

9th Circuit Provides Important Reminders for Religious Employers

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Recently, the 9th Circuit applied, in an unpublished opinion, the U.S. Supreme Court's broad definition of minister for purposes of the "ministerial exception." Under the ministerial exception, religious institutions have a First Amendment right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

The Supreme Court has broadly defined what employment positions are eligible for the application of the exception. In determining whether employees at religious schools are ministers, the Supreme Court has explained that the core consideration is their "role in conveying the Church's message and carrying out its mission." [Our Lady of Guadalupe Sch. v. Morrissey-Berru](#), 140 S. Ct. 2049, 2063 (2020) (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 192 (2012)). "[E]ducating 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." *Id.*, at 2064.

The 9th Circuit in [Orr v. Christian Brothers High School, Inc.](#) held the plaintiff qualified as a minister for purposes of the ministerial exception, focusing on the employee's role in conveying the Church's message and carrying out its mission. The court reasoned that the plaintiff participated in religious services and activities, aiding the school in developing a faith-based community and inculcating faith-based teachings. He had supervisory authority over aspects of religious instruction and programming. He also received religious education as part of his role. The court held that based on the U.S. Supreme Court's formulation, the plaintiff qualified as a minister under the ministerial exception.

In this case, while the plaintiff made harassment claims that could be deemed to survive the ministerial exception, the 9th Circuit held that the allegations were "so intertwined with the employment decisions that the claims cannot be separated."

The 9th Circuit also upheld the district court's finding that the religious school did not waive its statutory exemption under the California Fair Employment and Housing Act (FEHA) for non-profit religious corporations. The court pointed out that the school's employee handbook never explicitly referenced FEHA and makes no promises it is bound by FEHA.

The case is a good reminder for non-profit religious employers both in protections for employment

decisions but also in reviewing employee handbooks to ensure statutory exemptions are appropriately protected.

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