

## Supreme Court Applies “Ministerial Exception” to Teachers at Religious Schools

On July 8, 2020, the Supreme Court analyzed the ministerial exception for employees who allege employment discrimination claims for the first time in nearly a decade when it issued its decision in *Our Lady of Guadalupe School v. Morrissey-Berru*. The decision, which was issued in two combined cases on appeal before the Court, confirms the general principle under the First Amendment to the U.S. Constitution that religious institutions must retain the right to select, supervise, and, if necessary, remove an employee who qualifies as a “minister” without interference by secular authorities. The Court construed the definition of “minister” broadly in holding that the ministerial exception applied to two teachers at religious schools who had filed employment discrimination claims pursuant to the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA) respectively.

The plaintiffs in each case were teachers at Catholic schools in the Archdiocese of Los Angeles. Agnes Morrissey-Berru alleged that she was terminated by Our Lady of Guadalupe School because of her age, and Kristen Biel alleged that she was terminated by St. James School because she was diagnosed with breast cancer. Both schools invoked the ministerial exception in an effort to get the cases dismissed. In the Court’s 2012 decision, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, the Court set forth four factors to determine if an individual was a “minister” for purposes of the exception: (1) whether the employee’s job title reflected her ministerial duties; (2) whether the employee had religious training; (3) whether the employee held herself out as a minister; and (4) whether the employee’s job duties reflected a role in conveying the Church’s message and carrying out its mission. In the claims filed by Morrissey-Berru and Biel, the school’s defense based on the ministerial exception was rejected by the Ninth Circuit Court of Appeals.

The Supreme Court reversed the Ninth Circuit. The Court clarified that the four factors used in *Hosanna-Tabor* were not meant to be a “checklist,” and that “a variety of factors may be important” in determining whether a particular position falls within the ministerial exception. Specifically, “what matters, at bottom, is what an employee does,” and a “recognition that educating 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.” Moreover, “a religious institution’s explanation of the role of such employees in the life of the religion in question is important” in determining whether the employee falls within the ministerial exception.

In the cases of Morrissey-Berru and Biel, both teachers taught multiple subjects to their students, including religion. Neither teacher had formal religious training, but both entered into employment agreements with their schools which stated that their duties were to be discharged in accordance with the schools’ Catholic principles. Each led their students in prayer at least daily, and each school evaluated the teachers’ performance, at least in part, by analyzing whether the teachers “infused Catholic values in all their teaching and included religious displays in their classrooms.”

As a result of the Court's conclusion that the facts supported the application of the ministerial exception to both *Morrissey-Berru* and *Biel*, the Court held that the ADEA and the ADA respectively did not apply to them. Based on the fairly expansive interpretation of the definition of "minister" for purposes of the exception, religious organizations of all denominations and sects may have a broad basis to argue that many of their employees are constitutionally precluded from asserting employment discrimination claims under the ADEA, the ADA, and possibly other federal employment discrimination laws such as Title VII of the Civil Rights Act.

If you have questions about this information memo, please contact [Theresa Rusnak](#), or the attorney at the firm with whom you are regularly in contact.



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