Poisoning: Employer Not Liable For Personal Malice.

Two medical assistants were assigned to work together stocking medical supplies and printed forms. They did not get along and argued frequently.

One was a hospital employee. The other was supplied by an agency.

The agency employee poured carbolic acid she found in a hospital stockroom into the hospital employee's water bottle. The hospital employee drank it and sustained chemical burns in her throat.

The hospital employee sued the agency employee and the agency.

An act of personal malice by one worker against a co-worker, whether it arises from interaction off the job or on the job, is not within the course and scope of employment and the employer is generally not liable.

COURT OF APPEAL OF CALIFORNIA
March 13, 2014

The Court of Appeal of California ruled the injured party had no grounds to sue the agency which employed the other.

An employer is legally liable for action taken by an employee, if the employee was acting in the course and scope of the employee's duties for the employer when the action was taken.

Although the animosity between them boiled up out of the problems they had trying to work together in the hospital, one medical assistant poisoning her co-worker was an act of purely personal malice which had nothing to do with the business purposes of the hospital where she worked or the staffing agency which provided her actual paycheck.

Even if the agency had an obligation to provide anti-workplace-violence training, it was only speculation that it would have made a difference. **Montague v. AMN, 2014 WL 983638 (Cal. App., March 13, 2014).**

Whistleblower: Court Suspects Timing Of Aide's Firing.

A CNA told her nurse manager and the human resources manager that a certain co-worker had been coming to work under the influence of methamphetamine.

The CNA herself already had enough unexcused absences that two more would result in her own termination.

Six weeks later her positive performance review specifically stated she was meeting expectations as to absenteeism and tardiness, that is, two recent absences were supported by doctors' notes and were not considered unexcused.

Two weeks after that she was abruptly terminated, not having been absent or reprimanded for misconduct in the interim.

The CNA sued her former employer, claiming she was terminated for having reported her co-worker's drug abuse and therefore had guaranteed legal rights under two state whistleblower protection statutes, one which applied specifically to healthcare employees and another which applied to employees in general.

Adverse employment action following soon after an employee's whistleblowing, with no employee misconduct in between, creates an inference that the employer retaliated against the employee.

COURT OF APPEAL OF CALIFORNIA
March 14, 2014

The Court of Appeal of California was highly suspicious of the CNA's termination soon after a positive review.

Close temporal proximity between whistle-blowing and an employee's termination, with no intervening misconduct to account for the employer's decision to terminate, entitles the employee to benefit from an inference that the employee's legally guaranteed rights as a whistleblower have been violated. **Courey v. Kindred, 2014 WL 996513 (Cal. App., March 14, 2014).**

Pregnancy Discrimination: Court Rejects Nurse's Case.

A nurse began fertility treatments which required her to take frequent days off to travel to another city, before she eventually transferred her treatments to a clinic closer to home. Then the nurse asked for more days off to spend time with her sister who was about to deliver a child.

Taking days off for her own treatments and to be with her sister caused a good deal of tension with her employer. A physician in the clinic accused the nurse of acting "hormonal" and of lacking the focus necessary to do her job.

Shortly after she actually learned she was pregnant and told her supervisor, the issues that had come to a head before she became pregnant led the nurse to feel compelled to resign. Then she sued her former employer for pregnancy discrimination.

It is a basic legal element of a lawsuit for pregnancy discrimination that the employee was pregnant and the employer knew the employee was pregnant, either because it was apparent or because the employee informed the employer.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
March 31, 2014

The US District Court for the Middle District of Pennsylvania rejected the idea that issues surrounding the nurse's fertility treatments were a legal basis for a lawsuit for pregnancy discrimination.

The die had already been cast before the nurse learned she was pregnant. After she actually told her supervisors she had conceived, nothing new transpired that contributed to her decision to resign, assuming for the sake of argument that that decision was prompted by prior disrespect by her employer that would have prompted a reasonable person to feel compelled to resign. **Kelly v. Horizon Medical, 2014 WL 1293859 (W.D. Penna., March 31, 2014).**