



## Ministerial Exception Exists in Michigan

Employment, Labor & Benefits Practice Group

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The Michigan Court of Appeals issued a published opinion on May 22, 2008, which held in a case of first impression that the "ministerial exception" exists in Michigan, and is a bar to inquiry into a religious institution's motivation for a contested employment decision. In the case of *Weishuhn v. Catholic Diocese of Lansing*, Plaintiff, an elementary school teacher whose duties included spiritual functions (i.e., teaching religious classes, planning Masses, developing penance services), brought an action for retaliatory termination under Michigan's Elliott-Larsen Civil Rights Act after she had been fired. The Court described the ministerial exception as "a non-statutory, constitutionally compelled exception to the application of employment discrimination and civil rights statutes to religious institutions and their 'ministerial' employees," explaining that "the ministerial exception has its roots in the Establishment and Free Exercise of religion clauses of the First Amendment" of the United States Constitution.

The Court of Appeals also determined that whether or not the ministerial exception existed was a question of subject matter jurisdiction for the court to determine, overruling the trial court decision that such an issue was one for jury determination. In making such a determination, the appellate tribunal directed the lower court on remand "to focus on the totality of plaintiff's duties and responsibilities, her position, and her function."

The applicability of this exception represents a significant development for Michigan religious institutions. The Defendants were represented in this case by Foster Swift.

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