Independent Contractors Protected Under Section 504 of the Rehabilitation Act

9th Circuit Court of Appeals holds § 504 of the Rehabilitation Act applies to independent contractors and the entities that hire them.

New York, NY (PRWEB) November 22, 2009 -- In a case of first impression, the U.S. Court of Appeals for the Ninth Circuit held on November 19, 2009 that Section 504 of the Rehabilitation Act prohibits disability discrimination in the workplace against independent contractors.

In Fleming v. Yuma Regional Medical Center, No. 07-16427, the Ninth Circuit found that Section 504 incorporates only the substantive standards of Title I of the Americans with Disabilities Act ("ADA") for determining what conduct violates the Rehabilitation Act and not the ADA's limitations concerning who is covered. The case was brought by Outten & Golden LLP (New York and Stamford, CT) and Lubin & Enoch, P.C. (Phoenix, Arizona) on behalf of Dr. Lester Fleming, an anesthesiologist whose employment contract was terminated by an Arizona anesthesiology practice after it learned he had sickle cell anemia.

Section 504 prohibits disability discrimination under any program or activity that receives federal financial assistance. Many employers, including hospitals, state and local governments, municipalities and colleges and universities, receive federal financial assistance. Although Section 504 is not limited to employment, it has had a major effect in that area. In addition to prohibiting entities from discriminating against individuals with disabilities, federal fund recipients in the Ninth Circuit will also be liable for failing to provide independent contractors with reasonable accommodations for their disabilities when necessary. According to Gary Phelan, a partner at Outten & Golden LLP and co-author of Disability Discrimination in the Workplace "this decision will alter the terrain for thousands of individuals with disabilities navigating the workplace." Phelan elaborated that the decision is particularly important because persons with disabilities are more likely to find opportunities in government agencies than in the private sector. In addition, Phelan noted that individuals with disabilities- whose unemployment rate exceeds 70% - are often only able to find positions as independent contractors.

Courts around the country have disagreed about the relationship between Title I of the ADA and Section 504 of the Rehabilitation Act. The Tenth Circuit, for example, concluded that Congress did not intend for the ADA's "15 or more employees" definition of employer to be incorporated into the Rehabilitation Act, reasoning that the ADA serves as guidance for the substantive standards but does not determine whether an employer is subject to the broader Rehabilitation Act in the first place. While joining the Tenth Circuit the Fleming court noted that its decision conflicted with the decisions reached by the Sixth and Eighth Circuits. "The Ninth Circuit recognized the distinction between substantive standards and jurisdictional prerequisites. It also appropriately deferred to Congress and did not reduce the express scope of the Rehabilitation Act," said Stanley Lubin, who argued the case to the Ninth Circuit.

The scope of this decision is far-reaching. In 2005, the U.S. Bureau of Labor Statistics determined that there were an estimated 10.3 million independent contractors. "Independent contractors are typically excluded from statutory anti-discrimination protection. When subjected to discrimination, they have little legal recourse. Particularly in the present economic environment, where employers are opting for independent contractors as a way to minimize costs, this is a welcome development in the law," says Seth M. Marnin (f/k/a Stephanie M. Marnin), also of Outten & Golden LLP, who briefed the appeal.
The split among the Circuit Courts on the issue makes the case ripe for review by the U.S. Supreme Court.

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