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THINK EMPLOYMENT LAWS DON'T APPLY TO YOUR PRIVATE CLUB? THINK AGAIN

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Think Employment Laws Don't Apply to Your Private Club? Think Again

Many private clubs have long operated under a widely misunderstood premise that federal employment discrimination laws simply do not apply to them. While there is a kernel of truth to that belief, the reality is far more nuanced – and, in many cases, far riskier than clubs appreciate. Too often, clubs treat the "private club exemption" to federal anti-discrimination statutes like Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) as a blanket permission slip to take a more relaxed approach to anti-discrimination, harassment, and retaliation issues. That approach can create significant exposure, because these exemptions are narrow, highly fact-specific, and frequently undermined by a club's own operations. We'll explain everything you need to know and provide four practical steps that can help reduce your risk.

The Federal Exemption: Narrower Than You Think

Under Title VII and the ADA, certain "bona fide private membership clubs" may be exempt from federal anti-discrimination requirements. But this exemption is not automatic – and not all clubs qualify.

To fall within the exemption, a club generally must:

- be tax-exempt under Section 501(c); and
- qualify as a "bona fide private membership club."

Related People

Leanne Lane Coyle
Associate

610.230.6121

Erin Gibson Allen
Partner

412.822.6635

The Equal Employment Opportunity Commission (EEOC), the federal watchdog on employment discrimination in the private sector, has articulated a general framework for assessing whether a private club meets the exemption, which looks at whether the organization:

1. is a club in the ordinary sense of the word;

2. is genuinely private; and

3. imposes meaningful conditions of limited membership.

Courts across the country apply different tests, which often turn on a fact-intensive, multi-factor analysis that may include:

- The selectivity of membership criteria;
- The degree of member control over governance;
- The club's history and purpose;
- The extent to which non-members use club facilities;
- Whether the club advertises for members or to the public generally; and
- Whether the organization operates on a nonprofit basis.

No single factor is dispositive. And, importantly, courts across jurisdictions apply these factors differently – meaning the same set of facts could yield different outcomes depending on where a claim is brought.

Where Clubs Often Get Into Trouble

Even clubs that believe they qualify as "private" can inadvertently undermine that status through their day-to-day operations. Common risk areas include:

- **Guest access that mirrors membership privileges**. If non-members routinely enjoy the same access as members, the "private" nature of the club may be called into question.
- **Lack of meaningful selectivity**. Open or minimally vetted membership processes can weaken arguments that the club is truly exclusive.

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- **Public-facing marketing**. Advertising that suggests the club is open to the general public may be used against the club in litigation.

There are also more nuanced scenarios that require careful navigation, such as:

- Hosting weddings or private events for non-members;
- Opening facilities for charity events; or
- Allowing outside groups to use club space.

These activities are not inherently disqualifying, but they can blur the line between private and public use. In these situations, it is prudent to consult counsel to evaluate whether operational practices are creating unintended legal exposure.

State and Local Laws May Still Apply

Even if a club successfully qualifies for the federal exemption, that does not end the analysis. Many states and municipalities have enacted anti-discrimination laws that do not recognize a private club exemption at all or apply it far more narrowly. For example, New Jersey, New York, Maryland, Connecticut, and California have laws that extend anti-discrimination protections to private clubs in ways federal law does not.

Additionally, there has been a split among federal courts as to whether Section 1981 of the Civil Rights Act of 1866, a federal law that prohibits race discrimination in contractual relationships, includes a private club exemption. That uncertainty alone creates meaningful litigation risk.

4 Practical Steps to Reduce Risk

Given the evolving and fact-specific nature of this area, private clubs should consider a proactive approach to compliance, including these four steps:

1. Audit your membership practices.

Ensure that your selection process reflects meaningful criteria, member involvement, and true selectivity.

2. Review marketing and communications.

Avoid language that suggests the club is open to the public or broadly accessible.

3. Tighten event and guest policies.

If non-member events are permitted, require genuine member sponsorship, and ensure that requirement is enforced in practice, not just on paper.

4. Train your workforce and maintain strong policies.

Regardless of whether a federal exemption may apply, implementing and enforcing anti-discrimination, anti-harassment, and anti-retaliation policies is simply good business. Well-trained employees and consistent policies not only promote a healthy workplace culture but also reduce the likelihood of claims in the first place.

Conclusion

If you have questions about how these issues may impact your private club, please contact the authors of this Insight, your Fisher Phillips attorney, or any member of our Non-Profit and Tax-Exempt Organizations team. We will continue to monitor all developments related to workplace law, so make sure you are subscribed to Fisher Phillips' Insight System to receive the most up-to-date information.