

Title VII may apply to some independent contractors

Title VII of the Civil Rights Act (the legal basis of many discrimination lawsuits) applies to anyone over whom an employer exercises control—that is, dictating the “manner and means” by which the individual performs the job. That means the law may cover even an otherwise independent contractor.

The bottom line: The more leeway you give an independent contractor, the less likely Title VII will cover her. But if you control how and when she does her job, chances are she can sue under Title VII for alleged discrimination.

Recent case: Dr. Barbara Salamon is a board certified gastroenterologist with medical staff privileges at Our Lady of Victory Hospital in Lackawanna. She said that a co-worker sexually harassed her. After she reported the alleged harassment, she said hospital officials began criticizing her work and placed her on a three-month “rehabilitation” program. She sued for sexual harassment and retaliation under Title VII.

At trial, the hospital succeeded in getting the case dismissed because it had classified Salamon as an independent contractor. It argued that Title VII’s employment sections don’t cover true independent contractors.

Salamon appealed, and the 2nd Circuit Court of Appeals reversed the decision to dismiss.

The appeals court reasoned that the lower court got hung up on the labeling and failed to consider the substance of the relationship. It went on to explain that because the hospital exercised substantial control over the treatments Dr. Salamon provided to patients—including specifying how and when she should perform procedures and which drugs she should prescribe—she was an employee for Title VII purposes. It didn’t matter that Salamon billed patients directly and that the hospital did not pay her. (*Salamon v. Our Lady of Victory*, 06-1707, 2nd Cir., 2008)