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Insights

U.S. Supreme Court Extends Reach of "Ministerial Exception" for Religious Organizations

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On Wednesday, July 8, 2020, the United States Supreme Court released its opinion in *Our Lady of Guadalupe School v. Morrissey-Berru*, ("*OLG*"), which may affect employers that are churches or other religious organizations. In its 7-2 decision, the Court held that the ministerial exception prohibited two teachers at Catholic elementary schools from bringing lawsuits against their employers based on the Americans With Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA).**1**

I. Hossana-Tabor Ministerial Exception

Under the ministerial exception, "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions" in recognition of the autonomy required under the First Amendment for these institutions to make decisions about which individuals are suitable to fill essential roles within the institution.**2** When the exception applies, "[i]t gives an employer free rein to discriminate because of race, sex, pregnancy, age, disability, or other traits protected by law when selecting or firing their ministers, even when the discrimination is wholly unrelated to the employer's religious beliefs or practices."**3**

This rule first came into play on a national scale with the U.S. Supreme Court's unanimous decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, ("*Hosanna-Tabor*"), in which an elementary school teacher filed suit against her employer, a religious school, for an alleged violation of the Americans with Disabilities Act.**4** The Court held her suit was barred based on the relevant, but not necessarily essential, circumstances surrounding her employment that triggered the ministerial exception.**5** First, she held the title of Minister of Religion, Commissioned, which was a distinct title affiliated with a "called" as opposed to "lay" teaching position. Second, she received a significant amount of religious training. Third, by claiming certain tax benefits and accepting the formal call to religious service, she held herself out to the public as a religious professional. Last, through her role as a religious instructor, the teacher was responsible for spreading the Church's religious message and mission.**6**

II. The Religious Exception Decision: *Our Lady of Guadalupe School v. Morrissey-Berru*

This decision is the result of two combined cases, *Morrissey-Berru v. Our Lady of Guadalupe School***7** and *Biel v. St. James School* **8**, involving teachers at Catholic elementary schools. In each case, the plaintiff sought relief with the Equal Employment Opportunity Commission (EEOC) after her employment contract was not renewed. The Court held in both cases that the ministerial exception applied and the trial courts' grants of summary judgment in favor of the schools was appropriate.

A. Facts: *Morrissey-Berru*

Agnes Morrissey-Berru worked at Our Lady of Guadalupe School (OLG) where she taught fifth and sixth grade students all their subjects, including religion. Even outside of those classes, she was expected to fulfill OLG's mission "to develop and promote a Catholic School Faith Community" throughout all areas of her employment.**9** In her role as a Catholic educator, she tailored her lessons to conform with Catholic teachings, prepared her students for the sacraments of Communion and Confession, and attended Mass and prayed with them. Both Morrissey-Berru's employment agreement and the employee handbook specifically state that the school's mission was "to develop and promote a Catholic School Faith Community" and informed Morrissey-Berru that "[a]ll [her] duties and responsibilities as a Teache[r were to] be performed within this overriding commitment" and that failing to do so could result in termination for cause.**10**

In 2014, OLG moved Morrisey-Berru to part-time before ultimately declining to renew her contract entirely in 2015. After filing a claim with the EEOC, she filed suit against OLG alleging the school violated the ADEA by failing to renew her contract so it could replace her with a younger teacher. OLG countered that Morrissey-Berru was asked not to return because of her performance, not her age. The trial court granted OLG's motion for summary judgment based on the ministerial exception, but the Ninth Circuit reversed based on an analysis of the factors outlined in *Hosanna-Tabor*.

B. Facts: *Biel*

Kristen Biel worked at St. James School (St. James) for roughly a year and a half, first as a substitute teacher for first grade and then as a full-time teacher for fifth grade. She was a generalist teacher and one of the subjects she taught was religion. During the time Biel worked at St. James, she was bound by the terms of her employment agreement, which required that she uphold the school's religious mission, instruct her students in line with Catholic teachings, and serve as a model Catholic figure to her students. Further, the St. James handbook defines "religious development" as the school's first goal and provides that teachers must "mode[l] the faith life," "exemplif[y] the teachings of Jesus Christ," "integrat[e] Catholic thought and principles into secular subjects," and "prepar[e] students to receive the sacraments."**11** While at St. James, Biel attended a conference that discussed how best to incorporate religious teachings in the classroom.

After Biel's first year as a full-time teacher, St. James declined to renew her contract. Biel filed a claim with the EEOC alleging St. James relieved her because she needed time off to treat her breast cancer. St. James replied that its decision was based on Biel's performance issues relating to keeping an orderly classroom and adhering to the set curriculum. Just as in *Morrissey-Berru*'s case, the trial court granted summary judgment in accordance with the ministerial exception, and the Ninth Circuit reversed on the grounds that Biel's situation was distinguishable from Perich's in *Hosanna-Tabor* because Biel did not have the same level of "credentials, training, and ministerial background."**12**

C. The Holding

The U.S. Supreme Court embarked on a thorough analysis of how the *Hosanna-Tabor* exception applies to both the *Morrissey-Berru* and *Biel* cases. While the Ninth Circuit treated the relevant factors in *Hosanna-Tabor* like a rigid balancing test, the Supreme Court rejected this application in favor of a totality of the circumstances approach. Specifically, the Court clarified that *Hosanna-Tabor* by its own words disavowed using any "rigid formula" and "called on courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the [ministerial] exception."**13**

The Court focsed on one relevant inquiry to determine whether the ministerial exception applies; specifically, what the employee's job functions are. *Hosanna-Tabor*—and now *OLG*—stands as judicial recognition that "educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school" regardless of the individual's title or training.**14**

The Court further explained the justifications for the ministerial exception. According to the Court, while religious institutions are not above or immune from secular laws, the First Amendment protects their ability to manage their internal affairs when those acts are "essential to the institution's central mission."**15** As such, the Court reasoned that a school with a religious mission that "entrusts a teacher with the responsibility to educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow."**16**

III. What Are the Next Steps for Employers?

For employers that are churches and other religious organizations, it is important to document the expectations for employees who are entrusted with performing duties related to the faith or mission of the religious organization. This documentation could include a statement in the organization's employee handbook similar to the statements that existed in the *Morrissey-Berru* and *Biel* handbooks. Further, despite the existence of the ministerial exception, employers should continue to document their reasons for taking any adverse actions against an employee.

Krieg DeVault LLP's Labor and Employment team is available to help you understand the impact of this decision on your organization, determine your compliance obligations, and move your compliance plan into action. We are pleased to offer flexible flat fee arrangements to assist clients with compliance-related activities, such as reviewing and updating employee handbooks, policies, and training materials. Please contact **Elizabeth M. Roberson**, or any member of our **Labor and Employment team** for more information.

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[1] *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, No. 19-267, 591 U.S. ___, *slip op.* (July 8, 2020).

[2] *Id.* at 11.

[3] *Id.* at 3 (Sotomayor, J., dissenting).

[4] *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

[5] *Id.* at 190-91.

[6] *Id.*

[7] *Morrissey-Berru v. Our Lady of Guadalupe Sch.*, 769 F. App'x 460 (9th Cir. 2019).

[8] *Biel v. St. James Sch.*, 911 F.3d 603 (9th Cir. 2018).

[9] *Morrissey-Berru*, 591 U.S. __, *slip op.* at 4, 6.

[10] *Id.* at 4.

[11] *Id.* at 8.

[12] *Id.* at 9 (quoting *Biel*, 911 F.3d at 608).

[13] *Id.* at 17, 22.

[14] *Id.* at 18.

[15] *Id.* at 10-11.

[16] *Id.* at 26-27.