

Understaffing: One Whistleblower's Claim Upheld, Another's Thrown Out By Court.

The Supreme Court of New Hampshire recently upheld one employee/whistleblower's complaint of illegal employer retaliation. She was a charge nurse on duty during the incident in question.

At the same time the court let stand another employee's firing, ruling she did not fit the definition of a whistleblower who would have legal protection from employer retaliation. She was the hospital's switchboard operator on duty during the incident in question.

Background

The employment setting was a drug and alcohol rehab hospital.

A few months before the incident the hospital had been investigated by the state department of health and human services following two patient deaths, an allegation of rape of a fourteen-year-old resident and a patient riot.

The state investigation resulted in a report finding the hospital was not in compliance with certain state statute laws and regulations.

The report pointed to specific deficiencies related to insufficient staffing.

The Incident

The switchboard operator on duty for the p.m. shift became uneasy because one staff member had called in sick, another had left the building and others were involved in difficult admissions, leaving the switchboard operator without immediate backup to deal with the residents. One resident was insisting on leaving AMA.

The security guard had not reported for work at 6:00 p.m. as the operator expected. Two male residents were making harassing comments to her. An Alcoholics Anonymous meeting was scheduled for 7:00 p.m., which would bring in numbers of people from the outside.

The operator talked to the charge nurse and phoned at home the administrator, the head of clinical services, the head of security and the director of nurses, requesting additional staff. She phoned the police at 7:00 p.m. A police officer stopped by at 9:02 p.m. and left at 9:20.

The Whistleblower law says that no employer can discharge, threaten or discriminate against any employee regarding compensation, terms, conditions, location or privileges of employment because the employee in good faith reported or caused to be reported, verbally or in writing, what the employee had reasonable cause to believe was a violation of a law, rule or regulation of state law, a political subdivision of the state or the United States.

The employee does not have to cite a reference to any specific law in making a report of what is or is believed to be illegal conduct.

The Whistleblower law extends to an employee who supports another employee who reports illegal conduct, because retaliation against a whistleblower is in itself an illegal act.

In this state an employee who believes he or she has a claim under the Whistleblower law must first have tried to make full use of the employer's grievance process, then must file a complaint with the state Commissioner of Labor, before filing a lawsuit.

SUPREME COURT OF
NEW HAMPSHIRE, 2000.

Switchboard Operator Fired

Whistleblower Complaint Thrown Out

The switchboard operator was fired for calling the police rather than expressing her concerns only within channels of communication inside the hospital.

She filed a retaliation complaint under the state Whistleblower law but her complaint was dismissed. The court ruled she was not a true whistleblower, specifically because she failed to grieve her termination internally before filing her complaint with the Commissioner of Labor, as required by New Hampshire state law.

Charge Nurse Fired

Whistleblower Complaint Upheld

The charge nurse complained to the hospital administrator, who would not do anything. Four days later she reported the understaffing situation and the switchboard operator's firing to the head of licensing at the state department of health and human services, by law the proper governmental authority to receive and act upon such a complaint.

Two weeks later the director of nursing fired the charge nurse, on the grounds the charge nurse was undermining the director's authority and promoting divisiveness among hospital staff.

The court ruled the charge nurse had a valid complaint under the state Whistleblower law. By going to the hospital administrator and getting no meaningful response she had done her duty to use up the institution's internal grievance process, the court felt. Then the charge nurse made a report to the appropriate governmental authorities in charge of acting on complaints of hospital understaffing. **Appeal of Linn, 761 A. 2d 502 (N.H., 2000).**

(Editor's Note: State whistleblower laws are not all the same. Most places it is necessary to make a report *in writing* to the proper authorities. Using up institutional grievance procedures may or may not be a requirement before filing suit

Be sure to consult a knowledgeable local attorney, nurse's union representative, etc., before taking any action.)