



DOL concludes FLSA ministerial exception can apply to religious daycare and preschool teachers, depending on their duties

January 15, 2021

In an [opinion letter](#) issued January 8, 2021, the U.S. Department of Labor (DOL) addressed whether the ministerial exception allows a private religious daycare and preschool to pay teachers in a manner that would not comply with the Fair Labor Standards Act (FLSA). The DOL answered in the affirmative, stating that teachers can be ministers for purposes of the exception. The DOL noted, however, that assessing whether teachers qualify for the exception must be done on a case-by-case basis.

The [ministerial exception](#), first recognized by the U.S. Supreme Court in 2012, prevents ministerial employees from bringing certain types of employment claims against religious organizations.

Ultimately, whether an employee qualifies for the ministerial exception will depend on each individual employee's responsibilities in carrying out the religious mission, not on the employer's designation or a standard "checklist." As the Supreme Court observed earlier this year in [Our Lady Guadalupe School v. Morrissey Berru](#), "educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school."

The DOL noted, however, that although important, an employer's "explanation of the role of such employees in the life of the religion in question" does not control. Instead, an employee's "ministerial" status depends on his or her role in carrying out the religious employer's mission and conveying its message. This question must be answered by considering all relevant circumstances surrounding each employee to determine whether each particular position implicates the fundamental purpose of the exception.

Although the DOL's letter provides important guidance to religious employers regarding the contours of the exception, the issues involved can be complex and fact-specific. Religious employers with questions about FLSA compliance or the applicability of the ministerial exception should consult with an attorney.

Authors
