

Developmentally-Disabled Adults: Nurse Must See That Helmet Is Worn, Assess Patient Who Falls.

Medical and therapeutic directives in a developmental center serving retarded and disabled adults are formulated by the doctors and therapists. However, the nurses are the professional staff who must understand the residents' day-to-day care needs and closely monitor each resident's activities.

Nurses are the professionals who have front-line responsibility for residents' care in a center for developmentally disabled adults.

It is the nurse's responsibility to see that a resident who is supposed to wear a helmet when out of bed wears the helmet.

If a resident does fall, the nurse must carefully assess the resident and determine if emergency medical care is needed.

COURT OF APPEAL OF LOUISIANA, 1997.

The Court of Appeal of Louisiana ruled in a recent case that the LPN on duty was at fault when an adult with epilepsy and substantial functional limitations fell. The nurse was not held responsible for the fall itself; that the resident could fall was to be expected and was largely unavoidable.

The court blamed the nurse because the resident was not wearing his protective helmet at the time. The nurse also did not correctly assess the extent of the resident's head injuries from the fall, and should have sent him to the emergency room right away. **Fincher vs. State Department of Health & Hospitals**, 691 So. 2d 844 (La. App., 1997).

Americans With Disabilities Act - Family And Medical Leave Act: Court Dismisses Nurse's Case.

The Americans With Disabilities Act (AWDA) says that no employer can discriminate against a qualified individual with a disability.

A disability is an on-going physical or mental impairment that substantially limits one or more of the major life activities of the individual.

A qualified individual with a disability is an individual with a disability who, with or without reasonable accommodation from the employer, can perform the essential functions of the position the individual holds or desires to hold.

The AWDA says that to be able to sue, an individual must both have a disability and able to perform the essential functions of the job.

The Family and Medical Leave Act (FMLA), among other things, gives an employee up to twelve weeks per year of unpaid medical leave for a serious health condition that makes the employee unable to work.

After twelve weeks, the FMLA no longer protects an employee who is still out on medical leave.

UNITED STATES DISTRICT COURT, OHIO, 1997.

The licensed practical nurse in this case worked in an extended care facility for Alzheimer's patients. She had psoriasis. Her condition meant long periods of dormancy, when she was able to work full-time without any problem, and periods of acute flare-up, when she could not work at all.

The nurse was terminated while on an extended medical leave for an acute flare-up. She was not re-hired when she re-applied after her condition had returned to dormancy and she was fully able to work, because her position had been filled. She sued for disability discrimination under the Americans With Disabilities Act and for violation of the Family and Medical Leave Act. The U.S. District Court for the Northern District of Ohio dismissed the suit.

The court took it for granted that an acute flare-up of this nurse's condition was a disability as "disability" is defined by law. But since she was completely unable to work during a flare-up she was not a "qualified individual with a disability" as that phrase is defined by law. Only a person who can perform the essential functions of the job, albeit perhaps with some degree of reasonable accommodation from the employer, can claim disability discrimination. An employer is not liable for not trying to accommodate an employee who is completely unable to work, the court ruled.

The hospital did its duty by giving the nurse twelve weeks unpaid medical leave. But when she had to stay out beyond that time, the hospital had the right to terminate her and require her to re-apply, and it did not have to re-hire her if no opening existed when she was able to return to work. The hospital's policy was to treat every employee the same who overstayed a twelve-week medical leave whether or not the leave was for a condition amounting to a legally-recognized disability. **Cehrs vs. Northeast Ohio Alzheimer Research Center**, 959 F. Supp. 441 (N.D. Ohio, 1997).