

Healthcare Employment Practices Liability

EPL Loss Scenarios

- A Pennsylvania physician was successful in proceeding with sexual harassment and gender discrimination claim under Title VII, even though he was not employed by the hospital. While basic federal anti-discrimination laws apply only to employees, the physician was able to establish that the hospital's quality assurance program which led into its peer review process may have actually created an employment relationship.
- A male employee with the hospital for over 23 years was promoted to the post of Nursing Manager by the Chief Nursing Officer. While preparing to transition into the new role, the Chief Nursing Officer resigned and was replaced. The new Chief Nursing Officer refused to allow him to assume the role and hired a younger female to fill the role. The aggrieved employee hired counsel and promptly demanded \$3.2M. After protracted litigation, the parties agreed to private mediation and both sides ultimately accepted a mediator's proposal of \$1.3M.
- A North Carolina healthcare provider has agreed to pay \$160,000 and provide other relief to settle an Americans with Disabilities Act (ADA) lawsuit brought on by the US Equal Employment Opportunity Commission (EEOC). The EEOC alleged that the company violated the ADA when it discriminated against an employee because of her disability, failed to provide her with a reasonable accommodation for her disability, and retaliated against her for bringing her claims to the EEOC.
- An Ohio based certified nursing assistant at a long-term care facility has recently filed suit against her employer, with the assistance of the ACLU, alleging that she was the victim of pregnancy discrimination. She alleges that she experienced complications early in her pregnancy and requested light-duty accommodations, which were routinely granted to other employees. She was told not to return until the restrictions were lifted. The case remains pending.
- A nursing home recently settled a case in which a patient request for white-only healthcare providers put the employer in a difficult position. The plaintiff, a Hispanic nurse, was told that only white assistants could enter the patient's room or provide her with care. The nurse filed suit alleging that the facility's acquiescence to the racial biases of its residents is illegal and created a hostile work environment. She also asserted that her termination was racially motivated. The case resolved with a \$150,000 settlement.
- A multi-location health system received a demand letter sent by counsel on behalf of a current employee. According to the letter, the male nurse employee alleged to have been sexually harassed by several staff members, including male and female physicians. Because his internal complaints went unanswered, he retained counsel to represent him. After pre-litigation discussions, he was relocated to another facility and received an undisclosed six figure settlement, and several employees were terminated for harassment.
- As case involving code words or nicknames cost on California employer \$750,000, plus defense costs north of \$400,000, when it agreed to settle national origin discrimination and retaliation claims made by an Asian nurse. The nurse, the only Asian employed at this facility, alleged to have endured years of offensive nicknames by coworkers and superiors. The medical group defended the claims vigorously, defending based on the fact that plaintiff was well liked, that the nicknames were given with no ill intention, and that he never faced any adverse employment actions. On the eve of trial, faced with the poor optics of the case to a jury, a significant settlement was reached.
- When a long-time patient of an optometrist's practice became upset when asked to return a pair of loaned frames, litigation ensued. The patient, who was wheelchair bound since birth, now alleged that the building design prevented her from accessing the building and this was a form of disability discrimination under the ADA. Once the costs of defending such an action were weighed, a 5-figure settlement was reached.

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