

Religious Employer Prevails Over Allegations That it Waived Religious Entity Exemption From FEHA

In 2018, this author [blogged](#) about how religious entities can navigate the potential traps when they seek to comply with the federal laws against anti-harassment, discrimination and retaliation laws by adopting handbook policies and training their employees, while protecting their status as exempt from the California analog to Title VII, the Fair Employment and Housing Act (FEHA). While that case was up on appeal, the parties settled, leaving the state of the law unsettled.

Happily for religious entities, the Court of Appeal for the Sixth Appellate District of California, in another case pending at the same time has paved a clearer path forward for religious employers.

Mathews v Happy Valley Conference Center

Background

Plaintiff Jeremiah Mathews was an employee of a religious employer, Happy Valley Conference Center (“Happy Valley”), a subordinate affiliate (but separate legal entity) of the Community of Christ Church (“Church”) in the Santa Cruz mountains. (The sordid details and other legal issues are laid out in the appellate court’s [opinion](#). This post focuses only on the religious entity exemption issue.)

In short, Mathews blew the whistle, reporting sexual harassment by his supervisor of a coworker. A month later, Mathews was terminated – according to the employer, the termination was for unrelated conduct. He initially filed an EEOC charge alleging retaliation for reporting harassment, and then sued for retaliatory termination under various theories, including under Title VII (which does not contain a general exemption for religious entities) and FEHA (which does). Out of the gate, Mathews sought affirmative declaratory relief as to the scope of FEHA’s religious entity exemption and the interpretation of Happy Valley’s handbook anti-harassment and retaliation provisions. Among other defenses, Happy Valley asserted that it was exempt from FEHA as a religious entity. The Church also asserted the FEHA religious exemption.

Happy Valley used software purchased from a popular provider of human resources forms and handbooks. The employee handbook was a “canned” handbook created using standardized templates; there was no option in the software Happy Valley used for religious entity-specific provisions related to discrimination, harassment, or retaliation. As adopted and provided to plaintiff during his employment, the employee handbook stated Happy Valley’s company policy “prohibits unlawful discrimination based on race, color, creed, gender, religion, marital status, registered domestic partner status, age, national origin or ancestry, physical or mental disability, medical condition including genetic characteristics, sexual orientation, or any other consideration made unlawful by federal, state, or local laws.” The handbook continued that Happy Valley is “committed to compliance with all *applicable* laws providing equal employment opportunities” (emphasis added) and advised employees that they could contact the federal Equal Employment

Opportunity Commission or the California Department of Fair Housing and Employment (which enforces the FEHA) if they feel they have been harassed or retaliated against.

Mathews claimed that defendants had waived and/or should be estopped from asserting its exemption, because it had a handbook policy prohibiting retaliation and harassment under “all applicable laws”. The trial court determined that defendants had waived the right to assert the religious entity exemption from the FEHA, based on the employee handbook, and because the defendants did not raise the religious entity exemption in their initial response to the EEOC charge. The court made similar findings to support estoppel and found that Mathews’ detrimental reliance was expending money pursuing his claims in reliance on the employee manual and the fact that the Church did not assert the exemption during the administrative claim investigation. The jury then found that the defendants’ firing of Mathews was in retaliation for reporting sexual harassment, and returned a \$900,000 verdict and the employer was ordered to pay almost \$1,000,000 in attorney’s fees.

Appeal

1. Defendants’ Handbook did Not Waive the Exemption from the FEHA.

On appeal, the court considered the waiver claim *de novo*, and found that there was no waiver of the religious entity exemption.

The EEOC notified defendants it was investigating a potential Title VII violation, *not* a FEHA violation. So, assertion of a FEHA exemption was immaterial to the EEOC proceedings and failure to raise it in that context did not waive the exemption.

As to the handbook, the court of appeal notes that the handbook never explicitly references the FEHA – it simply states that Happy Valley prohibits harassment, discrimination, and retaliation; that Happy Valley is “committed to compliance with all applicable laws providing equal employment opportunities”; and that employees “should be aware that the Federal Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing investigate and prosecute complaints of prohibited harassment in employment.” The handbook makes no promise that defendants will be bound by FEHA; the handbook refers to being bound by “applicable” laws. Nothing in the handbook amounts to a “knowing and voluntary” waiver of the religious entity exemption.

2. Defendants’ Conduct did not Support Estoppel

On appeal, the court considered the estoppel claim *de novo*, and found that the defendants were not estopped by their conduct from asserting the religious entity exemption.

The Court considered both the definition of “estoppel” in California Evidence Code section 623, and the doctrine of equitable estoppel founded on the concepts of fair dealing. “Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a

particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.” (Evid. Code, § 623.) The Court found it important that equitable estoppel is “defensive in nature only,” and “operates to prevent one [party] from taking an unfair advantage of another.”

The Court found that there was no evidence that a crucial element of estoppel – conduct by the party that causes detrimental reliance by the other. “ The employee handbook was ambiguous and makes no affirmative representation that FEHA will apply. The failure to raise the FEHA exemption before the EEOC, which only enforces Title VII, was reasonable, because it was not relevant. And finally, defendants’ denial in the case put Mathews on notice that they believed the religious entity exemption applied. There was no indication that Mathews would have abandoned the FEHA cause of action had he known earlier that defendants would assert the religious entity exemption.

3. Religious Employers are Exempt from the Retaliation Provision of FEHA

The appellate court considered and rejected Mathews’ argument that even if the FEHA’s religious exemption applies to defendants as “employers,” the retaliation provision – which prohibits retaliation by any “employer, ... or person” – still applies. The court rejected this tortured reading, stating that “because we have already determined that defendants ... were plaintiff’s employer, they fall under the ‘employer’ category for purposes of” the anti-retaliation provision. As employers that are religious entities, they are exempt from FEHA liability.

Although, at the end of the day, these findings did not ultimately absolve Happy Valley of all liability for conduct that fell outside of the purview of the FEHA, it did reaffirm this author’s views that that a religious entity’s good faith efforts to prevent harassment, retaliation and discrimination through policies, training and notices of employee rights, should *not* create liability. In addition, while it appears the Church’s use of out-of-the-box canned templates *ultimately* did not create liability, the Church had to spend five years and thousands of dollars defending that position before it prevailed on appeal.

Employers – particularly those who believe themselves exempt (as a small business, religious employer, or otherwise) from , would be wise to consult with competent California legal counsel and have their handbooks, offer letter templates, applications and related materials reviewed annually to minimize these risks. Templates are no substitute for customized counsel.

It is important to note that there is a possibility that this Sixth Appellate District opinion could be reviewed by the California Supreme Court. If that occurs, watch for an update to this post.