



## One Minute Memo®

# Religious School Lawfully Terminated Employee For Conduct That Violated Church Precepts

*In Henry v. Red Hill Evangelical Lutheran Church of Tustin* (December 9, 2011), a California Court of Appeal held that a preschool that is part of a church's ministry lawfully terminated its director for living with her boyfriend and raising their child together without being married. In doing so, the court rejected the director's claims of employment discrimination and wrongful termination in violation of public policy.

Sara Henry was a teacher at the Red Hill Evangelical Lutheran Church of Tustin ("Red Hill"), where she also served as director of the pre-school. Red Hill is a non-profit religious corporation and the school, which does not exist as a separate legal entity, is part of the church's ministry. Before each school year, Henry signed documents affirming "the ministry of teaching as a God-ordained vocation."

Henry and the other teachers signed a pledge stating: "you minister our students and families." Although Red Hill did not require teachers to be Lutheran—Henry is Catholic—Red Hill did require that teachers be practicing Christians. On a weekly basis, the teachers participated in devotions. Henry taught religion, led classes in daily prayer, and "spoke to the children about Jesus on a daily basis."

Henry, who was married when she applied to work at the school, divorced and then gave birth to a child fathered by her boyfriend. When the school learned of this and Henry's intention not to marry her boyfriend, the school terminated her employment for her "failure to adhere with the Professional Expectations of the teaching staff in that her living arrangement were contrary to the religious beliefs of the church and school."

Henry sued Red Hill on tort and statutory claims, alleging that her termination was unlawful marital status and sex discrimination under the California Fair Employment and Housing Act ("FEHA"), and contrary to public policy against sex discrimination contained both in the California Constitution, and in Title VII of the Civil Rights Act of 1964. The trial court rejected Henry's claims, finding that her employer was a religious organization that had the right to terminate her employment for violating church precepts. Henry appealed.

The Court of Appeal rejected Henry's FEHA claim for marital status and sex discrimination, finding that Red Hill was not covered by the FEHA. The court relied on the complete exclusion of non-profit religious corporations and associations from the FEHA definition of "employer." The court also held that the narrower exemption for religious educational institutions incorporated as non-profit benefit corporations did not apply, for two reasons. First, there was no evidence that Red Hill was a public benefit corporation, as opposed to a religious corporation. Second, the school had "no independent legal status apart from the church."

The court then addressed Henry's claim that her termination violated the public policy against discrimination contained in Title VII. The court rejected this theory of liability, finding that the claim was barred by Title VII's partial religious employer exemption. The court accepted Red Hill's contention that it did not discharge Henry for having a baby out of wedlock, or for remaining unmarried. Rather, Red Hill discharged Henry for continuing to live with her boyfriend in a sexual relationship while unmarried. The court held that, on these facts, Title VII does not apply, because Title VII contains a partial religious employer exemption that allows religious employers to terminate an employee whose conduct or religious beliefs conflict with those of the religious employer.

The court also rejected Henry's public policy claim based on Article I, Section 8 of the California Constitution, which prohibits discrimination because of sex. The court relied on the ministerial exception—a judicially created, constitutionally compelled, doctrine—which “protects religious organizations from the normally attendant adverse consequences of employment discrimination” in cases involving “ministers.”

Acknowledging that the United States Supreme Court recently heard oral argument in a case presenting the question of whether a “called” teacher fell within the ministerial exception, *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, the court concluded that the ministerial exception barred Henry's claim.

Although Henry primarily taught classes, the court determined that she was a “spiritual leader” because, for example, she led students in prayer, read Bible stories, led chapel worship, participated in weekly devotions with staff, led staff prayers, assured parents of the school's Christian atmosphere, taught religions, and spread the faith. Accordingly, the court concluded that the ministerial exception applied and barred Henry's claims.

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