

# Why Employees at Religious Organizations May Not Be Protected Against Discrimination

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**Update:** On July 9, 2021, the full Seventh Circuit, sitting en banc, ruled that all of Demkovich's claims are barred by the ministerial exemption. The district court had held that Demkovich could pursue his claim of hostile environment under the ADA, but not his Title VII hostile environment claim, and the panel decision, discussed below, had held that he could pursue all of his hostile environment claims. The full court held that claims of hostile environment, like claims of discrimination in tangible employment decisions, cannot be litigated in court without excessive entanglement in the religious prerogatives of the Church. Read the full ruling [here](#).

In *Demkovich v. St. Andrew the Apostle Parish*, the Seventh Circuit recently held in a 2-1 decision that the ministerial exception does not preclude church ministerial employees from asserting hostile work environment claims.

## Supreme Court Rulings Clarify Ministerial Exception in Employment Discrimination Cases

The decision in *Demkovich* was preceded by two significant Supreme Court cases that clarified the reach of the ministerial exception by explaining the test for determining which employees of a religious institution are considered ministers. In the 2012 case *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, in a unanimous decision, the Court recognized that the ministerial exception bars ministerial employees from bringing employment discrimination claims against their religious employers. The issue was whether a teacher in a religious school who taught secular subjects should be considered a minister. The Court held, based on several specific facts about the teacher's duties and status, that she was in fact a minister in the church's view and thus was barred from bringing her claim that she was fired because of her disability. The ministerial exception bars all types of [employment discrimination](#) claims brought by ministers alleging [discrimination under Title VII](#), the [Age Discrimination in Employment Act](#), and the [Americans with Disabilities Act](#), at issue in *Hosanna-Tabor*. Although it appears to protect bad actors, the ministerial exception serves to ensure that the ecclesiastical authority to select and control who will minister to the faithful is not undermined by the

state.

More recently, this past July, in a 7-2 decision in *Our Lady of Guadalupe v. Morrissey-Berru*, the Court held that the primary consideration in determining whether a claim was barred by the ministerial exception turned on the tasks the employee performed. Hence, in determining whether two parochial school teachers who taught fifth and sixth grade classes and claimed they were fired—in one instance because of her age and in the other because she had breast cancer—could assert an age discrimination or a disability claim, the court determined they could not assert such claims, because the tasks they performed were vital religious duties such that the ministerial exception would apply. Specifically, the Court held that both teachers educated their students in the Catholic faith and guided them to live according to that faith.

As explained in the Demkovich decision, these Supreme Court decisions analyzed termination decisions by the religious schools and held that courts could not allow ministerial employees to challenge such decisions regardless of the reasons for their terminations. Demkovich, on the other hand, would determine whether the ministerial exception should apply to bar hostile work environment cases that did not involve such tangible employment action.

### **Applying the Ministerial Exception in Hostile Work Environment Cases**

In September 2012, Mr. Demkovich began working as the Music Director, Choir Director, and Organist for the Archdiocese of Chicago and St. Andrew Parish in Calumet City. His supervisor, Saint Andrews Pastor, Reverend Jacek Dada, often made derogatory comments about Mr. Demkovich's being an openly homosexual man engaged to a same-sex partner. Mr. Dada called Mr. Demkovich a bitch and his nuptials a fag wedding. Mr. Dada, also aware that Mr. Demkovich suffered from diabetes and a metabolic syndrome that caused weight gain, made additional remarks about his weight—urging him to walk his dog to lose weight, complaining about the cost of keeping him on the parish's health and dental insurance, and commenting that he needed to lose weight because Mr. Dada did not want to preach at Mr. Demkovich's funeral. After enduring prolonged verbal abuse, Mr. Demkovich was finally terminated in September 2014 after marrying his same-sex partner.

Mr. Demkovich initiated a Title VII, ADA, and wrongful termination claim. The defendants, Saint Andrews Parish and the Archdiocese of Chicago, moved to dismiss arguing the suit was barred by the ministerial exception. The district court granted the defendant's motion, holding all the claims were barred. Mr. Demkovich filed an amended complaint dropping his wrongful termination claim, but seeking damages for a hostile work environment caused by discriminatory remarks and

insults based on his disability and sex. The district court dismissed his hostile work environment claims based on sex, sexual orientation, and marital status because even though the claims were not barred by the ministerial exception, their adjudication would lead to excessive entanglement in matters of faith. The district court certified the following legal question for review by the Seventh Circuit: “Under Title VII and the Americans with Disabilities Act, does the ministerial exception ban all claims of a hostile work environment brought by a plaintiff who qualifies as a minister, even if the claim does not challenge a tangible employment action?”

Hostile environment claims do not involve challenges to employment decisions made by religious officials, so the resolution of the question in *Demkovich* turned on whether litigating the claim would nevertheless result in excessive entanglement between church and state. The *Demkovich* court discussed both procedural and substantive entanglement. The court concluded there would be no undue procedural entanglement, which refers to the operation of the entire legal process. The church’s concern about the intrusive nature of litigation is shared by all litigants and thus concern of excessive entanglement would not bar hostile work environment claims by ministers any more than by the non-ministerial employees of a church. Next, the court discussed substantive entanglement, analyzing whether civil courts can decide substantive questions of law while avoiding issues of faith. The court discussed a variety of cases allowing claims against churches involving tax disputes, property disputes, tort claims, and application of the Fair Labor Standards Act to church employees. As in those cases, the court determined it was possible for a court to rule on a harassment claim without getting into matters of religious faith. Mr. *Demkovich* faced ongoing harassment in part due to his sexual orientation. The church argued that all comments made about Mr. *Demkovich* were motivated by church doctrine and the manner Reverend Dada expressed these beliefs were shielded from judicial scrutiny. The church also argued that haranguing Mr. *Demkovich* about his health was within his supervisor’s purview in implementing the proper formation of a member of the clergy. Although the district court had accepted the church’s argument in part, dismissing his sexual orientation claim, the court of appeals was not as persuaded that the risk of substantive entanglement was so great that hostile work environment cases should be dismissed without further inquiry. The court emphasized that Reverend Dada could have expressed the church’s views on gay marriage and obesity without being personally abusive, so the content of his religious reprimands did not excuse compliance with valid, neutral laws against harassment.

### **Courts Split on Reach of Ministerial Exception**

The Seventh Circuit decision to narrow the reach of the ministerial exception

deepens a split among the circuit courts of appeal. The Seventh Circuit now has joined the conclusion the Ninth Circuit reached in 2004 in *Elvig v. Calvin Presbyterian Church*, holding that the ministerial exception does not categorically bar ministers' hostile work environment claims where the religious employer denies or disavows the conduct. At the same time, the Seventh Circuit has rejected the Tenth Circuit's opposite conclusion in a 2010 case *Skrzypczak v. Roman Catholic Diocese of Tulsa*, holding that the ministerial exception bars all hostile work environment claims. Because of this lack of uniformity in applying the ministerial exception, ministerial employees who are victimized by any type of harassment constituting a hostile environment should consult an employment attorney to determine whether they can pursue a claim against their religious employer.