

11 | 20 | 2009 Posted By

Ninth Circuit Extends Rehabilitation Act to Independent Contractors

On November 19, 2009, the Ninth Circuit handed down its opinion in Fleming v. Yuma Regional Medical Center, 07-16427. The court faced the difficult task of interpreting the interplay between Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and Title I of the Americans with Disabilities Act. The Sixth and Eighth Circuits had previously held that the Rehabilitation Act incorporated Title I in its entirety, requiring an employer-employee relationship as a prerequisite to suing for discrimination. On the other hand, the Tenth Circuit had disagreed, and only incorporated the "standards" of Title I, allowing independent contractors to sue even without an employment relationship. In Fleming, the Ninth Circuit agreed with the Tenth Circuit, and held that the Rehabilitation Act would indeed cover claims by an independent contractor notwithstanding the lack of an employer-employee relationship.

In Fleming, the Yuma Regional Medical Center denied an anesthesiologist suffering from Sickle Cell Anemia a contract. The doctor sued under the Rehabilitation Act, which provides that "[n]o otherwise qualified individual with a disability... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The hospital defended, arguing that because the doctor was an independent contractor, he had no standing to sue for discrimination.

The court found for the doctor, holding that Section 504 incorporated only the standards of Title I of the ADA, and did not incorporate Title I's requirement of an employment relationship. First, the court noted that the scope of the ADA is far narrower than that of the Rehabilitation Act. The Rehabilitation Act covers any "otherwise qualified individual" who has been discriminated against. This is in contrast to the ADA, which only prohibits discrimination against those qualified individuals in an employment context. Second, the court noted that Congress, in writing Section 504, did not use any language of incorporation when referring to the ADA, but rather only referred to Title I's "standards." This led to the third point, that without express authorization from Congress, the court cannot simply restrict the scope of the broader Rehabilitation Act to match that of the more restrictive ADA. Fourth, incorporating Title I in its entirety would cause substantial duplication between the Rehabilitation Act and the ADA. The creation of two parallel schemes in each of the acts, according to the Fleming court, "counsels against finding that Congress created one scheme and then displaced it with a second, duplicative scheme."

Fleming dramatically changes the landscape for employers in the Ninth Circuit which are

covered by the Rehabilitation Act. Now, independent contractors may sue the entities that hire them for discrimination under the Rehabilitation Act even though they are not actual employees.