

A DISCUSSION – BEST PRACTICES

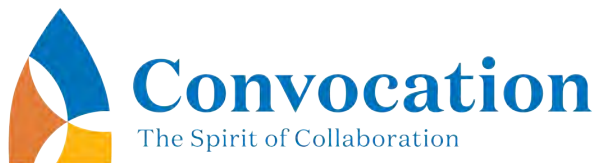
Diocesan Risk Prevention and Management in the Workplace and With the Public

Jennifer Gniady, Stradley Ronon

Mark Chopko, Stradley Ronon

Kevin Keily, Archdiocese of Portland in Oregon

Doug McKenna, The National Catholic Risk Retention Group





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Introduction, Overview and Scope of Discussion

- Hiring for Mission
- Managing Employment Claims
- Dealing with Ancient Abuse Complaints
- What's Next



“Hiring for Mission”

- Traditional rule – All employers have right to expect staff respects core values and beliefs.
- Start with orientation and in service to catechize all faculty/staff on religious mission.
- Depends on setting, communicating and documenting expectations.
- Look for evidence of consent to expectations.
- Requires catechesis and re-education...including leadership.

Employment Claims- Ministerial Exception

The Rule -- (1) A “minister” may not sue their (2) “church” concerning the (3) “terms and conditions” of their ministry.

- When applicable, the “ministerial exception” bars state and federal employment and anti-discrimination rules and even (some contract and tort claims
- It is a specific application of general First Amendment principles precluding governmental interference in internal “church” matters.

Even if inapplicable, there are still First Amendment implications and defenses.

Definitions – A “Minister” is ...

- Person who occupies a “position of ministry”!
- Recent cases focus on job duties – what does this person do? Factual Question – look to job descriptions, daily duties (connection to religious activities), and similar matters (handbooks, contracts, policies, orientation). E.g., Teachers (Our Lady of Guadalupe).
- Traditional cases examined relationship between the position and the advancement of church’s teaching, evangelization, and preaching. E.g., Teachers (Lemon v. Kurtzman). Factual Question that regardless of the quantity of “religious work” the position is essential to religious mission.

Who Carries Out Your Mission?

- Key cases have focused on schools as clearly religiously affiliated charitable organizations
- Further extension is a question of facts and circumstances.
- What’s challenging is defining (then supporting) the *qualities* necessary for an employee to be a “minister”
- Even if the employee squares completely with the exception, it’s a defense, not protection from being sued.
- No preclusion of claims unrelated to the terms and conditions of ministry, e.g., abuse or harassment.

Matching Ministry to Ministers

- Deliberate attention to which positions are integral to mission
- Reflect that attention in job descriptions.

Expense: planning & educating OR explaining & defending

Affirmative defense: “church” required to prove exception

- Not unlike an employee handbook review, audit of employee roles

Audit focused on qualities, function and connection

Use experienced assistance to classify, review, and defend choices

Not Every Position is ... Our Tradition

- Answer will depend on polity, teaching, and mechanics of ministry’s employment system and procedures.
- Schools, yes. Teachers, yes. But maintenance workers?
- Other institutions – social services? Yes. Other positions – psychiatric social workers?
- Resist the Siren Song of “other voices” to declare everyone a minister and every position “ministry.”

Helpful Practices

- Classify positions in relation to ministry’s mission.
- Note classifications as “minister” on position descriptions and records.
- Recite expectations of all staff in handbooks and practices and manage expectations from application to hiring.
- Be clear about expectations about acting publicly contrary to Church teaching.
- Consider how to document “consent” – applications, receipts, signatures, etc.
- Continuing education and ongoing formation – no surprises.
- Be clear, write it down, answer questions.
- Watch for waivers – public funding contracts, union agreements...
- Get good advice – second opinions.

Extend the Conversation –Preventive Actions

- Talk about religious mission throughout employment: Who we are.
- Policies and operational documents
- Employees, yes, but also other stakeholders

Parents

Students

Donors

Community

Clients

Plan Ahead

- Assume disputes will happen
 - High-performing but non-compliant employees
 - Tenure or union issues
- Pastoral response
- Communications strategy

DISCUSSION



Thank you.

Contact Information

Jennifer Gniady

Stradley Ronon

jgniady@stradley.com

Mark Chopko

Stradley Ronon

mchopko@stradley.com

Kevin Keily

Archdiocese of Portland

gkkiely@archdpdx.org

Doug McKenna

TNCRRG

dmckenna@tncrrg.org



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