

LEGAL EAGLE EYE NEWSLETTER

April 2016

For the Nursing Profession

Volume 24 Number 4

Wrongful Termination: Nurse Can Refuse To Work While Infectious With The Flu.

An LPN employed in a nursing home became acutely ill while at work. The facility's director of nursing overheard him vomiting, told him he did not look good and sent him home.

On his way home the LPN went directly to his primary care physician who treated him for his illness and wrote him a note taking him off work for three days.

That same day, in compliance with the facility's policy, the LPN phoned the scheduler and reported his illness and his physician's order to stay off work for three days. He said he would come in the following Monday and bring in his physician's note.

The director of nursing called the LPN the next day and he told her the same things he had told the scheduler.

However, when the LPN came in on Sunday he found he had been crossed off the work schedule for that entire week. Two days later he was terminated altogether.

Former Employee Has Right To Sue Fired in Violation of Public Policy

The Supreme Court of Oklahoma ruled the fired LPN could not be terminated for a reason that violates public policy, even as a common law employee at will with no employment contract or collective bargaining agreement to protect his rights in the workplace.



A common law employee at will, as a general rule, can be terminated at any time at the employer's discretion.

A major exception to the general rule is that an employee at will, or anyone else for that matter, cannot be fired in violation of a public policy that is clearly defined by the law.

Infection control is a clearly defined public policy.

SUPREME COURT OF OKLAHOMA
March 8, 2016

For legal authority the Court looked at a host of state laws in Oklahoma similar to those in other states and at US Federal statutes and regulations.

No state or Federal statute or regulation could be found that specifically says that a nurse cannot be fired for missing work with a serious illness that can be readily communicated to vulnerable patients.

However, the extreme importance of infection control in healthcare facilities serving vulnerable populations is clearly expressed many places in the law as an important public policy objective.

The Court quoted extensive regulations that require nursing homes and other healthcare facilities to practice infection control and provide a safe and sanitary environment for residents and patients.

Facilities are required to exclude personnel and visitors with communicable diseases from contact with patients.

With reversal of the local district court's dismissal of his case the LPN will get his day in court to try to convince a jury that his absence with the flu rather than other disciplinary issues was the reason for his termination.

Moore v. Warr Acres, 2016 OK 28, ___ P. 3d ___, 2016 WL 889507 (Okla., March 8, 2016).

Inside this month's issue...

April 2016

New Subscriptions
See Page 3

Nurse/Influenza/Wrongful Termination - Insurance Coverage/Fraud
Drug Allergy/Charting - Advanced Practice Nurse Practitioners
Physician vs. Nurses Harassment/Clinical Privileges Revoked
Nurse Anesthetist/PACU Nurses/Morphine/Overdose
Nurse/Family And Medical Leave Act - Gender Discrimination
Nurses/Patient's Race-Based Caregiver Request - Confidentiality
Nurse/Medication/Informed Consent - Nurse/Sexual Assault
Arbitration - Reasonable Accommodation - CDC/Vaccine Information