

# DEVELOPMENTS IN DISCRIMINATION LAW 2020-2021



James H. Kizziar, Jr.  
Amber K. Dodds

Bracewell LLP

BRACEWELL

## MINISTERIAL EXCEPTION AND ADA CLAIMS

- Ministerial Exception prevents adjudication of employment discrimination claims by “ministers” of religious organizations
- Whether an employee is a “minister” is not based on a rigid formula
  - Consider “all relevant circumstances” to determine if employee is covered
  - Covered employees do not need any specific title or formal schooling
  - “What matters, at bottom, is what an employee does”
- Supreme Court held that an elementary school teacher was covered by the ministerial exception because she performed “vital religious duties”

*Our Lady of Guadalupe School v. Morrissey-Berru*  
BRACEWELL

## MINISTERIAL EXCEPTION: CIRCUIT SPLIT ON HARASSMENT CLAIMS

- Question: Does the ministerial exception automatically bar all hostile work environment claims?
  - Ninth Circuit (no automatic bar) split with Tenth Circuit (automatic bar)
- “Tangible” claims such as hiring, firing, assignment and promotion barred by ministerial exception
- Music Director alleged disability harassment by Priest
- August 2020 decision: “intangible” claims of harassment are not automatically barred by ministerial exception
  - “abuse that actively inhibits job performance” is not protected
  - Decision vacated to allow rehearing en banc
- Oral argument conducted in February and awaiting decision

*Demkovich v. St. Andrew the Apostle Parish*  
BRACEWELL

## ADMINISTRATIVE DEVELOPMENT: WELLNESS RULES

- Issue: what level of incentive to participate in wellness programs that involves disclosing medical information is allowed before program participation becomes “involuntary”
- 2016 Wellness Rules: up to 30% of total cost of employee-only coverage was “voluntary”
  - Rule challenged and 30% incentive rule was vacated
- January 7, 2021: EEOC notice of proposed rulemaking stating that “no more than de minimis” incentive levels were allowed
- January 20, 2021: proposed regulations withdrawn by Biden Administration in a regulatory freeze
- Current status: “next steps . . . are under consideration”

BRACEWELL

# JUDICIAL DEVELOPMENTS ON DISABILITY ISSUES

BRACEWELL

## IMPAIRMENTS

- **“Disability” is defined as:**
  - A physical or mental impairment that substantially limits one or more major life activities or
  - A record of a physical or mental impairment that substantially limited a major life activity ("record of"), or
  - When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as").
- **“Physical or mental impairment” is not defined**

BRACEWELL

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Developments in Discrimination Law 2020-2021

Also available as part of the eCourse

[2021 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the  
28<sup>th</sup> Annual Labor and Employment Law Conference session  
"Developments in Disability Discrimination Law"