

Is Your Non-Profit Immune from Claims of Religious Discrimination?

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AS YOU KNOW, TITLE VII PROHIBITS MANY KINDS OF DISCRIMINATION, INCLUDING DISCRIMINATING AGAINST EMPLOYEES FOR THEIR RELIGIOUS BELIEFS.



YOU MAY NOT HAVE KNOWN, HOWEVER, THAT TITLE VII ACTUALLY ALLOWS RELIGIOUS DISCRIMINATION TO OCCUR AT CERTAIN RELIGIOUS ORGANIZATIONS.

Since we have a number of religious organizations in our NonProfit PEG, this month I write about a 2008 case where three former employees complained about religious discrimination.

World Vision, Inc. is not a church or a religious education organization. It is a nonprofit Christian humanitarian organization which provides aid and services “to the world’s poorest children and families.” Founded in 1950 by Dr. Robert Pierce, World Vision declares its mission is to be an “outreach of Christians concerned for the physical and spiritual well-being of people throughout

the world . . . dedicated to serving God by serving man through six basic ministries.” These ministries include: (1) caring for children in need, (2) building self-reliance among the needy, (3) emergency aid and relief, (4) evangelism, (5) strengthening Christian leadership, and (6) educating Americans about the needs of the suffering around the world.”

On its “Careers” page of its website, World Vision informs prospective employees:

WHO WE ARE

Motivated by our faith in Jesus, we serve the poor as a demonstration of God’s unconditional love for all people. Our faith is at the heart of all we do. Foundational to our work is the commitment to a shared faith by staff, volunteers and interns, and a common understanding of how that faith is lived out day-to-day.

Sylvia Spencer, Vicki Hulse and Ted Youngberg (the “Employees”) were all employed by World Vision. Like every employee, they attended daily devotions



and weekly chapels held during the workday. However, at some point, the Employees stopped their attendance.

World Vision interviewed each Employee as to why they stopped their daily devotions. Their responses were not recorded by the court, but World Vision concluded that each employee had they denied the deity of Jesus Christ. Even though the Employees denied this conclusion, World Vision nevertheless terminated their employment. The Employees sued World Vision for firing them, claiming that their terminations were based upon their religious beliefs.

World Vision never denied that it had terminated the Employees because of what it perceived to be their religious beliefs. Rather, World Vision sought to have their case thrown out, claiming that it was exempt from religious discrimination claims under the religious organization exemption of Title VII.

...terminated employees because of...their religious beliefs.



Title VII states that “In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions” and to prevent excessive government entanglement, Congress declared that religious organizations are

exempt from Title VII’s prohibition against religious discrimination.

However, this exemption does “not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.”

Generally, a court will look at **NINE FACTORS** to determine whether an organization is entitled to the exemption. The factors are:

1. whether the entity operates for a profit
2. whether it produces a secular product
3. whether the entity’s articles of incorporation or other pertinent documents state a religious purpose
4. whether it is owned, affiliated with or financially supported by a formally religious entity such as a church
5. whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees
6. whether the entity holds itself out to the public as secular or sectarian
7. whether the entity regularly includes prayer or other forms of worship in its activities
8. whether it includes religious instruction in its curriculum, to the extent it is an educational institution
9. whether its membership is made up by co-religionists

9 Factors Discussed

NO. 1: There was no question that World Vision was a non-profit. The IRS classified it as a tax-exempt 501(c)(3) nonprofit organization and even designated it as a church.

NO. 2: World Vision did not, however, produce a secular product. Instead, it provided humanitarian services such as relief and aid. Of course, while providing humanitarian services may be a secular activity, it is not necessarily so, and other courts have held that religious organizations may engage in secular activities without forfeiting the religious organization exception. Therefore, providing humanitarian services, possibly a secular activity, did not disqualify World Vision from the religious organization exemption.

NO. 3: There was no question that World Vision’s articles of incorporation or other pertinent documents stated a religious purpose

The primary, exclusive and only purposes for which this corporation is organized are religious ones, to wit: to perform the functions of the Christian church including, without limitation, the following functions, to conduct Christian religious and missionary services, to disseminate, teach and preach the Gospel and teachings of Jesus Christ, to encourage and aid the growth, nurture and spread of the Christian religion and to render Christian service, both material and spiritual to the sick, the aged, the homeless and the needy.

NO. 4: World Vision was not owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue. However, it partnered with a full spectrum of Christian organizations, and the court found that to be sufficient to establish affiliation with a religious entity.

The Employees argued that because the U.S. government provided funding to World Vision, — which it could not do if it was indeed a religious organization because that would be promoting one religion over another — World Vision could not be classified as a religious organization under Title VII. The Employees provided evidence that government grants comprised 23 to 27 percent of World Vision's total revenue.

The Employees' argument failed. Courts have found that religious organizations receiving federal funds are not required to waive their religious organization exemption. This is because the government usually provides these funds with no strings attached, meaning that the government does not require the religious organizations to curtail their activity to receive the funds. And, the Employees did not show how giving the funds to World Vision promoted one religion over another.



NO. 5: Ten of the twenty World Vision Directors were from church and ministry leadership. The court found that this percentage strongly indicated that a formally religious entity participated in World Vision's management.

NO. 6: There was little question that World Vision held itself out to the public as a religious organization. Its website, job application form, mailings, instruction materials, and business cards all reference the fact that it was "a Christian humanitarian organization," and that "our faith in Jesus is at the heart of all we do." Additionally, religious art--paintings, photographs, sculptures, and artistic lettering of religious symbols and Bible verses--was displayed throughout World Vision's campuses and buildings.

NO. 7: In its activities, World Vision regularly included prayers and other forms of worship such as chapel services, devotionals led by department leaders, prayer chains, an annual day of prayer, and Scriptural themes.

NO. 8: World Vision was not an educational institution and did not provide religious instruction. Consequently, the eighth factor, whether it provided religious instruction, was inapplicable.

NO. 9: Finally, the Employees did not dispute that World Vision was comprised of coreligionists, and conceded that "World Vision hires only Christians for all positions."

Even though World Vision was not a church, its purpose and character was primarily religious. It was therefore entitled to Title VII's religious organization exemption, and the court dismissed the Employees' lawsuit, even though World Vision discriminated against them for their religious beliefs. ❧



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