

# Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

PUBLISHED BY



**COLE SCHOTZ**  
COLE, SCHOTZ, MEISEL, FORMAN & LEDNARD, P.A.

## **United States Supreme Court Recognizes "Ministerial Exception" and Bars Certain Religious Employees from Bringing Employment Discrimination Claims**

*January 18, 2012 by Randi W. Kochman*

In a significant religious freedom decision, on January 11, 2012, the United States Supreme Court unanimously recognized a “ministerial exception” to employment discrimination laws. The “ministerial exception” had been recognized by the lower Courts of Appeals, but, until now, had not been affirmed by the Supreme Court. In its decision, the Court found that the Establishment and Free Exercise Clauses of the First Amendment preclude “ministers” from asserting employment discrimination claims against their churches.

In Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Opportunity Employment Commission – No. 10-553, the Court addressed the claims of Cheryl Perich (“Perich”), a teacher at the Hosanna-Tabor Evangelical Lutheran Church and School (the “Church”), which is a member of the Lutheran Church – Missouri Synod in Redford, Michigan. Perich claimed that the Church terminated her because of her disability, narcolepsy, as well as her threat to pursue a disability discrimination claim. The Church claimed that it terminated Perich because she violated its religious doctrine by failing to resolve her conflict internally rather than initiate litigation.

Following Perich’s termination, the Equal Opportunity Employment Commission sued the Church on behalf of Perich alleging that her termination was unlawful and in retaliation of her threats to file an Americans with Disabilities Act (“ADA”) lawsuit. The lower courts acknowledged the “ministerial exception” to anti-discrimination laws, and thus, recognized the First Amendment’s guarantee of freedom of religion to churches and their operations with regard to their treatment of employees. The Supreme Court upheld the exception. Issuing the Court’s opinion, Chief Justice John G. Roberts, Jr. wrote that “the interest of society and the enforcement of employment

discrimination statutes is undoubtedly important ... but so, too, is the interest of religious groups in choosing who will preach their beliefs, teach their faith and carry out their mission.” The Court expressed concern that requiring churches to follow anti-discrimination laws could hinder their selection and retention of religious leaders.

In precluding Perich from pursuing her employment discrimination claim, the Court considered whether Perich was a religious employee, or “minister,” covered by the ministerial exception. Although she taught secular subjects, a small portion of her day involved religious duties. Moreover, the Court recognized that Perich was a “called” (to God) teacher who had received religious training. Thus, the Court found her to be covered by the ministerial exception and prohibited from invoking anti-discrimination laws. Although concluding that Perich was a “minister,” the Court neglected to establish a bright line rule distinguishing religious from secular employees, leaving such determinations to the facts of each case.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North  
25 Main Street  
Hackensack, NJ 07601  
Phone: (201) 489-3000

900 Third Avenue  
16th Floor  
New York, NY 10022  
Phone: (212) 752-8000

500 Delaware Avenue  
Suite 1410  
Wilmington, DE 19801  
Phone: (302) 652-3131

300 East Lombard Street Suite 2000  
Baltimore, MD 21202  
Phone: (410) 230-0660

301 Commerce Street  
Suite 1700  
Fort Worth, TX 76102  
Phone: (817) 810-5250