

Anti-Discrimination in the Workplace: Why You Need More Than Written Policies

Labor & Employment Law Update

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One of the most recent illustrations of the need for written anti-discrimination policies and training comes from a case out of a federal trial court in Michigan. In the case, *McCrary v. Oakwood Healthcare, Inc.*, No. 14-14053 (E.D. Mich. Mar. 16, 2016), a hospital patient stated that he did not want to be treated by African-American hospital employees.

Cutting to the chase: such a request is unacceptable; the customer (or patient, in this instance) is not always right. Nevertheless, the patient's request was noted in his chart—and the hospital did not immediately reject the request.

The Plaintiff in the case, an African-American nurse, alleged that the patient told the nurse to leave the patient's room because of the nurse's race. Shortly thereafter, the patient was moved to a different floor of the hospital, which was outside of the Plaintiff's assigned coverage area.

Addressing those facts, the court ruled that the Plaintiff's claim that she was the victim of unlawful race discrimination based on the hospital's alleged response to the patient's discriminatory request should proceed to trial. The court's decision in that regard was based heavily on the absence of any written hospital policy instructing employees to reject discriminatory patient requests, along with the lack of any training to advise employees on the proper response to such requests.

Employers must be aware that the actions of patients, customers, clients, etc., can expose employers to liability for employment discrimination claims. To limit that exposure before problems arise, employers must have written anti-discrimination policies—and those policies must include specific language prohibiting discrimination by customers.

As always, having written policies is not enough. The policies must be backed up by training—and that training should specifically instruct employees how to respond to and resolve improper customer requests based on racial preferences or other characteristics protected by anti-discrimination laws. There is no better time than the present for employers to review their policies and training to ensure they are updated to address this important issue.