

## Phlebotomist's HIV Discrimination Claim Against Hospital Ruled Unfounded.

**A** hospital phlebotomist filed a charge of employment discrimination with the state department of human rights. She filed this charge when she was reassigned from her duties as a phlebotomist drawing blood from patients to a clerical position in the hospital's billing office. She claimed the hospital reassigned her to duties not involving direct patient contact because she was HIV positive, which, she asserted, amounted to illegal disability discrimination in employment.

The state department of human rights ruled in favor of the hospital, and the employee filed an appeal. The New York Supreme Court, Appellate Division, upheld the department's decision. According to the court, although unjustified adverse action against an HIV-positive employee is illegal, there was no disability discrimination in this particular case.

In this case the hospital was justified in reassigning this employee from direct patient contact to clerical duties, due to her persistent disregard of hospital policies which required all persons drawing blood to wear gloves on both hands. The court was convinced this policy was being and had been uniformly enforced by the hospital toward all employees who drew blood. **Friedel vs. New York State Division of Human Rights**, 632 N.Y.S. 2d 520 (A.D., 1995).

## Sexual Harassment: Court Rules Hospital Can Fire Male Employee For Fondling And Kissing Co-Worker's Young Daughter.

**F**ondling and kissing a co-worker's twelve-year-old daughter was sufficient grounds for a hospital to dismiss a man employed as a patient representative, the New York Supreme Court, Appellate Division recently ruled.

The case came to court as an appeal filed by the fired employee to contest being denied unemployment benefits by the state department of labor. The commissioner of the department of labor had ruled that he was dismissed for misconduct which justified termination. The court agreed he was guilty of substantial misconduct justifying termination for cause, and was not entitled to draw unemployment.

An investigator for the hospital obtained a statement from the girl that the man had kissed her and touched her private parts. The employee admitted kissing her, but denied the touching. The court accepted the girl's statement. It ruled the evidence fully supported the hospital's decision to terminate this individual. **Akhtar vs. Sweeny**, 638 N.Y.S. 2d 520 (A.D., 1996).

## Blood Transfusion: Patient's "Disease Phobia" No Grounds For Suit, Court Rules.

**U**njustified fear of disease contagion from a blood transfusion will not be recognized as grounds for an award of damages to a patient in a civil lawsuit, according to a recent ruling of the New York Supreme Court, Appellate Division.

The blood administered to this patient had tested negative for HIV and for hepatitis C, according to the hospital's lab records. After the patient voiced his concerns to the hospital over his fears of disease contagion from the transfusion, the donor was located and tested. The donor proved negative for HIV and hepatitis C. The patient himself also tested negative, well after the transfusion.

Without objective medical evidence upholding a reasonable likelihood of infection, a patient's "disease phobia" claim is considered by the law to be too remote and speculative to support an award of damages in a civil case, and is not compensable, according to the court.

There were also allegations the transfusion was medically contraindicated. Although the record is sketchy as to why, the case was bound over for trial as a medical negligence case on this issue alone. **Sargeant vs. New York Infirmary Beekman Downtown Hospital**, 635 N.Y.S. 2d 8 (A.D., 1996).

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