



RELIGIOUS ANTI-DISCRIMINATION PROVISIONS IN TITLE VII DO NOT APPLY TO RELIGIOUS ORGANIZATIONS

The law is clear that a non-religious employer cannot require an objecting employee to subscribe to a statement of faith or otherwise participate in a religious activity. But religious employers can place such requirements on their employees and discriminate in their hiring practices based on religion.

1. Title VII Prohibits Religious Discrimination At The Workplace And Requires Most Employers To Make Reasonable Accommodations For Employees' Religious Beliefs And Practices.

Title VII of the Civil Rights Act of 1964, codified in 42 U.S.C. 2000e *et seq.*, prohibits most employers from discriminating at work based on religion. *See* 42 U.S.C. § 2000e-2 (“It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”).¹

Unless FRC qualifies for an exemption from Title VII, it cannot discriminate among its employees based on religion and would have to excuse employees from such things as mandatory chapel services if attendance violates their religious beliefs. *See EEOC v. Townley Engineering & Manufacturing Co.*, 859 F.2d 610 (9th Cir. 1988) (holding that organization was

¹ The prohibition on religious discrimination protects both religious *beliefs* and *practices*. *See* 42 U.S.C. §2000e(j) (“The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”); *see also Trans World Airlines, Inc., v. Hardison*, 432 U.S. 63 (1977).

not a religious corporation under Title VII and thus must excuse employee from a mandatory devotional service).

2. Title VII Does Not Apply To Religious Organizations.

The religious discrimination provisions of Title VII do not apply to religious organizations, including corporations, associations, schools, or societies. Section 702 states:

This subchapter shall not apply to ... a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

42 U.S.C. § 2000e-1.

If an organization is deemed “religious” under Section 702, then all of its activities are exempt from Title VII’s prohibition on religious discrimination – not just the religious activities. The District of Columbia’s non-discrimination statutes essentially track the federal law, and contain an exemption for religious organizations. Therefore, the analysis is the same for claims brought under D.C. law. *See* D.C. Code Ann. § 2-1401.03.

In *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987), the Supreme Court found that an employer was able to fire a custodian at a gymnasium because the gymnasium was owned by the Mormon church and thus was exempted under Section 702. While Title VII does not define a “religious organization,” case law provides some guidance on how this term is interpreted. As a general matter, courts have stated that the exemption is a narrow one and should not be applied broadly. *See Townley*, 859 F.2d at 617-18 (“Congress’s conception of the scope of section 702 was not a broad one. All assumed that only those institutions with extremely close ties to organized religions would be covered. Churches, and entities similar to churches, were the paradigm.”). The *Townley* court evaluated legislative history and a few relevant cases involving clearly religious organizations, concluding that the primary purpose of § 702 is to exempt churches and organizations closely affiliated with them. *Id.* It determined that each case required separate factual evaluation to weigh the organization’s characteristics, establishing a “general picture” of the entity as either secular or religious. An organization will

only be allowed to utilize the exemption if the court determines that the corporation's purpose is primarily religious. *Id.*

a. Cases Holding the Organization Fell Within the Exemption

In *Killinger v. Samford University*, 113 F.3d 196 (11th Cir. 1997), the court found that a Baptist university was a religious educational institution within the scope of the Title VII exemption. As evidence that it was "religious," the court pointed to the following facts:

- it was founded as a theological institution by the Alabama Baptist State Convention,
- its "trustees are now, must be, and always have been (with one historical exception) Baptist,"
- it receives over four million dollars from the Baptist Convention,
- it reports financially to both the Baptist Convention and the Alabama Baptist Convention,
- all faculty must subscribe to the Baptist Statement of Faith and Message (with possible termination as a penalty), and
- the university's charter stated its chief purpose as the "promotion of the Christian Religion throughout the world by maintaining and operating ... institutions dedicated to the development of Christian character in high scholastic standing."

Id. at 199.

The Third Circuit Court of Appeals came to a similar conclusion in *LeBoon v. Lancaster Jewish Community Center Assoc.*, 503 F.3d 217, 226 (3d Cir. 2007), finding that a Jewish Community Center was a religious organization. The court considered factors similar to those listed in *Killinger* and held that the Center was religious because it displayed religious symbols in its building, offered religious instructional programs, observed Jewish holidays, began meetings with Biblical readings, and used several rabbis from local congregations as advisors. *Id.* at 229. *See also Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2011) (holding that a

Christian ministry not affiliated with a church was a religious organization that could discriminate based on religion in hiring, and listing factors to be considered when determining if an entity is religious).

