

SHOULD NURSE BE ALLOWED INDEFINITE NUMBER OF UNPLANNED ABSENCES?



A neo-natal intensive care unit nurse lost her job for too many unplanned absences. She filed a lawsuit, alleging that her employers had violated the Americans with Disabilities Act (ADA) for failing to accommodate her – by allowing an indefinite number of absences. The woman had been working at Providence St. Vincent, a facility in Portland, OR, as a registered nurse for 11 years. Providence’s attendance policy was five unplanned absences within a twelve-month period. Since at least 2005, she has had fibromyalgia, which limits her sleep and causes chronic pain. The nurse never worked full time at the facility, but in July 2000, she was told to improve her attendance, as she had exceeded the year limit. In 2002, she was placed on work plans to address her frequent absences, which she blamed on a divorce and further predicted increased attendance when her personal life “dramatically improved.” However, the absences continued, and the woman met with the manager to discuss her poor attendance. The manager agreed to allow the woman to call in if she was “having a bad day.” She could move her shift to later in the week and was not required to find someone to cover her shift. A year later, she had once again surpassed the maximum number of absences allotted in a year. Management was even more flexible: her two shifts per week would not be scheduled on consecutive days. More absences ensued, and the woman received a verbal warning, responding by asking to be exempt from the attendance policy



altogether. There were other absences that weren’t marked against her, including leave for medical reasons, a trial involving her spouse and counseling. The unplanned absences were still a problem, and she was issued two corrective action notices: one for the sporadic attendance, and the other for allegedly inappropriate comments made in front of a patient – in response to being informed that her part-time position would no longer exist and she would need to transfer or lose her job. She was later scheduled to meet with management following two more unplanned absences. Not surprisingly, she failed to attend the meeting and soon thereafter was terminated. She brought action against the facility, claiming that her bosses had not accommodated her by allowing the exemption from the attendance policy. The district court ruled in favor of Providence, citing three essential reasons: she was “unqualified” due to her inability to adhere to a company policy; Providence’s flexibility in not scheduling shifts on consecutive days was a reasonable accommodation; and the request for a waiver from the attendance policy was unreasonable. The appeals court saw the case turning on the notion of attendance being a necessity at the facility. By the plaintiff’s own admission, her absences had adverse effects on the other staff members and their job performances. Furthermore, she simply could not refute the fact that she had repeatedly violated the attendance policy, and appellate judges believed that Providence, having accommodated her numerous times, “was under no obligation to give [the plaintiff] a free pass” for every absence. The district court’s decision was affirmed.