

## HOLIER THAN THOU: DO RELIGIOUS EMPLOYERS HAVE THE RIGHT TO DISCRIMINATE AGAINST EMPLOYEES?

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Gabriel McGaha's article "Holier than Thou: Do Religious Employers Have the Right to Discriminate Against Employees?" was featured in *HR Professionals Magazine* on December 3, 2015.

Consider this parable: Mary, a paid Sunday school teacher desperately wants to have a child. Her physician advises her to begin undergoing IVF treatment to give her and her husband the best chance of conceiving. After meeting with the head parishioner to request time off for the procedure, the teacher is summarily terminated. The reason: the church believes that using IVF violates its tenets. Does the teacher have a viable claim against the church for employment discrimination?

She hast not a prayer for relief.

Although the Pregnancy Discrimination Act (which is part of Title VII) prohibits employers from discriminating against women "on the basis of pregnancy, childbirth, or related medical conditions," a church is generally free to discriminate against a "ministerial" employee, even if the discrimination would be otherwise prohibited. The U.S. Supreme Court unanimously recognized this "ministerial exception" in *Hosana-Tabor Evangelical Lutheran v. EEOC*, 132 S. Ct. 694 (2012), finding that, based on the Free Exercise Clause of the First Amendment, a religious organization has an absolute freedom to decide who may carry out its mission. While the *Hosana-Tabor* Court did not lay out a precise definition for who may qualify as a "ministerial employee" for purposes of the exception, factors that it considered were: (1) the employee's title; (2) whether the employee was required to undergo significant religious training to qualify for the position; (3) whether the employee held herself out as accepting a call to religious service; and (4) the religious functions performed by the employee. The Court determined that as long as the employee qualifies as a

“ministerial employee,” a religious organization has a right to discriminate for employment purposes.

To read the full article, please visit [\*HR Professionals Magazine\*](#).