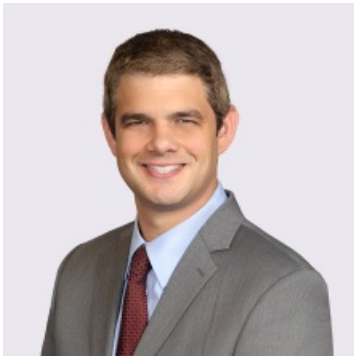


Seventh Circuit Issues Decision Finding Broad Scope of Ministerial Exception; Questions Remain

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On July 9, 2021, U.S. Court of Appeals for the Seventh Circuit, sitting en banc, issued a 7-3 decision in the closely watched case *Sandor Demkovich v. St Andrew the Apostle Parish, Calumet City and the Archdiocese of Chicago*. The Seventh Circuit found that the ministerial exception acted as a per se bar to the plaintiff's hostile work environment claims.

This decision is the latest development in a rapidly developing area of the law that offers a potentially sweeping defense for religious institutions against employment claims by certain employees. The Seventh Circuit's decision deepens a split among the circuit courts on whether the ministerial exception bars hostile work environment claims, with the Ninth Circuit holding that hostile work environment claims are not barred and the Tenth and Seventh Circuits finding the opposite. Given this split among the circuits, the U.S. Supreme Court will likely have to resolve this issue.

Background of the Ministerial Exception

The ministerial exception is a legal doctrine stemming from the First Amendment of the Constitution's Religion Clauses. Specifically, the Establishment Clause and the Free Exercise Clause have led courts to determine that the government, including courts, cannot interfere in disputes between religious institutions and certain employees. This doctrine effectively gives religious institutions a broad exemption from employment discrimination laws for certain employees. While these employees are often labeled as "ministers" for purposes of analyzing the Exception's application, the employees who qualify have extended beyond clergy.

The Supreme Court officially recognized the ministerial exception in 2012 in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, when the Court found the employment discrimination claims of a teacher at a Lutheran school were barred. Less than a decade later in 2020, the Court ruled again on the ministerial exception in *Our Lady of Guadalupe School v. Morrissey-Berru*, finding that the doctrine applied to the employment discrimination claims of Catholic elementary school teachers. In both decisions, the Court showed that the basis for its holdings were the principles of religious institution autonomy enshrined in the First Amendment's Religion Clauses. Both *Hosanna-Tabor* and *Morrissey-Berru* dealt with situations where teachers' terminations were behind the disputes. A major remaining question is whether the ministerial exception also bars claims that involve a dispute such as a harassment or hostile work environment claim.

Demkovich Decision

Sandor Demkovich worked as the music director, choir director, and organist at St. Andrew the Apostle Parish in Illinois. Demkovich was supervised by Father Jacek Dada. The relationship between Dada and Demkovich deteriorated and Dada terminated Demkovich. Demkovich filed a complaint alleging a hostile work environment on the basis

of sex, sexual orientation, marital status, and disability under federal, state, and county statutes. The district court initially dismissed all claims, except for the disability-based hostile work environment claim, because of the ministerial exception. A panel of three judges on the Seventh Circuit heard an interlocutory appeal and in a 2-1 decision reversed the district court's dismissal of the hostile work environment claims and held that all of these claims were not barred by the ministerial exception. The full Seventh Circuit voted to hear the *case en banc* and reversed the panel's decision.

The majority decision, written by Judge Michael Brennan, found that the ministerial exception was not just confined to tangible employment actions, like hiring and firing, but also extended to intangible actions, like the supervision of employees who are "ministers," which would also bar hostile work environment claims. The majority found that adjudicating Demkovich's hostile work environment claims would "lead to impermissible intrusion into, and excessive entanglement with, the religious sphere." The majority focused on how Demkovich's allegations would force the court to involve itself in the dispute between one minister, Father Dada, and another minister, Demkovich. According to the majority, how these individuals interacted and the work environment that resulted is "a religious, not judicial prerogative."

Three judges issued a dissent, written by Judge David Hamilton, in which they argued that the majority overly weighed the religious liberty interest without properly weighing other interests that favored the hostile work environment claims being heard.

Implications

Religious institutions should keep abreast of the many developments regarding the ministerial exception and should remain aware of how these changes affect their employees. The Seventh Circuit's decision in *Demkovich* provides some clarity, but also highlights the differing views of courts and judges on these issues. The exact scope of the defense may depend on the court in which the religious institution finds itself.

If you are a religious institution facing an employment claim or want to learn more about the ministerial exception, please contact your Jackson Lewis attorney.

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