



Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption

January 8, 2021

Section 204(c) of Executive Order 11246

- Exempts certain religious organizations from Section 202 with respect to the employment of individuals of a particular religion
- Parallels the religious exemption in Section 702(a) of Title VII, 42 U.S.C. 2000e-1(a)

Background

- OFCCP published the notice of proposed rulemaking (NPRM) on August 15, 2019
- OFCCP published the final rule on December 9, 2020
- The final rule is effective January 8, 2021
- Why did OFCCP issue this final rule?

Recent Supreme Court Cases

- *Bostock v. Clayton County* (2020)
- *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018)
- *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017)
- *Burwell v. Hobby Lobby Stores, Inc.* (2014)
- *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* (2012)

Changes from NPRM

- Removed definition of *Exercise of religion*
- Modified definition of *Religious corporation, association, educational institution, or society*
- Added severability clauses



New Definition: **Religion**

(41 C.F.R. § 60-1.3)

Includes all aspects of religious observance and practice, as well as belief

**New Definition: Religious corporation,
association, educational institution, or society
(41 C.F.R. § 60-1.3)**

- (i) Is organized for a religious purpose;
- (ii) Holds itself out to the public as carrying out a religious purpose;
- (iii) Engages in activity consistent with, and in furtherance of, that religious purpose; and
- (iv)(A) Operates on a not-for-profit basis; or
(B) Presents other strong evidence that its purpose is substantially religious.



New Definition: **Sincere** (41 C.F.R. § 60-1.3)

Sincere under the law applied by the courts of the United States when ascertaining the sincerity of a party's religious exercise or belief

New Definition: Particular Religion

(41 C.F.R. § 60-1.3)

The religion of a particular individual, corporation, association, educational institution, society, school, college, university, or institution of learning, including acceptance of or adherence to sincere religious tenets as understood by the employer as a condition of employment, whether or not the particular religion of an individual employee or applicant is the same as the particular religion of his or her employer or prospective employer

41 C.F.R. § 60-1.5(e)

- Rule of construction

Additional Information

- OFCCP's Frequently Asked Questions on the Religious Exemption
- Final Rule
- Contact OFCCP

Questions about the Religious Exemption Final Rule?





Thank You!