

The Broad Application of the "Ministerial Exception" Re: Employment Discrimination

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On January 11, 2012, the U.S. Supreme Court, in ***Hosanna-Tabor Church v. Equal Employment Opportunity Commission***, affirmed the existence of the "ministerial exception" in employment discrimination actions. The Court, relying on the Free Exercise and Establishment Clauses of the First Amendment, held that religious institutions are entitled to make employment decisions regarding a "minister" without the interference of the government. Accordingly, employment suits by a "minister" are not actionable in court and must be dismissed.

One of the key implications from *Hosanna-Tabor Church* is that the application of the ministerial exception is not limited only to ordained ministers. Indeed, in *Hosanna-Tabor Church*, the plaintiff, a teacher in a parochial school, qualified as a minister. In making its determination, the Court considered a number of factors, including that plaintiff had significant religious training, she held herself out as a minister, the school held her out as a minister, she taught religious courses four days per week, and she led her students in prayer three times each day. Though plaintiff taught other secular educational courses, such activities are not dispositive of the "ministerial" analysis. Further, although the Court determined that plaintiff qualified as a minister, it refused to establish a rigid test for making such a determination. Rather, the Court noted that such a determination should be based on a fact-specific inquiry and should be considered under the totality of the circumstances.

The U.S. Court of Appeals for the Fifth Circuit recently applied the expansive ministerial exception in *Philip Cannata v. Catholic Diocese of Austin*, finding that the ministerial exception applied to a church music director. In reaching this decision, the court considered Cannata's role in determining the music for Mass, his performance of music at Mass, and his rehearsal with members of the church choir. The court acknowledged that although not all of Cannata's duties were expressly religious in nature, it is up to the Church to determine whom it classifies as a minister. In fact, the court explicitly notes that the "decision to select and control ministers belongs to the church alone. Thus, it is immaterial if the reason for termination is not religious, but rather pretextual." *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 174 (5th Cir. 2012) (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694 (2012)). Consequently, the Fifth Circuit dismissed Cannata's suit.

The ministerial exception was again examined in *Dias v. Archdiocese of Cincinnati*. Unlike the previous two cases, however, the district court judge found that Dias, who exclusively taught

computer and technology classes, did not qualify as a minister and thus was able to proceed with her Title VII employment discrimination claim. Significantly, the plaintiff did not engage in any form of religious instruction or education. The plaintiff, who was terminated for violating the morals clause in her contract, asserted that male employees who similarly violated the morals clause were not terminated, illustrating the importance of consistently applying and enforcing such workplace standards.

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