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Developments in Disability Discrimination Law 2023-2024

Amber K. Dodds
Laura M. Merritt

Amber K. Dodds
Bracewell LLP
San Antonio, Texas
Amber.Dodds@bracewell.com
210-299-3569

Laura M. Merritt
Boulette Golden & Marin, L.L.P.
Austin, Texas
laura@boulettegolden.com
512-732-8903

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APPENDIX B: Impairments in ADA Charges, FY 2022*

APPENDIX C: Mental Health Issues in ADA Charges Filed in FY 2022*

APPENDIX D: Resolution of ADA Charges filed with EEOC in FY 2022*

*At the time of writing, the EEOC has not updated the statistical information on which these charts are based for fiscal year 2023.

THIS OUTLINE IS INTENDED TO ASSIST PARTICIPANTS WITH A GENERAL UNDERSTANDING OF CURRENT DEVELOPMENTS IN THE LAW. IT IS NOT A COMPREHENSIVE REVIEW OF ALL LEGAL DEVELOPMENTS AND SHOULD NOT BE CONSIDERED LEGAL ADVICE.

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I. INTRODUCTION

This outline provides background and recent legal developments under the Americans with Disabilities Act of 1990 (the "Act" or the "ADA"), as amended by the ADA Amendments Act ("ADAAA"). This outline cannot provide an exhaustive detailing of ADA legal authority, but seeks to identify significant cases, concepts and developments related to the ADA and summarize some key ADA principles.

Appendix A provides information regarding disability discrimination charges filed with the EEOC. Between FY 2015 and 2017, the average number of disability-based charges filed per year was at its highest levels, between 26,838 and 28,073. From FY 2018 to 2020, the annual average decreased to slightly lower levels, at 24,238 to 24,605 charges each year. In FY 2022, charge numbers continued the downward trend, dipping to 22,843 charges, the closest charge numbers have been to 2009, when the ADAAA became effective. However, in FY 2022, charge numbers bounced back up to 25,004 charges filed, exceeding the FY 2018 – 2020 levels.

II. EEOC REGULATIONS

The EEOC issued final regulations implementing the ADAAA on March 25, 2011, which can be found at 29 C.F.R. § 1630. These regulations include definitions, requirements and extensive commentary on many ADA topics and concepts.

The EEOC also made substantial changes to the Interpretive Guidance to implement the changes to the ADA and the regulations. The Interpretive Guidance is available at 29 C.F.R. Part 1630 Appendix.

III. THE MINISTERIAL EXCEPTION AND THE ADA

A. Supreme Court Affirms Application of Ministerial Exception to ADA Claims of Teacher and Confirms that Exception is Not Based on Rigid Criteria

Case: ***Our Lady of Guadalupe School v. Morrissey-Berru***, 140 S. Ct. 2049 (2020).

Facts: Kristen Beil worked as a lay elementary-school teacher at a Catholic primary school, substitute teaching as a first-grade instructor and teaching fifth grade. She taught all subjects, including religion, and instructed her students on the tenets of Catholicism. She signed an employment agreement and was subject to a handbook requiring that she would model the Catholic faith life, integrate Catholic thought and principles into secular subjects and prepare students to receive the sacraments. As a teacher, Beil also attended religious services with her students and prayed with them. Beil's contract at the school was not renewed, and Beil alleged this was because she sought leave to obtain treatment for breast cancer. She sued, alleging disability discrimination.

Issues and Decision: The district court ruled in favor of the School, holding the ministerial exception applied. The Ninth Circuit reversed, holding that Biel lacked the credentials, training and ministerial background to be covered by the ministerial exception.

The United States Supreme Court reversed the Ninth Circuit and held that the ministerial exception applied to Biel. The Court held that the First Amendment prohibits judicial review of the manner in which private religious schools implement the education and formation of students, including employment decisions related to their teachers.

The Court reiterated its holding in *Hosanna-Tabor* that there is not a "rigid formula" to determining whether the ministerial exception applies to an individual, but instead that "all relevant circumstances" should be considered to determine whether "each particular position implicate[s] the fundamental purpose of the exception." The Court reasoned that specific criteria (such as a "minister" title or certain formal religious schooling) need not be met for employees to be covered by the ministerial exception.

B. Circuit Split on Whether Ministerial Exception Applies to ADA Hostile Work Environment Claims

Case: ***Demkovich v. St. Andrew the Apostle Parish****,* 973 F.3d 718 (7th Cir. Aug. 31, 2020), opinion withdrawn pending *en banc* review (Dec. 9, 2020); reissued 3 F.4th 968, (July 9, 2021).

Facts: Sandor Demkovich served as Music Director for St. Andrew the Apostle Parish. He alleged he was harassed by his supervisor, Reverend Dada, because of his sexual orientation and disabilities. Ultimately, after Demkovich married his partner, Dada demanded he resign because the marriage was against church teaching. Demkovich refused, and Dada fired him. Demkovich sued, alleging discrimination based on his sexual orientation and disability. The United States District Court for the Northern District of Illinois held that Demkovich was covered by the ministerial exception and dismissed his claims. Demkovich responded by re-pleading his claims as hostile work environment claims. Initially, the Seventh Circuit held that hostile work environment claims by a minister would not automatically be barred from court review by the ministerial exception, but instead should be reviewed to determine whether the challenge was to a tangible employment action (which would be barred) or an "intangible" employment action, such as harassing behavior, that could be reviewed by the court.

Three months later, the Seventh Circuit withdrew that opinion pending *en banc* review. Ultimately, the *en banc* court issued another opinion in July 2021, holding that all hostile work environment claims *of minister-on-minister* harassment were barred from court review by the ministerial exception.

July 9, 2021 Decision: The court began its review by noting "two principles" that stemmed from *Hosanna-Tabor* and *Our Lady of Guadalupe*—that, while those cases involved terminations, the "protected interest of a religious organization in its ministers covers the entire employment relationship" and that the ministerial exception is to "prevent" the "harms [of] civil intrusion and excessive entanglement." The court held that adjudicating the claim would violate both principles "and threaten the independence of religious organizations 'in a way that the First Amendment does not allow.'"

The court held that "[p]recluding hostile work environment claims arising from minister-on-minister harassment . . . fits within the doctrinal framework of the ministerial exception" because the religious organization's supervision of ministers is a much a component of religious autonomy as selection them in the first place. It would "be incongruous" if this autonomy "mattered only at the beginning (hiring) and the end (firing) . . . and not in between (work environment)."

Further, the court found that "probing the ministerial work environment" would interfere with a religious organization's rights under the Free Exercise clause, and "[a]llowing the state to regulate the ministerial work environment" would violate the Establishment clause. This is because "[e]ven at its least invasive, a hostile work environment claim threatens to fundamentally alter the ministerial relationship and work environment."

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