

Religious nonprofits can face job discrimination suits if work not related to religion

Religious nonprofits in Washington state can be sued for job discrimination if an employee's work was unrelated to religion, the state Supreme Court said Thursday in a divided opinion

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Nonprofit religious institutions in Washington can be sued for job discrimination if an employee's work was unrelated to religion, the state Supreme Court said Thursday in a divided opinion.

Although the ruling says those institutions don't get a free pass to fire people for reasons of race, disability or sexual orientation, in general, it allows religious organizations — which employ tens of thousands of workers in hospitals, schools, universities and charities — to maintain their long-standing exemption from the state's anti-discrimination law.

The state's anti-discrimination law applies to companies with at least eight workers, but not to nonprofit religious institutions. The idea is to ensure that the state doesn't intrude on the free exercise of religion by those bodies.

But the case of Larry Ockletree, a 59-year-old African American, raised questions about whether that exemption is too broad. In 2010, he suffered a stroke while working as an unarmed-security guard at the front desk of St. Joseph's Medical Center in Tacoma. He lost some ability to move his left arm after the episode, and the hospital, owned by Franciscan Health System, fired him.

Ockletree claimed he could still do the work, which mostly consisted of checking name tags, and he sued, saying he was illegally fired because of his race and his disability.

His lawsuit landed in U.S. District Court in Tacoma, where Judge Ronald Leighton expressed serious concerns about the constitutionality of Washington's Law Against Discrimination. At one hearing, he said it didn't make sense that Ockletree would have been allowed to sue under the state law if he had been a security guard working for a for-profit company, but not if he was working for a religious nonprofit.

“Can the Franciscans, or other religious organizations not for profit, discriminate against anyone on any basis, freely with impunity?” he asked at one hearing.

Leighton ultimately asked the state Supreme Court to answer two questions about the law's validity under the state Constitution.

On Thursday, the court responded, with four justices saying the exemption was valid, four saying it wasn't, and one saying it depends.

The one — Justice Charles Wiggins — wrote the deciding opinion, holding that the law isn't on its face unconstitutional, but it can be unconstitutional when applied to someone like Ockletree, whose job had nothing to do with the institution's religious practices.

“When the exemption is applied to a person whose job qualifications and responsibilities are unrelated to religion, there is no reasonable ground for distinguishing between a religious organization and a purely secular organization,” he wrote.

The outcome means Ockletree's case will proceed in federal court.

“This is a tough case,” said one of his lawyers, James Walter Beck. “The court was tasked with walking a tightrope between the free exercise of religion and any ruling that would serve as an endorsement of religion” — with the latter prohibited by the First Amendment to the U.S. Constitution.

Sarah Dunne, legal director of the American Civil Liberties Union of Washington, said she was happy for Ockletree, but the decision didn't go far enough. The court could have struck down the exemption and made clear that religious nonprofits can't discriminate against nonministerial employees — that is, those who don't perform a religious function, she said.

Instead, each time an individual is fired or passed over for a promotion or otherwise subject to discrimination, they'll have to figure out whether their role involved the religious mission of the institution, or whether they have a legal claim under the state anti-discrimination law.

“If a doctor gets fired because she's a lesbian, we're going to have to say, ‘Well, it's unsettled, and we're going to have to litigate this out,’ ” Dunne said.

Sheryl Willert, an attorney for Franciscan Health System, said the Legislature could revisit the issue.

“Whether it was the intent of the Legislature to have this carve-out that the Supreme Court has established remains to be seen,” she said.

Employees of religious nonprofits whose jobs don't entail the institution's religious concerns can already file job-discrimination claims with the federal Equal Employment Opportunity Commission. Such claims must be filed within 180 days if the petitioner has no claim under state law, or within 300 days if the petitioner also has a state-law claim.

Because Ockletree's federal petition wasn't filed within 180 days, if the state law didn't apply, his federal claims would be barred as well. But with Thursday's ruling, it appears he will be able to pursue both state and federal discrimination claims. Ockletree is seeking damages.

Seattle Times staff contributed