



How the Supreme Court's 2020 Ruling in *Our Lady of Guadalupe School* Affects Churches and Ministries

OUR LADY OF GUADALUPE SCHOOL V. MORRISEY-BERRU

The Supreme Court's July 2020 decision in *Our Lady of Guadalupe School v. Morrissey-Berru* involved two cases in which religious schools were sued by former teachers claiming wrongful termination. Alliance Defending Freedom filed a friend-of-the-court brief in support of the schools.

Federal employment law prohibits discrimination based on a variety of employee characteristics. But courts have long held that "ministers" may not assert employment discrimination claims against the churches and religious organizations that employ them. In 2012, the Supreme Court not only unanimously affirmed the existence of this constitutionally-based "ministerial exception," but also embraced a fairly broad understanding of who is a "minister." The Court understood the need to protect religious organizations' freedom to choose those who will pass along the faith to the younger generation, without undue government interference.

In its July ruling in favor of the religious schools, the Court clarified and broadened the scope of the ministerial exception. Importantly, the Court ruled that the exemption is based on what an employee does, not just the employee's title or training. If an employee's duties include educating people in the faith, instilling its teachings and values, or training others how to live out the faith, they are considered a minister. And courts should give some deference to churches in how those churches view their ministers. All this helps provide religious schools with the freedom they need to make proper decisions when hiring, promoting, firing, and disciplining teachers.

HOW DOES THE MINISTERIAL EXCEPTION PROTECT CHURCHES AND MINISTRIES?

The strengthened ministerial exception protects the ability of churches and ministries to choose who teaches the faith without worrying about government intervention. Without this exception, churches and ministries could be subject to various employment regulations, including those that prevent employment decisions on the basis of sexual orientation and gender identity. In an increasingly litigious society, strong precedent also has the benefit of reducing the risk of lawsuits that drain ministry resources.

The right protected by the ministerial exception is part of a broader legal concept called church autonomy - the right of churches and ministries to govern themselves. In addition to the ministerial exception, the federal law forbidding discrimination in employment explicitly permits religious employers to prefer individuals "of a particular religion." Most state statutes have similar exemptions. This means that "religious organizations" may consider an applicant's or employee's religious beliefs and conduct in hiring and firing decisions.

WHAT QUESTIONS STILL REMAIN AFTER THE *OUR LADY OF GUADALUPE SCHOOL* DECISION?

While *Our Lady of Guadalupe School* was a positive ruling, it did not comprehensively address every question that could impact churches and ministries, such as:

- How much will courts defer to religious organizations when determining who is a ministerial employee?
- When dealing with non-ministerial employees, to what extent may religious organizations maintain and enforce faith-based conduct standards that reflect their beliefs about marriage, sexual morality, and the distinction between the sexes?

WHAT CHALLENGES RELATED TO EMPLOYMENT ARE AHEAD FOR CHURCHES AND MINISTRIES?

Recent federal proposals regarding sexual orientation and gender identity legislation are particularly dangerous for churches, ministries, and religious schools. For example, the deceptively named “Equality Act” would add “sexual orientation” and “gender identity” as protected classes to various laws in ways that would prohibit religious organizations from properly living out and teaching their faith.

A similar piece of legislation, titled “Fairness for All,” is another deceptively named bill that poses many of the same threats to religious freedom.

Additionally, some government officials are calling into question the religious nature of ministries. For example, the State of Illinois has questioned whether a church-related ministry that serves low-income students in Chicago is religious enough to qualify for religious protections under state law. Governments cannot be allowed to undermine the religious nature of ministries.

WHAT CAN I DO TO BETTER PROTECT MY CHURCH OR MINISTRY?

The *Our Lady of Guadalupe School* decision should motivate churches and ministries to ensure that their governing documents, which are an important line of defense, provide the strongest possible religious freedom protections. Church and ministry leaders should ask the following questions:

- Do your church or ministry’s governing documents clearly express your beliefs?
- Have your employees signed a statement affirming that they have read, agree with, and will abide by your church or ministry’s beliefs?
- Does your church or ministry have a code of Christian conduct, grounded in the statement of faith, which establishes behavioral expectations for employees, volunteers, teachers, administrators, campers, students, etc.?
- Does your church or ministry have job descriptions that reflect employees’ ministerial duties?

A thorough review of your governing documents is critical. If your church or ministry has not yet started reviewing its governing documents—particularly documents related to employment—we encourage you to begin now.

ADF attorneys can also help better prepare churches and ministries by providing a legal review of your governing documents. This service is available to ADF Church Alliance and ADF Ministry Alliance members for free.

An ADF attorney will review your governing documents with an eye toward better protecting your religious freedom, consistent with the membership scope of services. You don't have to compile all your documents or make them perfect before beginning this process. You can even start with our team reviewing just one document, like your statement of faith.

You may also consider creative ways to build positions that have ministerial components, so each employee is trained and expected to be a minister of the Gospel when called upon to do so in the employment context.

WHAT IF MY CHURCH OR MINISTRY NEEDS LEGAL HELP?

Before making employment decisions for your church or ministry, we encourage speaking with an ADF attorney who can review your situation and provide recommendations.

If your church or ministry encounters a legal situation challenging an employment decision you have made, please contact us immediately by [requesting legal help here](#). We recommend seeking legal advice before responding in any manner.

In addition to document review, members of the Alliance have access to attorneys to advise on the best possible protections for your church or ministry. To request a religious liberty document review or legal help, follow these three easy steps:

- (1) Go to the [legal intake form](#).
- (2) Fill out [the form](#), and in the "Brief description of your legal situation" section, state that you are an ADF Church Alliance or ADF Ministry Alliance member requesting a document review.
- (3) After you submit this form, an ADF attorney will contact you about your document review.

Members of ADF Ministry Alliance and ADF Church Alliance can access this and many other resources within the members-only website.

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1-800-835-5233
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