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An important Labor & Employment law update from the law firm of Jackson Walker.

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## U.S. Supreme Court Recognizes a "Ministerial Exception" Applies to Federal Anti-Discrimination Employment Laws

By Jon Mark Hogg

Today, in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, the U.S. Supreme Court held that there is a "ministerial exception" to Federal anti-discrimination employment laws. Despite the fact that the Federal Courts of Appeal have uniformly recognized such an exception for 40 years, the Supreme Court has never directly addressed the issue before today.

Relying on the First Amendment, the Court reasoned that permitting anti-discrimination lawsuits in such cases was an unconstitutional interference with a church's right to control the selection of those who will personify its beliefs.

Although it refused to adopt a rigid test as to who qualifies as a minister under this exception, it did set out a list of criteria for courts to consider. These are:

1. Whether the church held the employee out as a minister with a role distinct from the general membership;
2. Whether the employee had a significant degree of religious training;
3. Whether the religious training was followed by a formal process of commissioning or ordination;
4. Whether the employee held him or herself out as a minister of the church by accepting a "call" to religious service; and,
5. Whether the employee's job duties reflected a role in conveying the church's religious message and carrying out its mission.

In the *Hosanna-Tabor* case the court recognized that the church could not be held liable under federal anti-discrimination law for firing a teacher in the church's school who also had a religious function in the school and met the criteria listed above.

Religious organizations should keep in mind that this exception is limited, and employees who do not meet these criteria (such as ordinary teachers, office staff and custodians) will probably not be protected by this exception.

If you have any questions about this e-Alert, please contact **Jon Mark Hogg** at 325.481.2550 or [jmhogg@jw.com](mailto:jmhogg@jw.com).

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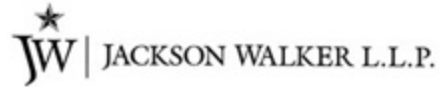
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