LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Nurse Forced To Work Overtime After Back Injury: Lawsuit Thrown Out.

As a general rule employees cannot sue their employers for on-the-job injuries.

The law gives an exception to this general rule to an employee who is forced to perform a dangerous job task that results in injury or aggravation of an injury. The laws says for this narrow exception to the general rule to apply the employer must know something within its operations is dangerous, the employer must know that subjecting the employee to it is substantially certain to produce injury and with that knowledge the employer required the employee to continue to perform a dangerous task.

Mandatory Overtime Policy Upheld

The Court of Appeals of Ohio noted at the outset it is inherent to the nature of direct patient -care work that mandatory overtime may be necessary when too few staff are coming on duty to relieve staff already on duty.

The employer's policy handbook, and the nurses' collective bargaining agreement in this particular case, stipulated that refusal of mandatory overtime in this situation was insubordination justifying termination.

The nurse in question had injured her back during her first shift, had filled out an incident report and had requested but been denied permission to leave early.

When the shift ended the charge nurse told her she had to stay on duty until the end of the next shift. The nurse assumed the supervisor had read her incident report; the supervisor apparently had not and mandated her to work anyway. The nurse continued to complain during the second shift and was allowed to leave early when a new charge nurse came on duty.

The court ruled the charge nurse was not fully aware of the extent of the nurse's injury and thus was not intentionally subjecting her to aggravation of that injury by forcing her to continue to work. The court also pointed out that the medical testimony was inconclusive at trial that a person with a minor lower back strain generally would suffer additional injury, or that this nurse did suffer additional injury by continuing to work rather than resting after it first occurred. **Eblin v. Corrections Medical Center, 2004 WL 2341712 (Ohio App., October 19, 2004).**

Agency Supplied Uncertified Aides To Nursing Homes: Criminal Conviction Upheld By Court.

State investigators found out that a nursing personnel agency was sending uncertified individuals to nursing homes to work as certified nursing assistants.

Because of technical legal errors during the trial, the California Court of Appeal was able only to uphold a conviction against the operator of the agency for conspiracy to obtain funds through false representations. That reduced her sentence from four years to nine months in prison plus 540 hours community service.

There was no intent to commit elder abuse so the jury could not consider charges of conspiracy to commit elder abuse. No actual harm to a patient was proven. Invoices were just submitted for certified aides' work hours.

The owner of the nursing personnel agency was charged with conspiracy to commit elder abuse.

The judge misstated the legal definition of conspiracy in the jury instructions, so the conspiracy conviction must be thrown out.

The conviction will still be upheld for conspiracy to commit false representations by submitting invoices to obtain payment.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 19, 2004

Most of the people sent to work were never certified; one lost his certification in another state for an assault conviction.

There was no credible proof the agency operator was not fully aware of the illegal conduct she was committing.

The nursing home clients relied fully upon the agency to ascertain that its personnel were certified and experienced in the specific patient-care tasks they would be performing.

The court stressed the importance of the training that certified aides receive in recognition of signs of patient distress, infection control, safety and emergency procedures, technique for taking vital signs and medical terminology. **People v. Ezebunwa, 2004 WL 2361821 (Cal. App., October 19, 2004).**

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