

NEW JERSEY SUPREME COURT SIDES WITH CATHOLIC SCHOOL THAT FIRED UNWED PREGNANT WORKER: 6 KEY TAKEAWAYS FOR RELIGIOUS SCHOOLS

Insights
Aug 22, 2023

Religious schools in New Jersey that make employment decisions based on the tenets of their faith just received a favorable ruling from the state's highest court last week. The case involves an unmarried Catholic school teacher who was fired after informing the principal that she was pregnant. The teacher filed a lawsuit claiming the termination decision violated the state's workplace anti-discrimination law — but the New Jersey Supreme Court nixed the claim on August 14. The school invoked the "religious tenets" exception and successfully showed that it fired the teacher **solely** for violating its religion-based code of ethics by engaging in premarital sex. You should note, however, that the religious exception is not automatically applied, and the court provided important guideposts on how it will evaluate such cases — highlighting the importance of thoroughly reviewing your policies and practices. What are the six biggest takeaways from *Crisitello v. St. Theresa School* for religious schools in New Jersey and beyond?

1. School Must Assert and Prove Exception Applies

The teacher in this case was a part-time art instructor and toddler room caregiver for St. Theresa School, a Catholic elementary school in the Archdiocese of Newark. When the school's principal arranged a meeting to discuss a potential full-time art position, the teacher mentioned that she was pregnant and would need a pay raise to work the additional hours. Based on this conversation, the teacher was fired for

Related People



Susan M. Guerette

Partner

610.230.2133



Kristin L. Smith

Partner, Co-chair K-12
Institutions

713.292.5621

engaging in premarital sex in violation of the school's policies following Catholic teachings.

The teacher sued under the New Jersey Law Against Discrimination (LAD), asserting bias claims based on marital status and pregnancy. Notably, a faith-based school can invoke the religious tenets exception when it relies on the teachings of its faith to set employment policies — but the school needs to prove that the exception applies. Specifically, the New Jersey Supreme Court clarified the following criteria:

- The exception is an **affirmative defense** that the school must assert and prove.
- The school must show that the challenged employment decision was based **solely** on employment criteria that were adopted under the tenets of its religion.
- The exception serves as **“an absolute bar to liability”** if the employee fails to raise a genuine dispute of material fact as to whether the challenged decision relied solely on the school's religious tenets.

In this case, the school argued that the teacher was not fired for being pregnant or unmarried. Instead, she was fired for violating the school's code of ethics and the tenets of the Catholic faith by engaging in premarital sex.

2. School Set Clear Policies

St. Theresa School follows the Archdiocese of Newark's Policies on Professional and Ministerial Conduct, which include a Code of Ethics that teachers are required to follow. The Code of Ethics requires employees to “conduct themselves in a manner that is consistent with the discipline, norms, and teachings of the Catholic Church.” The policies also stated that church personnel are forbidden from engaging in “adultery, flagrant promiscuity or illicit co-habitation.” Additionally, the school had a faculty handbook explaining that teachers should “express a value-centered approach to living” and serve “as positive role models for their students.”

Notably, the teacher — who was a former student of the school and a practicing Catholic — admitted that she knew premarital sex violates the tenets of the Catholic Church.

3. Teacher Signed Acknowledgement

Industry Focus

Education

Related Offices

New Jersey

In addition to setting clear policies requiring employees to follow Catholic teaching, the St. Theresa School had employees sign an acknowledgement. The teacher in this case signed several conduct-related acknowledgements when she was hired, including one that stated the following: "My signature below indicates that I have received a copy of the Policies on Professional and Ministerial Conduct adopted by the Archdiocese of Newark; and that I have read and understand those Policies, including the Archdiocesan Code of Ethics, and agree to abide by all of the Policies and the Code of Ethics."

4. School Didn't Need to Survey Its Workforce

The New Jersey Supreme Court rejected a lower court's finding that "because only women can become pregnant, it is evidence of pretext for an employer to discipline violations of its ban on premarital sex through observations of pregnancy or fortuitous discovery."

Moreover, the state's highest court disagreed that St. Theresa's decision was discriminatory because the school did not "survey its employees to discover other transgressions of the faith."

The law does not require this type of investigation, according to the court. Simply put: The teacher did not offer any evidence that the reason given for her termination was false.

5. Policies Were Consistently Applied

In a concurring opinion, Justice Fabiana Pierre-Louis said she would apply a different test than the majority — which is known as the McDonnell Douglas framework. She agreed, however, that even when applying the other analysis, there was no evidence that the school's stated reason for firing the teacher was actually a pretext for discrimination based on marital status or pregnancy.

Justice Pierre-Louis pointed to evidence showing that other schools in the Archdiocese of Newark consistently applied the same policies. For example, when another school in the archdiocese learned that an unmarried male teacher was expecting a child with his girlfriend, he was also fired.

The majority reached its decision without considering this point directly, but it highlights the importance of following

consistent practices.

6. Case Serves as a Reminder of Best Practices

Although the New Jersey Supreme Court ultimately ruled in favor of the school, the litigation has been ongoing for years between the trial court and appellate court. The good news is that the New Jersey Supreme Court's ruling now provides a clearer roadmap for religious institutions in the state that make employment decisions based on the tenets of their faith. That being said, you should also keep the following four points in mind as you develop your best practices:

- Court rulings based on the religious tenets exception are fact specific, and as a best practice, you should consider contacting experienced legal counsel before making complex termination decisions.
- Schools should also ensure that policies — including any handbooks, offer letters, and employment agreements — are consistent with your religious teachings and reaffirm that employees are required to follow religious tenets as a condition of their employment.
- Additional best practices include requiring employees to sign acknowledgments of these obligations and offering employees an avenue to seek clarification if they have any questions relating to the religious tenets.
- You should also note that the test for applying a religious exception to workplace laws will vary from state to state, so you should carefully review the rules in your jurisdiction and consult with an attorney as needed.

Conclusion

We will continue to monitor this area and other education-related developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Education Team](#).