

Religious Discrimination: Court Validates Nurse's Claim *vis-a-vis* Leave-Early Practice.

The hospital petitioned the U.S. District Court for the District of Kansas to dismiss a religious discrimination case filed against the hospital by a former employee who was a licensed practical nurse.

In civil cases the courts routinely get these petitions. Before going ahead with a full-blown trial, the court looks at the sworn affidavits of the witnesses each side intends to summon and at the lawyers' legal briefs to decide if there is sufficient evidence to justify a trial. If the evidence is too weak the defendant who was sued is allowed to walk away. That is what the hospital wanted.

In this case the court said the nurse's evidence was strong enough to go forward with a trial. If the witnesses testified at trial according to their affidavits, the nurse could win the jury over, the court believed.

The nurse asked for Easter Sunday off to attend a religious function. That request was granted. However, being a new convert to the church, she later found out it was actually Holy Saturday afternoon she needed off, and only the last hours of her shift, not the whole day. She was available and had herself rescheduled to work the whole day on Easter Sunday.

She was never given a straight answer whether she could or could not leave early on Saturday, but she did anyway. When she reported for work on Easter Sunday morning she was sent home and told the nursing director would be contacting her.

The next week she received a letter indicating the hospital was taking the position she had abandoned her position and quit but was being fired anyway for abandoning her patients which was deemed inexcusable nursing neglect.

She filed suit for religious discrimination. As indicated above the court believed there were probable grounds for the lawsuit. The court reviewed the law of religious discrimination step-by-step.

It is unlawful for any employer to discharge or discriminate against any employee with respect to compensation or the terms, conditions or privileges of employment because an employee chooses to place an importance on religion in his or her life or because the employee belongs to one religious faith rather than another.

The hospital never had an obligation to let any nurse leave early for any reason, but the hospital had been letting nurses leave early to take college classes, take children to school, pick children up from school, go to the dentist, etc.

Having let some nurses leave early for personal reasons, the hospital could not refuse to let a nurse leave early to attend a religious service.

If what the employee asks for as reasonable accommodation is withheld in a discriminatory way, the employee has grounds to sue for discrimination.

Nurses also could request in advance to be the one sent home early on a particular day if there turned out to be a low patient census on the unit.

Eight to ten hours before the supervisor had any way of knowing what the unit's patient census would be in the latter hours of the nurse's work shift the supervisor had already decided not to let her go to her church service.

There seems to be some motivation to discriminate on the basis of religion and grounds for a lawsuit.

UNITED STATES DISTRICT COURT,
KANSAS, 2000.

Religion includes all aspects of religious observance and practice. The courts concede that is a circular definition. Judges apply it using their best judgment on a case-by-case basis.

It is discriminatory to refuse an employee's request for reasonable accommodation to his or her religious practices and observance unless the accommodation would impose undue hardship on the employer which is not reasonable.

The hospital allowed employees to request time off in advance for their religious needs. The hospital always accommodated their needs to the extent adequate replacement staffing could be lined up either by a supervisor reshuffling people or by the employee finding someone with whom to swap shifts voluntarily.

The hospital claimed that was reasonable accommodation and claimed it was all the hospital had to do. The court agreed it was reasonable accommodation, but said there was more to it than that.

The hospital had no policy permitting nurses to ask to leave early. They were not supposed to leave early. However, it was the actual practice that nurses were at times allowed to leave early.

The court said if there is an actual practice of making exceptions to a policy, the employer is guilty of religious discrimination if the actual practice does not accommodate one employee's religious needs the same as it accommodates another employee's personal needs.

There actually was a policy at the hospital of allowing nurses to request to be the first one sent home in the event of a low census, which did not guarantee anyone could get any specific time off.

That policy had to be applied on a non-discriminatory basis. Apparently the supervisor already decided this nurse would not be sent home before she had any way of knowing what the census would be, which the court saw as discriminatory. Weilert v. Health Midwest Development Group, 95 F. Supp. 2d 1190 (D. Kan., 2000).