

FMLA: Court Says Injured Nurse's Legal Rights Were Not Violated.

A med/surg nurse had an on-the-job neck and shoulder injury which made her unable to lift at least twenty-five pounds as required by the hospital's job description for a bedside nurse.

She was allowed to participate in a special program which provided light duty to injured care-giving employees to assist in their transition back to full-duty status.

The program required, however, that the employee provide proof through reports from the treating physician of progress toward successful resolution of the employee's job restrictions and toward return to work without those restrictions.

The nurse was not able to demonstrate such progress and was therefore told to take medical leave. After her leave was used up she was not able to return on full-duty status and was terminated.

The US Family and Medical Leave Act (FMLA) does not require an employer to provide light duty for an employee who cannot meet the physical demands of his or her position.

UNITED STATES DISTRICT COURT
OHIO
June 23, 2011

The US District Court for the Western District of Ohio ruled the nurse had no grounds to sue her former employer for violation of the US Family and Medical Leave Act (FMLA).

The nurse was not entitled to remain on light-duty status and use her medical leave intermittently as she needed it. Normally an employee who is eligible for FMLA leave can use it in large chunks or intermittently as needed, but that assumes the employee will return to full-duty status when the leave is over, after many weeks or just a few days, which was not the situation in this case. Kleinser v. Bay Park Comm. Hosp., __ F. Supp. 2d __, 2011 WL 2474217 (W.D. Ohio, June 23, 2011).

Religious Discrimination: CNA's Lawsuit Dismissed By Court.

Title VII of the US Civil Rights Act requires an employer to make reasonable accommodation to an employee's religious observances, so long as it does not cause an undue hardship to the employer.

An employee can sue the employer if the employee can prove that he or she had a bona fide religious belief that conflicted with an employment requirement, that he or she informed the employer of the belief and that he or she was disciplined or discharged for failing to adhere to the employment requirement in question.

In this case, however, there is no evidence the employee had a bona fide religious belief that required her to pray at certain times of the day or that she was unable to pray because of a requirement of her job.

She never told her supervisor that she needed to pray during her lunch or break times or that she needed to take her breaks at certain times to pray.

Nor is there any evidence the employee was discharged for praying or that the employer failed to make reasonable accommodation to her religious practices.

UNITED STATES DISTRICT COURT
MISSISSIPPI
June 24, 2011

A CNA used her lunch breaks as times to pray at work.

She claimed she was criticized by her co-workers for praying. After she complained to her supervisor, she was denied additional training that she requested and then was fired.

She sued her former employer, claiming religious discrimination, failure to provide reasonable accommodation to her religious beliefs and practices, retaliation and a hostile work environment. The US District Court for the Southern District of Mississippi dismissed her lawsuit.

No Religious Discrimination

The CNA's lawsuit ignored one basic legal requirement. She had to prove that the person who replaced her had different religious beliefs and practices than hers.

Secondly, the employer had legitimate non-discriminatory grounds to terminate her for insubordination. She apparently "crashed" an on-the-job in-service training session she wanted to attend but was expressly not authorized to attend because she was not yet qualified with her length of time on the job. Blatant refusal to follow directions from a nurse manager is grounds to terminate a CNA.

No Failure to Provide

Reasonable Accommodation

The CNA had no proof she required reasonable accommodation above and beyond being able to pray when her supervisor happened to let her take her breaks.

An employer must make reasonable accommodation to an employee's religious beliefs and practices, but only after the employee expressly asks for such accommodation and only to the point it does not cause undue hardship to the employer.

No Harassment, Retaliation

The Court also saw no harassment in the fact that her co-workers made remarks about her praying on the job. To be the basis of a lawsuit, offensive treatment by others must be physically threatening or humiliating and substantially interfere with the victim's ability to work. Complaining about something which does not amount to harassment is not the basis for a retaliation complaint. Stallworth v. Singing River Health, 2011 WL 2532473 (S.D. Miss., June 24, 2011).