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An Introduction to the Ministerial Exception

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The "ministerial exception" is grounded in the Establishment and Free Exercise Clauses of the First Amendment of the U.S. Constitution and was developed over time by federal and state courts as a way to "bar the government from interfering with the decision of a religious group to fire one of its ministers." Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 132 S. Ct. 694, 702 (U.S. 2012). Essentially, the ministerial exception prevents ministers from bringing employment discrimination actions against their religious group employer.

The United States Supreme Court recognized the "ministerial exception" in Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C. In that case, the Supreme Court held that a woman employed as a teacher for a religious school could not bring a claim against the school that she was unlawfully fired in retaliation for threatening to file an Americans with Disabilities Act claim.

The Supreme Court was careful to limit the exception to employees of "religious group" employers. Unfortunately, the Supreme Court did not expound on what counts as a "religious group" employer. However, courts have since managed to be slightly more specific. For instance, in its first ministerial exception case after Hosanna-Tabor, the Sixth Circuit recently stated that "the ministerial exception's applicability does not turn on its being tied to a specific denominational faith; it applies to multidenominational and nondenominational religious organizations as well." Conlon v. InterVarsity Christian Fellowship, 777 F.3d 829, 834 (6th Cir. 2015). In addition, "in order to invoke the exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization." Id. at 834 (quoting Hollins v. Methodist Healthcare, Inc., 474 F.3d 223 (6th Cir.2007)). In other words, "a religiously affiliated entity" is one whose "mission is marked by clear or obvious religious characteristics." Id. (quoting Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 310 (4th Cir.2004)).

In that case, the Sixth Circuit held that a non-denominational 501(c)(3) "whose purpose is to advance the understanding and practice of Christianity in colleges and universities" was a religious group to which the ministerial exception applied. The Sixth Circuit has also previously held that a Methodist Hospital operated in accordance with the Social Principles of The United Methodist Church and associated with the Conferences of the United Methodist Church was a religious group to which the exception applied. Id. at 835.

The Supreme Court in Hosanna-Tabor was also careful to explain that the ministerial exception is limited to those employees who are "ministers." The Supreme Court found that the teacher of the religious school was a "minister" based on the totality of the circumstances, but was "reluctant…to adopt a rigid formula for deciding when an employee qualifies as a minister." Hosanna-Tabor, 132 S. Ct. at 707-08.

The Sixth Circuit has since identified four factors that led the Supreme Court in *Hosanna-Tabor* to conclude the employee was a minister covered by the exception: "[1] the formal title given [the employee] by the Church, [2] the substance reflected in that title, [3] her own use of that title, and [4] the important religious functions she performed for the Church." *Conlon,* 777 F.3d at 834. In that case, the Sixth Circuit went on to hold that the employee at issue was akin to a minister, because her title was that of "spiritual director" and job functions included "leading others toward Christian maturity," even though she had no formal training and did have any "sort of public role of interacting with the community as an ambassador of the faith." *Id*. at 835.

Other courts have interpreted *Hosanna-Tabor* to mean that mere employees of religiously affiliated institutions do not qualify as "ministers" absent other factors which tend to indicate a ministerial role. For example, the court in *Herx v. Diocese of Ft. Wayne-S. Bend Inc.*, held that a language arts teacher at a Catholic junior high school was not a minister because (a) she was not required to have similar teaching qualifications to that of the teacher in *Hosanna-Tabor*, (b) she did not have similar religious responsibilities to that of the teacher in *Hosanna-Tabor*, (c) she was not treated as a member of clergy of the Catholic Church, (d) she never held herself out to be a minister, and (e) the teachers of religion at the school had different contracts from "law teachers" and were required to have religious education and training. 2014 WL 4373617, at *7-8 (N.D. Ind. Sept. 3, 2014). The court also rejected the idea that the teacher was a "minister based on her attendance and participation in prayer and religious services with her students, which was done in a supervisory capacity . . . ." *Id*. at *8.

In summary, although the ministerial exception is an important defense which "protects a religious group's right to shape its own faith and mission through its [ministerial] appointments" (Hosanna-Tabor, 132 S. Ct. at 697), its application is situational and very fact-intensive. It is possible that different courts will apply the exception in slightly different ways, depending on the type of religious employer and the role of the employee. Additionally, there are likely to be more developments to the concept as more cases come forward and courts apply the exception in light of Hosanna-Tabor.

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