

Racial Bias: Court Turns Down Tech's Lawsuit (Cont.)

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Racially Charged Incident

When the song "Lady Marmalade" played on the O.R. sound system an independent contractor physician with staff privileges at the hospital sang along highlighting the lyric "soul sista" to mock the tech while dancing like a gorilla.

The Court ruled this was unacceptable conduct in the workplace. However, that in and of itself did not make the hospital automatically liable.

According to the Court, the anti-discrimination laws differentiate the conduct of supervisors, non-supervisory co-workers and non-employees.

When the harasser is a supervisor the employer is strictly liable for the consequences. The actions of a supervisor toward a subordinate are essentially the actions of the employer itself.

If the alleged harasser is the victim's co-worker or other non-supervisor, the employer will be held liable only if the employer was negligent in its control of working conditions.

To sue for a racially hostile environment created by a co-worker or other non-supervisory individual the victim must show that the employer failed to provide a reasonable avenue to handle complaints or that the employer was aware of the harassment and nevertheless declined to take appropriate remedial action.

Hospital Stopped the Offensive Conduct

The courts have ruled that any remedial action by the employer which effectively stops the offending non-supervisory person from harassing the victim is considered an adequate defense to a lawsuit.

After the tech complained to her supervisor about the incident all further inappropriate conduct by the physician ceased, presumably because someone in authority spoke to him and told him to stop.

According to the Court, there is no hard and fast rule that defines exactly what an employer is expected to do when it learns an employee has been or is being harassed. The employer is judged instead by the results of its corrective measures. **Ryliskis v. Uniontown Area Hosp.**, 2013 WL 6328733 (W.D. Pa., December 5, 2013).

Whistleblower Law: Court Turns Down LPN's Retaliation Lawsuit.

The state's Whistleblower Law provides that no employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or an appropriate authority an instance of wrongdoing.

The word "wrongdoing" refers to a violation of a Federal or State statute or regulation or a code of conduct or ethics designed to protect the interests of the public or the employer.

Federal law provides that methadone may only be administered or dispensed by a licensed practitioner, such as a physician, registered nurse or licensed practical nurse.

Federal law was not violated by the conduct the LPN complained about.

The program director, not a licensed practitioner, went to a registered nurse, a licensed practitioner, who dispensed the medication based on her own assessment of the patient.

COMMONWEALTH COURT
OF PENNSYLVANIA
December 4, 2013

An LPN worked as medication nurse in the hospital's maternal addiction treatment program where she dispensed methadone to the program's clients.

The LPN's performance reviews were consistently above average as to her clinical competence but consistently called for improvement in the attitude and tone she brought to interactions with her patients.

An incident occurred in which she refused to dispense methadone to a patient she believed was intoxicated on drugs. Instead, the LPN insisted the patient give a urine sample for a drug screen.

The patient went to the program director. The program director told the LPN to give her her methadone. The LPN refused. The program director went to another nurse, an RN, and the RN assessed the patient, did not believe she was intoxicated and gave the patient her methadone.

The LPN reported to their nursing supervisor what had happened. The parties held a meeting where the program director and the registered nurse who gave the methadone said they did not believe the patient was intoxicated and that it was not inappropriate to give her her methadone. They brought up the patient's complaint that the LPN was prejudiced against her because she was a minority and an addict.

Patient complaints continued against the LPN, along with disciplinary write-ups and poor performance reviews.

Eventually the LPN was terminated after a battle she waged by email with a newly-hired addiction counselor over the way the counselor was doing his job.

The LPN's termination occurred several months after the incident with the methadone.

Program Director's Action Was Not Illegal

No Whistleblower Lawsuit

The Pennsylvania Commonwealth Court ruled the LPN did not have grounds to sue under the state's whistleblower law because the issue she complained about was not a violation of any law.

The methadone was given by a licensed registered nurse based on that nurse's assessment of the patient as appropriate to receive the medication. **Evans v. Thomas Jefferson Univ.**, __ A.3d __, 6244607 (Pa. Cmwlth., December 4, 2013).