

## Revolving Door: Hospital Ruled Not Liable To Senior Visitor With Walker.

A hospital held a senior health fair on its premises to which the hospital invited residents of a particular nursing home. A nursing home employee brought a van full of seniors to the fair. One of the residents, who used a walker, was injured exiting the building through a revolving door and sued the hospital and the nursing home for negligence.

The Court of Appeals of Georgia ruled there was no basis for a lawsuit against the hospital.

***A hospital visitor with a walker is as knowledgeable as the hospital itself of the danger of a revolving door.***

***A hospital is not required to post persons by the revolving doors to help senior visitors.***

***There were four employees and four volunteers helping seniors at the senior fair, but the hospital was under no legal obligation to provide special accommodation to these visitors.***

COURT OF APPEALS OF GEORGIA, 2001.

The court said it was the nursing home's staff member's responsibility to help the residents through the revolving door. In fact, the staff member did tell this resident to wait while she helped the others to the van and she would come back and help her, but the resident went ahead alone and fell in the revolving door.

The court ruled the resident nevertheless was entitled to her day in court in a jury trial to try to prove the nursing home was negligent. Owens v. Dekalb Medical Center, Inc., 557 S.E. 2d 404 (Ga. App., 2001).

## Family And Medical Leave Act: Court Says Different Shifts Not Equivalent Nursing Positions.

***The US Family and Medical Leave Act (FMLA) makes employees working for employers with fifty or more employees eligible to take medical leave.***

***When an eligible employee returns to work after medical leave the employee has the right to be restored to the same position as before or an equivalent position.***

***A night shift is not equivalent to a day shift. Federal regulations say explicitly that an employee returning from leave is entitled to go back on the same shift. This employee's supervisor conceded that most hospital employees find one particular shift more desirable than others, most persons preferring the day shift.***

***Even if the day shift and night shift are on the same nursing unit with the same duties and responsibilities and the same pay, a night shift is not the same or an equivalent position under the FMLA.***

***However, if an employee stays out beyond the twelve weeks allowed by the FMLA the employee forfeits the right to be reinstated to the same job or to any job for that matter.***

UNITED STATES COURT OF APPEALS,  
FIFTH CIRCUIT, 2001.

The Family and Medical Leave Act (FMLA) is extremely complex.

In a recent court decision involving a hospital critical care nurse the US Circuit Court of Appeals for the Fifth Circuit focused only on the issues that pertained to the case. There was no dispute the hospital had more than 50 employees, the nurse worked more than 1250 hours in the preceding year, the nurse gave proper notice and provided medical documentation, the nurse's injuries from a motor vehicle accident were a serious health condition, etc.

### **Same or Equivalent Position**

#### **On Return From Leave**

The court ruled that the night shift the nurse was offered when she returned from leave was not the same or equivalent to the day shift she worked before.

The FMLA requires the employer to restore the employee to the same or an equivalent position in terms of pay, benefits and other terms and conditions of employment.

The night shift was on the same unit at the hospital, with the same duties and responsibilities and the same pay. However, according to the court, Federal regulations state in general that different shifts are not equivalent positions and the court said the same rule should apply to nurses. Further, the nurse's own supervisor testified that most hospital employees find one shift more desirable than another, with most preferring the day shift.

### **No Constructive Discharge**

The nurse went into the day nursing pool for a while and made less money than on the CCU day shift before her leave began. But soon she resigned voluntarily.

When an employee is forced out the law refers to it as constructive discharge. It is the essentially the same as retaliatory discharge and it is grounds to sue. But the bottom line for this nurse was her voluntary resignation effectively cut off her right to seek more than minimal damages. Hunt v. Rapides Healthcare System, LLC, 277 F. 3d 757 (5th Cir., 2001).