

## Race Bias: Caucasian Nurse Unable To Prove Minority Supervisor's Bias Was Behind Adverse Employment Decision.

A Caucasian registered nurse working in a mental health center took several medical leaves of absence. Although not explicitly stated in the court record it appeared the leaves were for mental health-related issues.

When she wanted to come back to work the director of human resources required her physician to certify her as fit for duty. Her physician instead stated unequivocally she was unable to return to work in any effective capacity as a registered nurse or in any other capacity within the mental health system.

Human resources placed her on administrative leave, meaning basically she was not allowed to come back to work. The nurse sued for racial discrimination. The US District Court for the Northern District of Illinois dismissed her case.

### **Direct Evidence of Racial Bias Employment Decision-Maker**

The nurse's immediate supervisor, an African-American, had made a remark that she, "... did not want any crazy white nurses working for me." The nurse also believed subjectively that her supervisor was prejudiced against her.

However, the court pointed to the accepted legal rule that to prove discrimination by direct evidence, racial bias has to be proven on the part of someone who is an employment decision-maker. This nurse's supervisor could not and did not decide to place her on administrative leave. That was up to the director of human resources, who based her decision strictly on what the nurse's physician said.

### **Circumstantial Evidence**

A Caucasian employee has circumstantial, as opposed to direct evidence of discrimination when treated unfairly in a department where the decision-makers are predominately minorities, but that was not the situation here, the court noted. **Pisko-rek v. Dept. of Human Services**, 2003 WL 21212583 (N.D. Ill., May 22, 2003).

***A Caucasian nurse can sue for race discrimination under some circumstances.***

***If the nurse is the only Caucasian employee in a department where all or nearly all the employment decision-makers are racial minorities, the Caucasian nurse would be the one considered the minority. In this situation the non-Caucasian decision-makers would have to disprove discriminatory intent as their motivation for an employment decision adversely affecting the Caucasian.***

***Reverse discrimination is another situation where a Caucasian can sue, if the minority person hired or promoted ahead of the Caucasian was clearly less qualified and management had expressed the desire to hire or promote a minority.***

***A Caucasian can also sue if there is direct evidence that a minority decision-maker was motivated by racial bias in making an employment decision, although in discrimination cases there is rarely direct evidence of discrimination.***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
May 22, 2003

## Race Bias: Nurse's Case Dismissed.

A long-term care facility's African American director of nursing was demoted to director of clinical programs, an assistant director-of-nursing position, after the facility was cited by the state department of health for insufficient hydration of residents, then suspended after the facility was written up a second time for the same problem.

She was terminated after she told a family member to speak to the administrator or to leave a note for the director of nursing when he complained his wife had a puddle of urine under her wheelchair and was not being attended to, rather than addressing the problem herself.

***When a minority employee is terminated there is a prima facie case of discrimination. The employer has to show a legitimate non-discriminatory reason.***

***The employee can try to prove the employer's non-discriminatory reason is not legitimate, but just a pretext for discrimination.***

UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT  
NOT SELECTED FOR PUBLICATION  
May 20, 2003

The US Circuit Court of Appeals for the Third Circuit, in an opinion not selected for publication, ruled the employer did have legitimate, non-discriminatory grounds to discipline and then terminate the employee, notwithstanding her complaints of racism.

A court does not second-guess the employer's judgment, but instead looks only for implausibilities, inconsistencies, incoherencies or contradictions in how the employer articulated a non-discriminatory reason for taking action against a certain employee, the court said. **Martin v. Health Care & Retirement Corp.**, 2003 WL 21186126 (3rd. Cir., May 20, 2003).