



by email to [strategic.plan@eEOC.gov](mailto:strategic.plan@eEOC.gov)

September 18, 2012

Executive Officer  
Office of the Executive Secretariat  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, D.C. 20507

Dear Sir or Ms.:

Thank you for soliciting public comments on the EEOC's Draft Strategic Enforcement Plan (09.04.12 version). I write to offer the perspective of a very important sector of the public—faith-based service organizations.

The Institutional Religious Freedom Alliance works with a multi-faith network of faith-based organizations that are active in a wide range of services that contribute to the common good, from schools and universities to overseas development organizations, health clinics, emergency shelters, and adoption agencies. Our concern is to maintain a public square in which such organizations remain free to make their distinctive—their uncommon—contributions to the common good because they are able to maintain their religious identities and faith-shaped internal practices and methods of serving the public.<sup>1</sup>

A strategic enforcement plan is a sensible means to promote the efficient use of limited resources to effectively combat illegal employment discrimination. IRFA wishes to comment on only a single issue: in planning and carrying out enforcement actions, in its research and analysis of employment issues, and in its training and public information activities, it is imperative that the EEOC and its staff keep in mind that *religious hiring by religious organizations does not constitute illegal job discrimination*. Rather, religious hiring by religious organizations with respect to all positions is protected in Title VII (the religious organization exemption)<sup>2</sup> and with regard to ministerial employees by the First Amendment (the ministerial exception).<sup>3</sup>

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<sup>1</sup> As President of IRFA, I served in 2009-2010 on the "Reform of the Office" taskforce of President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships; in 2001-2001 I served on the staff of the White House Office of Faith-Based and Community Initiatives.

<sup>2</sup> Secs. 702(a) and 703(e)(2).

<sup>3</sup> Recently unanimously affirmed by the U.S. Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (80 U.S.L.W. 4056 (2012)).


Of course, it is the case that, notwithstanding these freedoms, the employment practices of religious organizations are subject to certain employment law restrictions. However, the application of those restrictions must take account of the freedoms that religious organizations possess when hiring and firing employees on the basis of religion or in dealing with their “ministerial” employees and potential employees.

We propose three ways that, at this important juncture, the EEOC can and should emphasize the important employment freedoms of religious organizations:

1. Update and expand Section 12: Religious Discrimination, in the EEOC Compliance Manual. In particular, the section’s discussion of how to identify “religious organizations” should be updated by taking into account major recent court decisions<sup>4</sup> and the discussion of the ministerial exception should be updated to take account of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012).
2. Extensive specific training for EEOC staff on employment law as it applies to religious organizations and ministerial positions.
3. Highlighting religious employment freedoms in the top level information offered on the EEOC website to employees/applicants and to employers. At present, that top level information only deals with religion as a prohibited basis for employment decisions without any notice of the distinct rules that apply in the case of religious organizations and ministerial employees. Information about the “religious organization exception” and the “ministerial exception” is included in document “Questions and Answers: Religious Discrimination in the Workplace” and in the EEOC Compliance Manual, but this information is not as easily accessible as the top level information and there is no hint in that top level information that these very important matters are discussed elsewhere. This unbalanced presentation of information contributes to the mistaken view widely held by the public and even by many religious organizations that religious hiring must be illegal. This mistaken view does not support religious organizations in exercising their legal and constitutional rights and it does not help the public, employers, and employees/applicants to understand that employee rights are subject to limits in the case of religious organizations and ministerial positions.

Thank you for considering these important matters as the EEOC’s Strategic Enforcement Plan is being prepared.

Sincerely,

  
Stanley W. Carlson-Thies  
President

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<sup>4</sup> *LeBoon v. Lancaster Jewish Community Center Ass’n*, 503 F.3d 217 (3d Cir. 2007); *Spencer v. World Vision, Inc.*, 633 F. 3d 723 (9th Circuit 2010).