

Repeated Tardiness: Court Validates Nurse's Disability Discrimination Lawsuit.

An LPN worked in a nursing home on the 11:00 p.m. to 7:00 a.m. shift which she requested based upon seniority.

The nurse was being treated for iron-deficiency anemia. That condition affected her ability to stand for long periods, occasionally limited her ability to concentrate, caused shortness of breath after walking fast and caused her to sleep up to twelve hours per day and have difficulty waking up and getting out of bed.

As her fatigue worsened she began arriving late for work. The facility had a policy that seven minutes late would be tolerated, but dropped that policy in favor of expecting strict on-time punctuality. After she was warned of the new policy the nurse's continued tardiness resulted in her termination. There was no problem with her job performance other than her repeated tardiness reporting for work.

The US District Court for the Eastern District of Pennsylvania found grounds for the nurse's disability discrimination suit.

No Interactive Communication Process Employer Violated the ADA

The nurse discussed her problem with her supervisor before she was fired, that is, she did expressly inform the facility that her medical condition was behind her repeated lateness reporting for work.

The Court interpreted that as a request for reasonable accommodation for a disability. Such a request, under the Americans With Disabilities Act (ADA), requires the employer to engage in an interactive communication process with the employee to explore what might be possible by way of a reasonable accommodation that will meet both the employee's and the employer's needs. The required interactive communication process never took place.

The Court said that earlier cases involving nurses were not applicable. Amendments to the ADA have expanded the definition of disability and punctuality cases involving nursing coverage in critical care environments are not applicable to the question whether a nursing home can tolerate a nurse arriving late for work. **Thomas v. Bala Nursing**, 2012 WL 2581057 (E.D. Pa., July 3, 2012).

The definition of disability was expanded to make the US anti-discrimination laws more employee-friendly when the Americans With Disabilities Act (ADA) was amended by the US Congress in 2008.

A disability is a physical or mental impairment that substantially limits a major life activity.

Before 2008 the US courts interpreted the words "substantially" and "major" in the ADA very strictly to create a difficult standard for an employee to overcome to qualify as disabled, but that approach was expressly rejected by Congress. Many earlier court decisions are now obsolete.

The nurse in this case suffers from iron-deficiency anemia which, among other things, leads to fatigue and can cause some individuals to sleep up to twelve hours per day and have difficulty waking up and getting out of bed.

The nurse is substantially limited in a major life activity under the newly expanded definition of disability and she has rights under the Americans With Disabilities Act.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
July 3, 2012

Leaving Early: Court Says MS Is No Excuse.

A registered nurse suffered from multiple sclerosis (MS) which, among other things, caused the nurse to be unusually susceptible to stress and depression.

When she learned she would be seeing a certain pediatric patient that day, the stress she was already experiencing from non-work-related issues became unbearable and she left the hospital and went home during the middle of her shift without obtaining permission to leave.

The nurse was fired for violating hospital policy which required any nursing employee who became ill on duty to notify the charge nurse, staffing office or house nursing supervisor and get permission. She told them she had to go home because she "hated being there now," but she was never expressly given permission to leave.

The nurse's neurologist supplied her with a letter stating that MS can cause inability to handle stress appropriately and occasional oppositional or inappropriate behavior.

The nurse's condition may have caused stress that pushed her to the point she had to leave the hospital, but it did not excuse her from following hospital policy requiring her to obtain permission first.

COURT OF APPEALS OF MINNESOTA
July 9, 2012

The Court of Appeals of Minnesota ruled that the nurse was guilty of misconduct justifying termination. She committed a serious violation of the standards of behavior her employer reasonably had the right to expect of her as an employee.

The Court accepted the nurse's medical evidence that her condition did in fact force her to have to leave, but that did not excuse her from the requirement to obtain permission first. **Plecko v. St. John's**, 2102 WL 2685093 (Minn. App., July 9, 2012).