



For your information

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Supreme Court Upholds Ministerial Exception to Employment Discrimination Laws

On January 11, 2012, a unanimous Supreme Court held that the First Amendment bars employment discrimination lawsuits by ministers against their religious organizations.

Background

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” In the context of church property disputes, Supreme Court decisions have long held that the government cannot interfere with ecclesiastical decisions under the First Amendment’s Establishment and Free Exercise Clauses.

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. The Americans with Disabilities Act (ADA) similarly prohibits employment discrimination on the basis of disability. Both Title VII and the ADA permit an individual who claims to have been the subject of workplace discrimination to file a charge with the Equal Employment Opportunity Commission (EEOC), and makes it unlawful for any employer to retaliate against an employee because the employee files a charge.

Since the passage of Title VII and other employment discrimination laws, the federal Courts of Appeals have uniformly recognized a ministerial exception under the First Amendment, which bars claims pertaining to the employment relationship between a religious institution and its ministers. The Supreme Court has now weighed in.

[Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC](#)

Hosanna-Tabor is a small K-8 school in Redford, Michigan that belongs to the Lutheran Church—Missouri Synod. The school employs both “lay” teachers and “called” teachers. Called teachers are commissioned Lutheran ministers. Lay and called teachers generally perform the same duties, but lay teachers are hired for one-year terms only when called teachers are not available. Called teachers serve open-ended terms; the call can be rescinded by a supermajority vote of the congregation.

Hosanna-Tabor hired Cheryl Perich as a lay teacher in 1999. After Perich completed theological studies at a Lutheran college, Hosanna-Tabor asked her to become a called teacher. As a

commissioned minister, Perich taught kindergarten, fourth grade, and a religion class. She also led prayer services, daily devotional exercises, and chapel services on occasion.

In 2004, Perich became ill with narcolepsy. When she took a medical leave of absence, Hosanna-Tabor contracted with a lay teacher to fill her position for the 2004-2005 school year. In January 2005, the congregation of Hosanna-Tabor offered to release Perich from her call and pay a portion of her health insurance premiums in exchange for her resignation. Perich refused to resign, subsequently reported to work, and threatened legal action when she was asked to leave. The congregation voted to rescind Perich's call, and Hosanna-Tabor terminated her.

Lower Court Decisions

Perich filed a charge with the EEOC, alleging that Hosanna-Tabor discriminated against her in violation of the ADA and in retaliation for threatening to file an ADA lawsuit. The EEOC brought suit under the ADA against Hosanna-Tabor. Hosanna-Tabor moved for summary judgment, maintaining that Perich was a minister and her threat to sue the church "violated the Synod's commitment to internal dispute resolution." The federal District Court concluded that Perich's discrimination claims were barred by the ministerial exception and dismissed the lawsuit. The United States Court of Appeals for the Sixth Circuit reversed. Although the Sixth Circuit recognized the exception, it found that Perich did not qualify as a minister because her duties were largely secular.

The Supreme Court's Decision

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (No. 10-553, January 11, 2012), the Supreme Court considered for the first time whether a ministerial exception exists in the employment discrimination context and whether requiring a church to accept or retain an unwanted minister impermissibly interferes with the internal governance of the religious organization.

The Court concluded that the exception exists and that the Religion Clauses in the First Amendment bar the government from interfering with a religious group's decision to fire one of its ministers. Although the Court declined to adopt a formula for deciding whether an employee qualifies as a minister, the Court made clear that the ministerial exception is not limited to the head of a religious congregation. The Court also noted that the title of minister, by itself, does not automatically qualify an individual for the ministerial exception. Rather, a facts-and-circumstances test applies. In overruling the Sixth Circuit, the Court emphasized that Perich had religious training and responsibilities, was a commissioned teacher, and held herself out as a minister. The Court did not find dispositive the amount of time Perich spent on secular duties in relation to her religious duties.

In a concurring opinion, Justice Thomas made clear that he would defer to a religious organization's good faith understanding as to whether an individual is its minister for purposes of the ministerial exception. In a separate concurring opinion, Justices Alito and Kagan agreed that courts should focus on the individual's function to determine whether the exception applies, not on whether an individual was formally ordained and designated as a minister.

INSIGHT

Because the Court declined to address the question of whether the ministerial exception bars other types of lawsuits against religious organizations, it remains to be seen whether the exception would, for example, bar actions by employees for breach of contract or other tortious conduct by their religious employers.

Conclusion

In *Hosanna-Tabor*, the Court weighed the competing interests of the freedom of religious groups to choose who will minister their faith and the societal interest in the enforcement of antidiscrimination laws. In a narrowly drawn decision, the Court held that religious autonomy trumps the statutes and, for the first time, recognized a ministerial exception to employment discrimination laws.

The decision addressed only claims brought on behalf of a minister, challenging her church's decision to fire her. In the absence of a bright-line test for determining who qualifies as a minister, courts will be left to make those determinations on a case-by-case basis when discrimination claims are brought.

Buck's consultants would be pleased to help you evaluate the impact of this decision on your employment policies and practices.

Buck Can Help

- Review employment practices, policies, and processes
- Update employee handbooks as needed
- Train and educate managers and supervisors on antidiscrimination laws