

Sunnydale Convalescent Center

Sunnydale Convalescent Center (SCC), is a large nursing home and retirement village operated by the state of Arkansas. SCC is often faced with staffing shortages because of its size and the lack of qualified nurses in the area. As a result it began to use aggressive recruitment techniques. First SCC offered current employees bonuses for each new employee they referred. It also contracted with an employment agency, Arkansas Statewide Employment Agency to send employees. SCC and Statewide were to split the fees paid by applicants. The contract with the applicants read as follows:

Employment shall be considered to be temporary when within 90 days after employment commences the employment is terminated through 'no fault' of the applicant, or the employment is voluntarily terminated by the applicant with 'just cause'. A temporary placement fee may be charged to any such applicant for such temporary employment. Such fee not to exceed twenty (20) percent of the total compensation received or seventy-five (75) percent of the permanent placement fee for the same position, whichever is the lesser. In the event the employee is discharged 'for cause' or voluntarily leaves employment without 'just cause' within 90 days after employment commences, a fee not to exceed 75% of the permanent placement fee may be charged to any such applicant.

SCC also placed want ads in local area papers. Lucky for SCC, the Sunnydale Courier ran want ads segregated by gender. That way, employers could more easily target the applicant pool they were interested in. SCC ran two ads, one in each column: "Wanted experienced women with LPN/RN credentials for nursing supervisor/administrator positions. Must live within Sunnydale County, Arkansas. EEO Employer." "Wanted, energetic young men with caring spirits and LPN or RN credentials. Must live within Sunnydale County, Arkansas. EEO Employer."

In order to reduce the high turnover rate, Wanda Hampton the Nurse Administrator at SCC, promised applicants that they would have a job with SCC as long as their work was good, and that the sky was the limit in terms of their earning potential. (In fact the states's relatively low salary caps on nurses' wages was one of the reasons for the turnover). All applicants were required to fill out an application form which asked among other things, whether they had a phone or a car, what their last salary had been, the dates of their degrees/diplomas and to authorize a credit check. Applicants also took a standardized test which covered the essentials of nursing home procedures. Men tended to significantly outperform women on the exam but Trisha Thimas made it past the initial screening process.

Statewide had the reputation of hiring "ethnic" applicants only in non managerial/professional positions. Two male RNs with essentially similar credentials, one Laotian, Jimmy and one white, Jake, applied with Statewide employment agency. They were sent by United, a local civil rights agency. The Statewide interviewer Tim offered Jimmy a position as an orderly and hired Jake as an RN. Jake then informed the interviewer that he was in the army reserves and would need to be available for training. Tim told Jake that "Healthcare is a demanding occupation that requires the total dedication of all employees. SCC values dependability. Perhaps you should consider another occupation."

Wanda called Jimmy's references. One employer stated, "Yes he worked here." Another said, "He was a great employee, but I'd never hire him back." (This was because Jimmy had revealed the fact that his boss had been embezzling. When he reported his findings, Jimmy was let go for insubordination.) Jimmy explained this to Wanda and she hired him. Trisha had

several arrests for assault, robbery and terroristic threatening. She had moved to Arkansas from New Hampshire to get a new start. The two began working together on the night shift. SCC informed Trisha that she was to “wear a pink frock with white skirt, keep hair neatly modest and wear no polish or makeup.” Jimmy was to wear green scrubs, no facial hair and short trimmed hair style.”

All employee email and phone calls were monitored.

During their first month of employment, Trish became frustrated with a patient who soiled herself after being washed. She assaulted the patient, slamming her into the bed and slapping her. Trisha explained to Wanda that she thought it was just the night shift that was affecting her. Wanda moved Trisha to the day shift. Jimmy, frustrated with some of the policies of SCC, told the patients they were overpaying to stay in SCC since it was not up to industry standards. Shortly thereafter, Jimmy fell asleep in a chair and fell back, hitting his head on a desk. He was sent to be drug tested. The results, which were inconclusive, were sent to Wanda who terminated him.

Discuss all the issues raised by this fact pattern. Be sure to indicate the likelihood of success of all claims, as well as potential damages.