

A Win for Religious-Based Employers: Supreme Court Recognizes "Ministerial Exception" to Employment Discrimination

Last month, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*,¹ the U.S. Supreme Court recognized a "ministerial exception" to employment discrimination laws, in what is likely to be a seminal case for religious-based employers. Until this point, the U.S. Supreme Court had not had the occasion to consider whether the concept of a religious organization's freedom to select its ministers is implicated by a law suit alleging discrimination in employment, although the federal Courts of Appeals have uniformly recognized that the ministerial exception does apply in this context. The U.S. Supreme Court has now confirmed that the ministerial exception exists to bar employment discrimination law suits brought by ministers against their employers.

Factual Background of the Case

The Hosanna-Tabor Evangelical Lutheran Church and School ("Hosanna-Tabor") in Redford, Michigan offered a religious-centered education to students in kindergarten through eighth grade. Cheryl Perich was originally employed as a "lay" teacher in 1999, but after she completed her required training to be a Lutheran minister, Hosanna-Tabor later asked her to become a "called" teacher which she accepted and received a diploma of vocation designating her as commissioned minister. Perich taught secular and religious subjects and conducted prayer and chapel services at Hosanna-Tabor. When Hosanna-Tabor refused to allow her to return to her position following a disability leave in 2004, Perich accused Hosanna-Tabor of unlawful discrimination and threatened legal action. She was subsequently terminated.

Perich filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging that her employment had been terminated in violation of the Americans with Disabilities Act (ADA).² Perich and the EEOC then sued Hosanna-Tabor alleging retaliation under the ADA (Perich also sued under the Michigan Persons with Disabilities Civil Rights Act) and sought reinstatement (or frontpay in lieu thereof), backpay, compensatory and punitive damages, attorney's fees and other injunctive relief. Hosanna-Tabor invoked the "ministerial exception" arguing that the suit was barred by the First Amendment. Although the District Court agreed with Hosanna-Tabor, the Sixth Circuit Court of Appeals disagreed, finding that although the "ministerial exception" existed, Perich was not a "minister" under the exception.

U.S. Supreme Court's Analysis

Recognizing the tension between a societal interest in enforcing employment discrimination laws and the "interest of religious groups in choosing who will preach their beliefs, teach their faith and carry out their mission," the U.S. Supreme Court reversed the Sixth Circuit Court of Appeals, unanimously concluding that the Establishment and Free Exercise Clauses of the First Amendment bars suits claiming termination in violation of employment discrimination laws brought on behalf of ministers against their employers.

¹ No. 10-553, 2012 U.S. Lexis 578 (2012).

² As the Court noted, the ADA generally prohibits an employer from discriminating against a qualified individual on the basis of disability or from retaliating against an individual for opposing any act or practice made unlawful by the ADA.

Having concluded that such a ministerial exception exists, the high court went on to find that the exception applied to Perich because she was a "minister," although the Court fell short in providing a clear determination as to who would be a "minister" generally for these purposes. With respect to Perich specifically, the Court named the following factors as the most salient considerations in leading it to its conclusion that the ministerial exception applied:

- *The formal title given by the church* – Hosanna-Tabor held Perich out as a minister, including giving her a designation of a minister, tasking her with performing that office "according to the Work of God," periodically reviewing her ministerial skills and responsibilities and providing her with continuing education in furtherance of her ministry;
- *The substance reflected in that title* – Perich completed substantial religious training and a formal process of commissioning, was elected by the congregation to her ministerial position, and her call could be rescinded only by a supermajority vote of the congregation;
- *Her own use of the title* – Perich held herself out as a minister by accepting the formal call to religious service and by claiming a special annual housing allowance on her taxes that is available only to employees working in the exercise of their ministry; and
- *The important religious functions she performed* – Perich's job duties were reflective of a minister, including, teaching students religion four days a week and leading them in daily prayer and devotional exercises, taking her students to a school-wide chapel service and occasionally leading that chapel service.

The Court noted that the Sixth Circuit Court of Appeals had erred in, among other things, not giving weight to Perich's title and status as a commissioned minister, most notably her significant religious training and the religious mission underlying her job position, and placing too much emphasis on Perich's performance of secular duties. While it was true that Perich's religious duties only consumed 45 minutes of each work day and that the rest of her day was devoted to teaching secular subjects, the Court found this to be non-determinative given, among other things, "the nature of the religious functions performed."

Implications for Employers

While this case is a welcomed development for religious-based employers, the scope of the decision and the questions that were left unanswered are important considerations to understanding the impact of the Court's decision.

First, this case does not grant unfettered discretion to religious organizations in the employment context. Although the EEOC and Perich argued that recognizing a ministerial exception to employment discrimination cases would create a host of unintended consequences by, for example, giving such employers an unfettered discretion to violate employment laws or by protecting religious organizations from liability for retaliating against employees for reporting criminal misconduct or testifying in a criminal trial, the Court was careful to limit the scope of its decision by stating that this case is "an *employment discrimination suit* brought on behalf of a *minister*, challenging her church's decision to fire her" (emphasis added) and does not address whether the ministerial exception bars other law suits (e.g., employees alleging breach of contract). The court stated that the application of the ministerial exception to other circumstances would be dealt with if and when they arise. As such, caution should be taken in relying on *Hosanna-Tabor* for a ministerial exception to employment-related matters outside the context of employment discrimination with respect to ministers.

Second, the Court did not set forth a clear standard for determining when an employee qualifies as a "minister" under the ministerial exception. Rather, it articulated its reluctance to give a precise formula for deciding this question, although it did state that the ministerial exception is not limited to the head of a religious congregation. It remains to be seen how this question will be answered by courts in the future following *Hosanna-Tabor*. Consequently, absent further judicial guidance, a religious-based employer would be prudent to consider the facts of this case carefully in trying to extend the ministerial exception to employees who are not "ministers" clearly evidenced by job status, education, training and religious duties. Also, religious-affiliated employers who are not churches per se—e.g., pension boards, nursing homes, hospitals, schools, etc.—but who employ "ministers" whose job duties may or may not include actual religious duties should carefully consider whether this ministerial exception applies. ♦

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