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Seventh Circuit Holds that Ministerial Exception Bars Hostile Work Environment Claims

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On July 9, 2021, the U.S. Court of Appeals for the Seventh Circuit sitting *en banc* overturned a split panel decision in the case, *Sandor Demkovich v. St. Andrew the Apostle Parish et al.*, and issued a 6-3 opinion holding that the First Amendment ministerial exception bars any claim of employment discrimination by a minister of a religious organization, including claims of hostile work environment. The Seventh Circuit found that "because ministers and nonministers are different in kind, the First Amendment requires that their hostile work environment claims be treated differently."

The decision is an important church-state ruling regarding the ministerial exception which was first explicitly recognized by the U.S. Supreme Court in the 2012 decision *Hosanna-Tabor Lutheran Church and School v. Equal Employment Opportunity Commission* and again addressed in the 2020 Supreme Court decision *Our Lady of Guadalupe v. Morrissey-Berru and St. James School v. Biel*. With its decision in *Demkovitch*, the Seventh Circuit joins the Tenth Circuit in a circuit split with the Ninth Circuit, which previously has held that the ministerial exception does not bar hostile work environment claims against religious organizations.

The ministerial exception doctrine

The ministerial exception is an application of the First Amendment and shields religious organizations from judicial review of internal employment disputes regarding selection, control and removal of employees who are designated as ministers. In *Hosanna-Tabor*, the Supreme Court recognized that the ministerial exception creates a constitutionally protected interest in a religious organization's ministers under the Establishment and Free Exercise clauses of the First Amendment and barred discrimination claims filed by a teacher who

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was an ordained minister and terminated from her position with her religious-employer. The Court acknowledged that "[r]equiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so," "interferes with the internal governance of the church" by "depriving the church of control over the selection of those who will personify its beliefs." The Supreme Court declined, however, to establish a rigid formula for determining when an employee qualifies as a minister.

But in the 2020 *Our Lady of Guadalupe* decision, the Supreme Court expanded the application of the ministerial exception beyond ministers of the faith who occupy a leadership role in the religious organization. The *Our Lady of Guadalupe* majority allowed the church-employer to claim the ministerial exception with respect to lay teachers who educate young people in the faith of the religious organization because the teachers "played a vital role in carrying out the mission of the church." The Supreme Court emphasized that the purpose of the ministerial exception is to "preserve the independent authority" of the church and to avoid entanglement in ecclesiastical matters. As such, the Supreme Court held that the ministerial exception barred employment discrimination claims that challenged the decision of the church-employer to terminate the lay teachers who were entrusted to educate the students in their faith.

The *Demkovitch* decision

The issue in *Demkovitch* shifted the focus from the scope of the category of a "ministerial employee" to the type of employment claim that is subject to the ministerial exception. In two decisions issued in 1999 and 2004, the Ninth Circuit distinguished claims of tangible employment actions (e.g., hiring and firing) from claims of a hostile work environment. In both cases, the Ninth Circuit held that the ministerial exception does not bar harassment claims because engaging in harassment is unrelated to the selection and control of personnel. The *Demkovitch* case similarly presented the Seventh Circuit with the issue of whether the ministerial exception bars all statutory hostile work environment claims of an employee who is a minister even if the claim does not assert an adverse tangible employment action.

Sandor Demkovitch was hired in 2012 as the music director, choir director, and organist at St. Andrew the Apostle Parish in Illinois and was terminated from his position in 2014 by his supervisor, Reverend Jacek Dada. Sandor Demkovitch filed suit against St. Andrew the Apostle Parish and the Archdiocese of Chicago alleging in his amended complaint that Dada subjected him to a hostile work environment based on his sex, sexual orientation and marital status under Title VII and based on his disabilities under the American with Disabilities Act (ADA). Sandor Demkovitch was deemed by the district court to be a ministerial employee. The Defendants invoked the ministerial exception and moved to dismiss the suit claiming that the First Amendment "categorically bars all claims under federal discrimination statutes." The district court granted the motion in part and dismissed the Title

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VII claims but not the ADA claim, engaging in a “balancing” assessment that included assessing possible religious justification for alleged conduct supporting the hostile work environment claims.

On interlocutory appeal, a split panel of the Seventh Circuit ruled against the Defendants, holding that the ministerial exception only bars tangible employment actions claimed by ministerial employees but not intangible employment actions, such as claims of a hostile work environment. The majority opinion stated that harassment is not part of the process of selecting and controlling employees, including ministers of the faith. Instead, such conduct is in the nature of a tort and not constitutionally protected. The panel rejected the argument that religious organizations are entitled to immunity from the entire class of claims relating to workplace harassment of all ministerial employees, stating that courts can manage the risk of entanglement. The panel affirmed the district court decision to deny the dismissal of the disability claim and reversed the dismissal of the sexual orientation claim. The employer-church asked the full court to reconsider the panel’s decision.

Sitting e*n banc*, the Seventh Circuit reversed the panel’s decision. The majority decision reaffirmed the Court’s previous position in the decision *Alicea-Hernandez v. The Catholic Bishop of Chicago* that the **ministerial exception precludes any inquiry into the reasons behind a religious organization’s ministerial employment decision, regardless of the type of employment law claims at issue**. With regard to claims of a hostile work environment specifically, the Seventh Circuit further elucidated that because religion permeates the workplace, the work environment of ministers and non-ministers differ. Disputes among ministers are constitutionally protected and claims related to the ministerial employment relationship are a religious matter. The Court noted that "if the relationship between a church and its minister is its lifeblood, then the relationship between its ministers is its backbone." The First Amendment precludes courts from encroaching on the independent authority of a religious institution, and any state regulation of the work environment impermissibly intrudes on the internal affairs of the religious organization. Significantly, this decision resulted in a dismissal of **all** employment claims against the employer-church, including claims of hostile work environment based on disability where the church provided no “religious justification” to defend the alleged conduct underlying that claim.

What this means to you

The Seventh Circuit’s decision establishes that the ministerial exception categorically bars all employment discrimination suits brought by employees who qualify as ministers and applies to religious organizations located within the jurisdiction of the Seventh Circuit (Illinois, Wisconsin and Indiana). The decision deepens the circuit split which will likely be resolved by the U.S Supreme Court. In the meantime, religious employers should continue to monitor decisions in their jurisdiction and stay abreast of this evolving area of law.

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It is important to note that this decision does not give religious employers carte blanche to discriminate against employees or fail to correct a hostile work environment. First, although recent decisions have expanded the scope of the ministerial exception, it only applies to those "who will minister to the faithful." Courts have rejected attempts to expand the ministerial exception to administrative assistants, librarians, facilities managers, and other employees. Second, a strong legal defense does not mean that an aggrieved employee will not file suit. As the Court notes, the *Demkovitch* case involved two motions to dismiss, discovery, an interlocutory appeal, a panel opinion, and an *en banc* rehearing. Such litigation is expensive and directs time and resources away from the ministry of religious employers. Finally, the fact that an action is legally permissible does not make it morally correct. Even setting aside potential litigation, the "derogatory comments and demeaning epithets" seen in the *Demokovitch* case impact both ministers and members of the faith community. Religious employers should also be aware that state law may impose different obligations and offer religious exemptions unrelated to the constitutional doctrine described in this article.

Contact us

If you have questions about the implications of this decision as it relates to your institution or how employment laws impact religious institutions, contact Jordan Ault, Larissa Whittingham or your Husch Blackwell attorney.

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