

LITIGATION INFORMATION MEMO

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New York State Appellate Division Upholds Agency Determination, Defers on a Question of Unsettled Constitutional Law

On an issue of unsettled constitutional law involving the First Amendment's Free Exercise Clause, the Appellate Division, Fourth Department held that the New York State Division of Human Rights (SDHR) did not act arbitrarily and capriciously or in error of law in determining that it lacked jurisdiction over a priest's claim of employment discrimination and harassment (*i.e.* hostile work environment) against the Diocese of Buffalo (the Diocese).

In the case *Matter of Victor O. Ibhawa v. New York State Division of Human Rights and Diocese of Buffalo*, the petitioner (a Catholic priest) filed an administrative complaint with the SDHR against his employer (the Diocese) alleging that he was subjected to race discrimination and harassment in his employment. The Diocese argued that a constitutional principle known as the "ministerial exception" barred the petitioner's claims.

The ministerial exception, derived from the First Amendment to the United States Constitution, bars a civil court from infringing on the employment relationship between a minister and his religious employer. Essentially, it is an exception to employment discrimination laws and precludes a court (federal or state) from enforcing those laws against a religious employer for claims brought by a "minister." It was recognized by the United States Supreme Court in the seminal 2012 case of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). In *Hosanna-Tabor*, the Supreme Court observed:

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments.

While it is well-established that the ministerial exception applies to termination (and failure to hire) claims, there is currently a split between the federal circuit courts as to whether the ministerial exception applies to claims of harassment or hostile work environment. There is also no controlling authority in New York State on the issue.

In March 2021, the SDHR agreed with the Diocese and dismissed the petitioner's complaint in its entirety (which included his harassment claim) on the grounds that: "[the petitioner] a priest serving as the pastor (Parish Administrator) of a church comes under the ministerial exception (relative to the first amendment of the U.S. Constitution). The Division cannot interfere with the right of a church or other religious group, to determine who will work for them in this type of religious role."

In a special proceeding brought before a local state trial court pursuant to New York Executive Law § 298 (which invokes the same standard of review as an Article 78 challenge), the petitioner appealed the

SDHR's determination and argued that the ministerial exception did not bar either his termination or harassment claims. The trial court affirmed the SDHR's dismissal of the petitioner's termination claim (citing *Hosanna-Tabor*) but held that the SDHR should not have dismissed his harassment claim because "neither the US Supreme Court, the US Court of Appeals for the Second Circuit, the New York State Court of Appeals or the New York State Supreme Court Appellate Division for the Fourth Department have held that the Ministerial Exception bars hostile work environment claim[s]." The trial court thus remanded the case to the SDHR and instructed the SDHR to make "a proper determination of the merits of [p]etitioner's complaint with respect to New York Executive Law § 296 on the issue of a hostile work environment."

Both the Diocese and the SDHR appealed that decision, arguing that the trial court applied the wrong standard of review and failed to give the SDHR the deference to which it is entitled when making agency determinations, such as its own jurisdiction (the petitioner did not cross-appeal the dismissal of his termination claim). On June 30, 2023, the Fourth Department reversed the trial court, agreeing with both the Diocese and the SDHR. The Fourth Department held:

The SDHR's determination is entitled to considerable deference given its expertise in evaluating discrimination claims. Here, SDHR determined that it lacked jurisdiction over petitioner's complaint inasmuch as petitioner had been a priest serving as the pastor of a church and the ministerial exception barred his claims. Inasmuch as there is no controlling United States Supreme Court or New York precedent and the federal courts that have addressed the issue are divided on the extent to which the ministerial exception applies to claims of a hostile work environment, we conclude that SDHR's determination with respect to the hostile work environment claim is not arbitrary and capricious or affected by an error of law.

Matter of Victor O. Ibhawa v. New York State Division of Human Rights and Diocese of Buffalo, 22-00060 (4th Dept. June 30, 2023) (internal citations and quotations omitted).

While the case does not resolve the circuit split as to whether the ministerial exception applies to claims of hostile work environment, it does stand for the principle that an agency does not act arbitrarily and capriciously in choosing to align itself with one side of a split as opposed to the other. Indeed, had the Supreme Court's decision been allowed to stand, agencies would likely never withstand a trial court's review of an agency determination that involved an unsettled issue of law, because choosing one side over the other would be deemed arbitrary and capricious.

For more information on this decision or if you have any related questions, contact [Katie McGraw](#) or the Bond attorney with whom you are in regular contact.

