

U.S. Supreme Court Rules in Favor of Religious Employers and Trump Administration in Two Important Decisions

July 8, 2020

Executive Summary: Today, July 8, 2020, the Supreme Court decided two cases – both by a 7 to 2 vote – involving the impact of religion in employment. First, the Supreme Court clarified the applicability of the Ministerial Exemption for religious organizations, including religious schools, from the federal antidiscrimination laws. Second, the Supreme Court upheld as valid two Trump Administration interim rules providing that employers who have sincerely held religious beliefs or moral objections against providing insurance coverage or payments for contraceptive services cannot be required to provide such coverage or payments.

Applicability of the “Ministerial Exception”

In [*Our Lady of Guadalupe School v. Morrissey-Berru*](#) (“OLG”) the Court clarified the scope and applicability of the “Ministerial Exception” previously recognized by the Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). The Court determined that the four factors examined in *Hosanna-Tabor* were not a rigid test and that there was sufficient evidence in the record to conclude that the plaintiffs both performed vital religious duties that triggered *Hosanna-Tabor’s* limitation on judicial interference on employment decisions of a religious nature.

In the two underlying cases that were consolidated before the Supreme Court, the two plaintiffs were educators in Catholic elementary schools. As part of their employment, both teachers signed employment agreements that expressly stated that their role was to promote the religious mission of the school and received employee handbooks that stated the same. The teachers’ employment agreements were not renewed, and they each filed Charges of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC)—one under the Age Discrimination in Employment Act (ADEA) and the other under the Americans with Disabilities Act (ADA). The District Court granted summary judgment to

MEET THE AUTHORS



Wesley C. Redmond

Partner
Birmingham, Alabama Office
wredmond@fordharrison.com
P: 205-244-5905



Jeffrey G. Douglas

Partner
New York, New York Office
jdouglas@fordharrison.com
P: 212-453-5927

the schools applying the Ministerial Exception. The Ninth Circuit Court of Appeals reversed, holding the Ministerial Exception did not apply because the schools did not satisfy the four factors identified in *Hosanna-Tabor*.

The Supreme Court noted that the underpinning for the Ministerial Exception rests on “the general principle of church autonomy to which we have already referred: independence in matters of faith and doctrine and in closely linked matters of internal government.” *OLG*, At 12. In *Hosanna-Tabor*, the Court declined “to adopt a rigid formula for deciding when an employee qualifies as a minister” but identified four relevant circumstances. The Court in *Hosanna-Tabor* was silent as to the manner in which the four factors should be analyzed or given any particular weight.

The four factors identified were:

1. whether the individual was given the title of “minister, with a role distinct from that of most of its members”;
2. whether the individual’s position “reflected a significant degree of religious training followed by a formal process of commissioning”;
3. whether the individual held herself out as a minister of the Church by accepting the formal call to religious services and by claiming certain tax benefits; and
4. whether the individual’s “job duties reflected a role in conveying the Church’s message and carrying out its mission.”

In *OLG*, the Court boiled down the four factors to a critical underlying question: *what is the role of the individual in conveying the Church’s message and carrying out its mission?* The Court further elucidated that the other factors simply help “shed light on that connection.” The inquiry must focus on what the employee in question actually does and whether the functions are in furtherance of conveying the Church’s message and carrying out its mission.

It is premature to determine the full practical impact of the Court’s decision. It will likely allow religious organizations to assert the Ministerial Exception as a defense and to seek dismissal early in litigation. However, the Court’s decision also indicates that the determination of whether the Ministerial Exception applies is fact-specific to the particular circumstances involved to ascertain whether the individual’s role is conveying the Church’s message and carrying out its mission. Religious organizations may consider reevaluating their personnel documents to ensure that when applicable they adequately memorialize that the role of the employee is to further the mission of the Church and to include specific expectations about how employees will facilitate the religious mission.

Religious Beliefs Exemption from Contraceptive Coverage Mandate

In [*Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, et al. and Trump v. Pennsylvania, et al.*](#), the Supreme Court upheld Trump administration rules providing that employers who have sincerely held beliefs against providing insurance coverage or payments for contraceptive measures to covered females are exempt from the Patient Protection and Affordable Care Act of 2010 (ACA) requirements to provide such coverage. Today’s decision involved two interim rules issued by the Departments of Health and Human Services, Labor, and Treasury (the Departments). One rule expanded the church exemption to the ACA’s contraceptive mandate to include an employer that “objects . . . based on its sincerely held religious beliefs” to providing insurance coverage or payments for

contraceptive services. The second rule created an exemption for employers who had sincerely held moral objections to providing certain forms or any contraceptive coverage. The two interim rules followed the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby*, holding that the ACA's requirement to provide contraceptive services substantially burdened the free exercise of certain businesses with sincerely held religious objections to providing employees with certain contraceptive services. In a 7-2 decision written by Judge Thomas (four judges wrote or joined in concurrences), the Court upheld the two interim rules. The Court held that the Departments had the authority to establish the rules and that the rules do not have any procedural defects.

The Court found that the plain language of the ACA gave the Departments authority to establish the exemptions based on the ACA provisions allowing an agency of the Department of Health and Human Services to establish comprehensive guidelines for preventative care and screenings for women. The Court found that language gave the Departments the authority to decide the care that applicable health plans must cover and to decide exemptions from the guidelines. The Court rejected the argument that the rules were contrary to Congress' intent, finding that such concerns could not contradict the plain meaning of the statute. The Court declined to determine if the Religious Freedom Restoration Act of 1993 (RFRA) required the exemptions in the two rules. The Court ruled, however, that the Departments could have and should have considered the RFRA in developing the rules and that failure to consider the RFRA could lead to claims that the rules were "arbitrary and capricious for failing to consider an important aspect of the problem." The Court also found that the procedure for adopting the rules satisfied any notice requirements, that all rule-making requirements were satisfied, and that any error in the notice was not prejudicial error.

As the four concurring judges noted, this is likely not the end of this litigation as the matter will now be returned to the individual states who challenged the rules, where the Justices predicted further challenges will be made. Two of the concurring judges stated that they would have decided one additional question, that the RFRA mandates the two rules, and thus ended the litigation. The two other concurring judges agreed with the majority ruling, although on different grounds, and openly questioned whether the rules would "survive administrative law's demand for reasoned decisionmaking."

The Bottom Line: The impact of these two decisions likely will be felt for years as lower courts address the parameters of the rulings. For now, religious institutions have some additional guidance and flexibility in asserting the Ministerial Exemption, and certain employers with religious or moral objections to providing some or all contraceptive services have valid rules to assert for refusing to provide that coverage until an objection or challenge supports an injunction preventing enforcement of the rules.

If you have any questions regarding this Alert, please contact the authors, [Wesley Redmond](mailto:wredmond@fordharrison.com), partner in our Birmingham office at wredmond@fordharrison.com, and [Jeffrey Douglas](mailto:jdouglas@fordharrison.com), partner in our New York City and Berkeley Heights offices at jdouglas@fordharrison.com. Of course, you can also contact the FordHarrison attorney with whom you usually work.