

Agency Nurse: Discrimination Suit Against Agency Client.

A nurse worked for a correctional healthcare corporation with the contract to provide inmate healthcare in the county jail. She sued the county jail for sexual harassment. The threshold question was whether she was a county employee, as only employees, not independent contractors, are covered by the state's employment discrimination law.

State and Federal employment discrimination laws protect employees from discrimination. The laws do not apply to independent contractors. They are not employees.

However, if the agency's client rather than the agency itself controls and supervises the agency's employee in the performance of work for the agency's client, the client is considered to be the employer for purposes of the anti-discrimination laws.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
June 30, 2003

The Superior Court of New Jersey, Appellate Division, ruled she was not a county employee and could not sue.

She was paid by the agency and designated as an independent contractor in the agency's contract with the county. However, those were not controlling factors.

Unlike many agency nurses, it was the physicians and nursing supervisors in the agency corporation, not officials in the client county jail, who controlled and supervised her nursing work. Chrisanthis v. County of Atlantic, A. 2d ___, 2003 WL 21487751 (N.J. App., June 30, 2003).

Understaffing: Nurses Fired Over Complaints, Court Finds No Right To Sue Under Federal False Claims Act.

The Federal False Claims Act (FCA) allows the Federal government to institute legal proceedings against parties defrauding the Federal government.

Private individuals are authorized by the FCA to file suit in the name of the government against parties who have defrauded the Federal government.

The FCA also outlaws employer retaliation. An employee who investigates or reports employer fraud can sue if he or she is the victim of employer retaliation.

False Medicare and Medicaid claims are covered by the FCA. An employee who investigates or complains of false claims cannot be retaliated against.

However, complaints about nursing staffing levels that may affect future certification do not involve false or fraudulent claims against the government and are not covered by the anti-retaliation language of the FCA if the employer has not submitted any false information to receive reimbursement for services.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
June 24, 2003

A staff registered nurse who was active in the nurses' union local began a campaign to correct what she and others believed was a serious problem of nursing understaffing at the hospital.

After speaking with representatives of the state Department of Public Health, she and other nurses began to articulate their complaints by looking for, noting and bringing to their supervisors' attention delays in patient care they attributed to the staffing situation, having been advised by the state Department of Public Health that unacceptable delays in patient care could affect the hospital's right to continue to participate in Medicare and Medicaid.

The nurse and others went to the state legislature to testify in committee hearings in support of a bill that would give nurses a role in determining nursing staffing levels and impose penalties on facilities for understaffing as determined by the nurses.

The nurse and others also circulated a petition, signed by one hundred sixty nurses at the hospital, demanding the understaffing situation be rectified.

The nurse was fired, on grounds she was attempting to organize an illegal work stoppage. She sued, citing the US Federal False Claims Act and common-law principles of wrongful discharge. The US District Court for the Northern District of Illinois dismissed her lawsuit.

No False Claims No Retaliation Lawsuit

Only complaints over actions that would be illegal if proven are covered by the FCA and state whistleblower laws. The hospital did not submit any false or fraudulent information to obtain Medicare or Medicaid reimbursements. The nurses were not complaining of illegal activities by the hospital. It is not illegal for a hospital to disagree with its nurses over staffing levels or to downsize unnecessary employees. Robbins v. Provena Hospitals, Inc., 2003 WL 21468588 (N.D. Ill., June 24, 2003).