The Court, in Flynn v. Distinctive Home Care, Inc. 812 F.3d 422 (5th Cir. 2016), addressed an issue of first impression for the Fifth Circuit: May an independent contractor who lacks an employer-employee relationship with the defendant sue the defendant for employment discrimination under Section 504 of the Rehabilitation Act? The Court answered in the affirmative.

Section 504 of the Rehabilitation Act, which was enacted seventeen years before the Americans with Disabilities Act (ADA), states that no 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 subjected to discrimination under “any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” The phrase “any program or activity receiving Federal financial assistance” has been broadly construed and so Section 504 is applicable to many private sector activities. For example, hospitals that treat Medicare and Medicaid patients are considered to be “receiving Federal financial assistance” by virtue of reimbursement for treatment provided to these patients.

Distinctive Home Care contracted with the Government to provide medical services at Lackland Air Force Base. To provide clinical pediatric services, Distinctive contracted with Dr. Rochelle Flynn, who agreed to provide twenty hours of services per week as an independent contractor. Based on complaints from Dr. Flynn's patients and co-workers, the Government directed Distinctive to remove Dr. Flynn from providing care to patients at Lackland Air Force Base. When Distinctive informed Dr. Flynn of the Government's decision, and the basis for it, she informed Distinctive that she has been diagnosed with Asperger's Syndrome and that her problems with patients and co-workers resulted from this condition. Nonetheless, Distinctive terminated her contract, which prompted Dr. Flynn to bring suit against Distinctive pursuant to Section 504 alleging discrimination based on her disability.

The trial court granted summary judgment against Dr. Flynn based on the conclusion that she lacked standing, under the Rehabilitation Act, to file suit for employment discrimination because she was not an employee of Distinctive. The trial court's conclusion was based on Section 504(d) of the Rehabilitation Act, which
incorporates the standards applied under Title I of the ADA. Although the legislative history suggests that Section 504(d) was added to the Rehabilitation Act to ensure that it provided a level of protection for disabled persons that was consistent with the ADA, several federal courts have held that Section 504(d) incorporates into the Rehabilitation Act the ADA's Title I requirement that only an employee of the defendant can bring suit for employment discrimination. The trial court agreed with these courts and granted summary judgment in favor of Distinctive because Dr. Flynn was not employed by Distinctive.

The Fifth Circuit, noting a split in the decisions among the courts that had addressed this issue, concluded that Section 504(d) does not incorporate into the Rehabilitation Act the requirement that the plaintiff and defendant have an employee-employer relationship. Consequently, the summary judgment was vacated and the lawsuit was remanded for further proceedings. In reaching its decision the Fifth Circuit rejected the argument that Section 504(d) was intended to incorporate all the terms of Title I of the ADA into the Rehabilitation Act; concluding instead that the intent was to incorporate the ADA's “standards” so as ensure consistent treatment of persons with disabilities under both laws.

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Practice Areas

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