In *McClure v. Salvation Army*, 323 F. Supp. 1100 (N.D. Ga. 1971), the court evaluated an organization's purpose and activities and found a central religious function. The court acknowledged that the Salvation Army was not a traditional house of worship. *Id.* at 1104. But the corporation was formed for the purpose of locating a church in the state and for the purpose of promoting the cause of Christian religion, charity, and education. *Id.* From this, the court found that the Army's purpose qualified the Salvation Army as a religious organization. *Id.*

The *McClure* court further evaluated the Army's activities and that of its officers. The Salvation Army's organizational structure, community activities, and the inherently religious duties assigned its officers all supported the court's conclusion that it was a religious organization. *Id.* at 1101-02. In addition, the Army required its officers to attend specialized training that prepared them for Army work of ministering to their congregations and performing ceremonies, including marriages and infant dedication. *Id.* at 1106. The court concluded that such activities, along with administrative operations that might seem secular (such as secretarial duties), were supportive of and integral to the Army's religious activities. Therefore, the court upheld the Army's claim to a religious organization exemption under Title VII. *Id.* at 1107.²

b. Cases Finding no Exemption

In *Townley*, 859 F.2d 610, the Ninth Circuit determined that an owner's sincere convictions were insufficient to deem a corporation "religious" for purposes of the exemption. *Id.* at 619. The court listed a few characteristics guiding their decision, including the corporation's profit structure and primary objective of producing a secular product. *Id.* The

² See also *EEOC v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980) (university affiliated with Southern Baptist Convention was religious organization, not subject to religious discrimination provisions of Title VII, but was subject to other prohibitions such as discrimination based on race and sex).

court also noted that the company lacked church support or affiliation, and did not mention any specific religious purpose in its articles of incorporation. *Id.*

In *EEOC v. Kamehameha Schools/Bishop Estate*, a non-Protestant applicant brought suit against a school when she was told that only Protestants could be hired to teach, in accordance with the terms of the charitable trust that established the school. 990 F.2d 458, 459 (9th Cir. 1993). The School claimed that it was exempt under § 702 of Title VII as a religious educational institution. *Id.* In *Kamehameha*, the Ninth Circuit utilized the *Townley* approach to evaluate the organization's "general picture." The court first weighed the significant religious and secular characteristics of the school to determine if its purpose was primarily religious. *Id.* at 460-61. It concluded that the "general picture" was secular since no religious organization ever controlled or supported the school, it was not affiliated with any church denomination or association of religious schools, and its religious nature was minimal. *Id.* at 461-62. The court also noted that the School was part of the Bishop Trust – a secular business which had not chartered the school as a religious organization. *Id.* at 461.

In *Fike v. United Methodist Children's Home*, 547 F. Supp. 286 (E.D. Va. 1982), the court found that a home originally established with a religious purpose and governed by church-member trustees was presently secular in purpose and therefore not a "religious organization" entitled to the discrimination exemption. Plaintiff, who worked with troubled youth, was discharged when the home decided to place a Methodist minister in his position. *Id.* at 287. Plaintiff brought a religious discrimination charge under Title VII, and the home responded that it was entitled to an exemption as a religious organization. *Id.* at 289. Although the case was dismissed on other grounds, the court found that the home was not a qualified religious organization. *Id.* at 290.

In its analysis, the court pointed to several factors identifying the home as secular. The home did not incorporate religious services or symbols of any kind into its program. *Id.* at 289-90. Theological instruction involved an overview of multiple perspectives, including atheism.

Id. at 290. Any attendance at religious services was entirely voluntary. *Id.* The court determined that defining the home as a religious organization required a greater degree of religious focus than merely a board of directors whose members also belonged to the Methodist Church. The home's activities were not infused enough with religious purpose to substantiate deeming it a religious organization at the time of the complaint to qualify for the discrimination exemption.

c. Factors Considered in Determining if the Exemption Applies

Viewing these cases together, courts have looked at the following factors in determining whether the “general picture” of an organization is religious or secular:

- whether the entity operates for profit or as a nonprofit organization;
- whether it produces a secular product;
- whether a government agency has determined the entity's status;
- whether the entity's articles of incorporation or other pertinent documents state a religious purpose;
- whether the entity represents itself to a church, the public, and the government as a secular or sectarian body;
- whether a church is intimately involved in the management, day-to-day operations, and financial affairs of the entity;
- whether a church supports or is affiliated with the entity;
- whether the entity adheres to or deviates from an original religious purpose;
- whether employees must subscribe to a statement of faith; and
- whether the entity conducts religious activities, services, or instruction.³

³ See *LeBoon v. Lancaster Jewish Community Center Assoc.*, 503 F.3d at 226 (listing factors and finding Jewish Community Center was religious organization even though it did not require its employees to be religious and had no direct ties to any synagogue).