

RELIGIOUS HIRING RIGHTS UPDATE

Outcomes Conference 2022

Hiring a team of likeminded employees who embrace your organization’s beliefs and values promotes a sense of belonging and supports missional success. This presentation addresses how leaders should respond to developments threatening religious hiring rights.

Presenters:

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Presentation Outline:

1. **Foundations – *The what and why of religious hiring***
 - a. What is “religious hiring”?
 - i. (Christian) religious hiring is the process of employing and retaining a team of individuals who embrace your organization’s beliefs, mission, values, and standards.
 - b. Why is religious hiring important?
 - i. Every organization—religious or otherwise—wants to hire people who embrace its mission and values.
 - ii. Promotes unity and a sense of belonging
 - iii. Supports missional success
 - iv. Maintains donor and stakeholder expectations
2. **Threats – *The challenges to religious hiring***
 - a. Non-legal threats
 - b. Federal nondiscrimination law
 - i. Isn’t religious discrimination illegal?
 1. Title VII
 2. *Corp. of Presiding Bishop v. Amos* (1987)

- ii. Sexual orientation and gender identity discrimination
 - 1. [Bostock v. Clayton County](#) (2020)
 - 2. Equality Act
 - 3. Fairness for All Act
- c. State nondiscrimination laws
 - i. Pre-*Bostock*, 22 states had SOGI nondiscrimination laws
 - ii. Municipal ordinances
- d. COVID vaccination mandates

3. Protections – *The legal basis for religious hiring*

- a. First Amendment: Ministerial Exception
 - i. Recent cases, good and bad:
 - 1. [Our Lady of Guadalupe School v. Morrissey-Berru](#) (2020)
 - 2. [DeWeese-Boyd v. Gordon College](#) (2021)
 - 3. [Palmer v. Liberty University](#) (2021)
 - 4. [Starkey v. Archdiocese of Indianapolis](#) (2021)
 - 5. [Demkovich v. St. Andrew the Apostle Parish](#) (2021)
 - ii. Takeaway: The ministerial exception continues to provide robust protections with respect to employees in “certain key roles” who “perform vital religious duties” and “play a vital part in carrying out the mission.”
- b. First Amendment: Strict Scrutiny (and RFRA)
 - i. The COVID Cases: *Diocese of Brooklyn v. Cuomo*; *Tandon v. Newsom*
 - ii. [Fulton v. City of Philadelphia](#)
 - iii. Takeaway: The Supreme Court continues to strengthen the First Amendment’s religious liberty protections, but application to the employment/hiring context remains undeveloped.
- c. Statutory: Title VII’s religious employer exemptions
 - i. Old cases re: sex discrimination
 - ii. Legal authorities are split on meaning and application to SOGI issues:

1. [*Starkey v. Archdiocese of Indianapolis*](#) (2020)
 2. *Bear Creek Bible Church v. EEOC* (2021)
 - iii. Takeaway: Title VII’s religious exemption is especially important for non-“ministers.” As courts wrestle with the scope of the exemption, the strongest approach is one that emphasizes an expectation of shared beliefs.
- d. Statutory: State law exemptions
- i. Exemptions for religious organizations and associations
 - ii. [*Matthew Woods v. Seattle’s Union Gospel Mission*](#) (2021)
 - iii. Takeaway: Although protections under state law are often broad, this may contribute to their downfall. This is a key area to watch in your state(s).

4. Recommendations – *The steps to maintain religious hiring*

- a. Stay the course: Do not abandon religious hiring; it is more important now than ever.
- b. Remember the three-legged stool:
 - i. Sincerely held beliefs
 - ii. Clearly articulated
 - iii. Consistently applied
- c. Refresh organizational documents and policies, bringing clarity to your community’s beliefs, expectations, etc.
- d. Focus on culture and recruiting.
- e. Consider seeking IRS recognition as a “church” or “association of churches.”
- f. Review your insurance policies and coverages.
- g. Have your teams ready—internal and external (legal, PR, etc.)