

[Public Employers Beware: The Other Religious Discrimination Claim](#)

January 17, 2010 by [Adam Santucci](#)

As a public employer, your actions are considered the actions of the government or the “state.” This dual persona brings with it additional obligations and challenges that private employers do not face. Some of these obligations include the requirement to provide due process rights to employees, and the challenges include a seemingly endless variety of lawsuits that your employees may bring against you. Lawsuits unique to public sector employers include unreasonable search and seizure challenges, including e-mail and text message based challenges, free speech challenges, and alleged violations of the Establishment Clause of the First Amendment.

The Establishment Clause prohibits the government from endorsing any particular religion and, in fact, endorsing religion at all. In a recent case involving the Establishment Clause, [Milwaukee Deputy Sheriffs' Association v. Clarke](#), the 7th Circuit Court of Appeals found that a county sheriff violated the Establishment Clause by having a Christian organization deliver a faith-based presentation to employees at mandatory meetings. The court concluded that the Sheriff, by introducing the Christian group and allowing them to speak at mandatory employee meetings, either endorsed the group or at the very least, gave the appearance of endorsing the group. This endorsement constituted a violation of the Establishment Clause, and the Sheriff’s Department was ordered to cease and desist from further violations and was also required to pay over \$38,000 in fees and costs.

While it may seem like an easy decision for most savvy Human Resource practitioners to avoid supporting one religion over another in the workplace, this is something that still occurs outside of the watchful eye of HR. It is true that [Milwaukee Deputy Sheriffs' Association](#) is an extreme case, but it is still a good reminder that as a public employer, you must avoid showing preference toward one religion over another. Because this message does not always trickle down to all supervisors and managers, the facts of this case serve as a good reminder to briefly discuss at your next executive staff meeting or supervisor and manager training session.

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