

## Religious Carve-out from Anti-discrimination Laws

The Utah Supreme Court requested that our committee determine whether there are religious exceptions to the Utah and Federal Anti-discrimination laws. It appears that there are religious exceptions in both Utah statutes and in Federal statutes.

### Utah Statutes

Utah's anti-discrimination statutes are found in Title 34A, Chapter 5 of the Utah Code, the Utah Antidiscrimination Act (the "Act"). Section 34A-5-106(1) defines acts which are discriminatory and are prohibited employment practices. A person is prohibited from discriminating in employment if that person is an "employer," which is defined in Section 34A-5-102(i)(i) and commits any of the prohibited acts listed in Section 106 of the Act.

Section 34A-5-102(i)(ii) provides that "employer" does *not* include:

- A) A religious organization, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader;
- B) Any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of any religious organization, religious corporation sole, religious association, or religious society, or
- C) The Boy Scouts of America or its councils, chapters, or subsidiaries.

This exception clearly excuses religious organizations from being required to comply with the Act, since they are not "employers" under such statutes.

The Act also contain an exception to the antidiscrimination rules where there is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Section 34A-5-102(1)(c) defines "bona fide occupational qualification" as "a characteristic applying to an employee that is (i) necessary to the operation; or (ii) the essence of the employee's employer's business." Thus, where a religious organization sets certain standards for its employees based on its religious tenants, such as membership in the organization, integrity, moral character, etc., a potential employee is not "otherwise qualified" under Section 34A-5-106(1)(a) (ii) if they do not meet those standards.

Also, the Act includes a provision that the chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article 1, Sections 1, 4, and 15 of the Utah Constitution. Section 34A-5-111.

The religious exception, the bona fide occupational qualification provisions, and the reminder of the supremacy of the freedom of expression and freedom of religion provisions in the applicable constitutions provide a significant religion carve-out from the antidiscrimination laws of Utah.

It should also be noted that Section 34A-5-102.5 of the Act provides that the Act supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to

the prohibition of discrimination in employment. Local governments, including cities, cannot pass local ordinances that conflict with the Act.

### **Federal Statutes**

Title VIII of the Civil Rights Act of 1964 (“Title VII”) is the federal antidiscrimination law. Section 2000e-1(a) provides an exception from the antidiscrimination rules of Title VII for religious entities:

- (a) Inapplicability of subchapter to certain aliens and employees of religious entities.  
This subchapter shall 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.