

RECENT LAWSUIT TESTS MINISTERIAL EXCEPTION

Generally, the “ministerial exception” allows religious employers to avoid liability for discrimination claims when making employment decisions concerning employees who qualify as “ministers.” The exception is rooted in religious freedom principles found in the U.S. Constitution. Specifically, the First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The first part of this amendment is known more commonly as the “Establishment Clause” and the second part is commonly known as the “Free Exercise Clause.” The U.S. Supreme Court has held that a church’s selection of its leaders is grounded in the Free Exercise Clause. The Free Exercise Clause recognizes that “perpetuation of a church’s existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large.”

More than one year ago, the U.S. Supreme Court confirmed that claims involving the employment relationship between a religious institution and its ministers exempt employers from liability under Title VII pursuant to the “ministerial exception” founded upon an employer’s First Amendment rights. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, the Supreme Court held that:

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employer's First Amendment rights. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, the Supreme Court held that:

"Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such an action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments."

The Supreme Court in *Hosanna-Tabor* refused to adopt a rigid formula for deciding when an employee qualifies as a minister. So, one of the primary questions that remains after the Supreme Court's decision in *Hosanna-Tabor* has been how broadly the courts will interpret "minister" and which employees will be covered by the ministerial exception.

One of the first opportunities to test the Supreme Court's ruling in *Hosanna-Tabor* presented itself in *Dias v. Archdiocese of Cincinnati*, a case coming out of the U.S. District Court for the Southern District of Ohio. On June 4, 2013, a jury returned a verdict for Crista Dias, a former technology coordinator for two Catholic schools in the Cincinnati area. Dias filed a complaint against the Archdiocese alleging the Archdiocese terminated her for being pregnant and unmarried in violation of Title VII's ban on sex and pregnancy discrimination.

The Archdiocese moved to dismiss Dias' complaint by invoking the "ministerial exception," but the district court denied the motion. The court found that Dias was not a minister for purposes of the ministerial exception to Title VII because Dias taught computer classes and because she was a non-Catholic who was not permitted under church rules to teach religion to her elementary school students. If the Ohio Archdiocese appeals the jury's verdict, it will have an opportunity to pursue defense of the claim under the ministerial exception at the federal appellate court level, which will give the appellate court a chance to develop the standard for determining when an employee qualifies as a minister.

Religious-based employers should closely follow the developing case law of the ministerial exception for guidance as to which employees will be considered "ministers" within the meaning of the exception.