

## **Religious Employers, The Ministerial Exception, And Pregnant Women**

By [Robin E. Shea](#) on April 04, 2012

With Easter and Passover almost upon us, what better topic than a new case on the ministerial exception to Title VII?

A federal judge in Ohio has recently [refused to dismiss](#)\* a lawsuit brought by a former teacher at a Catholic school who alleged that she was let go because of her pregnancy. (The teacher was not married, and she alleged that she became pregnant through artificial insemination.)

*\*At this very preliminary stage of the litigation, the judge had to accept as true everything that was alleged in the plaintiff's lawsuit. So it's possible that the ultimate outcome will be different, and we have not heard the employer's side of the story.*

The case is interesting because it is one of the first "ministerial exception" cases (if not the first) to be decided since the U.S. Supreme Court decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, which I [blogged about](#) a while back. (Scroll down to "Hail, hail, Freedonia!")

According to the lawsuit, the plaintiff, Ms. Dias, was a "technology coordinator" for two Catholic schools in the Archdiocese of Cincinnati. Ms. Dias was not Catholic. As technology coordinator, she was responsible for teaching computer to the kids and overseeing the IT systems at the two schools. She did not teach religion and, indeed, *was not allowed* to teach religion because she wasn't Catholic.



(By the way, have I mentioned lately that she wasn't Catholic? I wasn't sure you got that point.)

Anyway, on a fine Friday in October, Ms. Dias notified one of her school principals that she was five and a half months pregnant. The principal congratulated her and said she did not think the pregnancy would "be a problem." Notwithstanding this rosy prediction, later that same day, the same principal called Ms. Dias back and told her that she would probably be terminated because she was "pregnant and unmarried." The next Monday, Ms. Dias told the principal that she had become pregnant through artificial insemination, not extramarital sexual relations. Then she disclosed her pregnancy to the other school principal, who told Ms. Dias right off the bat that her pregnancy "was going to be a problem" because Ms. Dias wasn't married.

After the schools consulted with Human Resources for the Archdiocese, Ms. Dias was told that she was being terminated for "failure to comply and act consistently in accordance with the stated philosophy and teachings of the Roman Catholic Church."

At this point, there are a couple of things you may need to know:

\*You may have heard that the Catholic Church has some strict rules. Among other things, the Church considers any sexual relations outside of marriage to be a sin. That would include premarital sex, as well as a lot of other things that I shouldn't get into on a family blog.

\*You may or may not have heard that the Catholic Church also considers artificial insemination to be a sin. It does.

OK, you needed to know those things before we moved on. So, Ms. Dias filed suit claiming pregnancy discrimination, and the Archdiocese said her suit should be dismissed because of the ministerial exception. And, as you already know, the judge refused to dismiss the lawsuit.

The judge said that the ministerial exception didn't apply in this case because the plaintiff was clearly not a "minister." Although she did work for two Catholic schools, she did not teach religion and wasn't even allowed to do so because she wasn't -- *well, you know*, and she did not have the title of "minister," and she did not, apparently, perform any "spiritual" function whatsoever.

This made her situation different from that of the Lutheran teacher in *Hosanna-Tabor*, who was a "called" minister, had religious education, taught religion classes, and led her kids in prayers and devotions.

Well, ok, said the Archdiocese, but Ms. Dias signed a contract agreeing that she would abide by Catholic teaching, so by her own admission she has breached her contract, giving us airtight grounds to terminate her employment. Well, maybe, the judge said, but how would a non-Catholic be expected to know that artificial insemination is a sin? (Heck, your honor, I'll go you one better -- I'd bet that most *Catholics* don't know that artificial insemination is a sin.) Because the plaintiff is entitled to all benefits of the doubt at this early stage of the lawsuit, the judge said, I have to find in favor of Ms. Dias.

Well, ok, said the Archdiocese, but Ms. Dias is also supposed to be a *good example* for the students in our schools, and she got pregnant by a means that our Church teaches is a sin. That's setting a bad example. Well, maybe, the judge said, but we have some legal precedents saying that artificial insemination (as opposed to premarital sex) isn't so bad for a church-affiliated school\*.

\*The [case cited by the judge](#) concerned a school affiliated with the Church of Christ, which (as far as I know) does not have centrally defined religious dogma and probably no specific doctrine on artificial



*insemination. So this decision may not be very applicable to a case involving the Catholic Church, which clearly does have a hierarchy, centralized dogma, and a specific teaching prohibiting artificial insemination. (If any readers are members of the Church of Christ, your comments on this point would be welcome.)*

We also have some precedents saying a religious employer can terminate pregnant women for being pregnant only if they're really sanctioning the -- *cough, cough* -- activity that resulted in the pregnancy, the judge continued (my paraphrase, obviously!). Put another way, the cases say that it's not ok for a religious employer to simply focus all of its moral energies on female employees who get pregnant out of wedlock. The religious employer has to also fire female *and male* employees who do the stuff that sometimes causes women to get pregnant out of wedlock. Otherwise, it's pregnancy discrimination. No fair to fire the pregnant unmarried women for being "immoral" while letting the men carry on like . . . bunny rabbits. (Not that the Archdiocese was necessarily doing that, but the judge said it was too early in the lawsuit to tell.)

So, Ms. Dias's case will go forward for now. As far as the Archdiocese is concerned, this shouldn't be the end of the world because it will have plenty of opportunity to develop the evidence and move for summary judgment later. But the case has a good lesson for religious employers: For the ministerial exception to apply, it helps if your employee's job involves something "ministerial."

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