

Date: August 8, 2002
To: Staff
From: John 
Subject: Religious Organizations as Employers

Recently a question was raised as to whether religious organizations are "employers" under the Act as defined by M.S.R.A. §4553(4): "Employer" does not include a religious... corporation or association... with respect to employment of its members of the same religion..., except for purposes of disability-related discrimination, in which case the corporation or association is considered to be an employer."

My interpretation of this language is that a religious organization can legally discriminate by acting on a preference for members of its own religion. It cannot discriminate on the basis of race, sex, national origin, etc. And, even when it is discriminating on the basis of religion, it can't prefer a non-disabled member of its religion over a disabled member.

This interpretation of the Maine Human Rights Act is consistent with federal court interpretation of the exemption in Title VII. It should also be remembered, however, that courts have held that even in the case of sex or race discrimination, if the job in question is that of minister/rabbi, etc, the Title VII (MHRA) prohibition is unenforceable because of First Amendment Free Exercise and Establishment Clause considerations. But, if the job is teacher or custodian, for example, i.e., not minister, the religious organization cannot discriminate on the basis of race, sex, national origin, etc..

We can discuss this if you have questions.