

Faith, Nonprofits and the Law

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Today's Topics:

- Bylaws –how they dictate the scope of your actions
- Employment laws that apply to faith-based organizations and nonprofits
- Contracts and other written agreements
- Policies and procedures – how they provide protection for your organization

Why is this important?

*Wisdom helps one to succeed.
Ecclesiastes 10:10*

This is important because:

- Churches can be easy targets for lawsuits:
 - Negligence, Supervision of employees, Sexual Harassment, Disclosure of confidential information, Discrimination
- One financial judgment against the organization has the potential to dismantle the organization
- As a faith-based organization, people in the community look up to you, lead by example

Bylaws & Doctrinal Documents

- They shape the scope of the work you can perform and the activities of your organization
 - Include or exclude certain activities
- Conflicts between religious beliefs and individual rights
 - Marriage
 - Other activities
- Be consistent in your application of the organization's policies when interacting with the public

Employment Law

Employer Liability

- Anti-discrimination laws
- Volunteers v. Employees
- Employees v. Independent Contractors
- Proper payment of wages

Discrimination

But the LORD said to Samuel, "Do not look on his appearance or on the height of his stature, because I have rejected him. For the LORD sees not as man sees: man looks on the outward appearance, but the LORD looks on the heart." 1 Samuel 16:7

Anti-Discrimination Law

- What is Discrimination?
 - Discrimination means being treated differently or unfairly.
 - Discrimination can be expressed through "Harassment," when a boss, supervisor, or co-worker says or does something that creates an intimidating, hostile or threatening work environment.

Anti-discrimination law – California

The Fair Employment and Housing Act ("FEHA") (Gov't Code §§12900 et seq.) makes it illegal for an employer to discriminate against an employee on the basis of:

- Religion
- Medical Condition & Disability (including HIV/AIDS)
- Marital status
- Age
- Refusal of Family Care Leave
- Sex/Gender
- Race
- Ancestry
- National Origin
- Color
- Sexual Orientation

Anti-Discrimination Law Cont'd

- Where does this affect your organization as an employer?
 - Hiring Employees
 - Terminating Employees
 - Day-to-Day Management of Employees

Exception for Religious Institutions

- Title VII allows churches and religious organizations to discriminate on the basis of religion. Title VII states that it does 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."

Volunteers v. Employees

Volunteers

"Each of you should give what you have decided in your heart to give, not reluctantly or under compulsion, for God loves a cheerful giver. And God is able to bless you abundantly, so that in all things at all times, having all that you need, you will abound in every good work. As it is written: 'They have freely scattered their gifts to the poor; their righteousness endures forever.'" 2 Corinthians 9:7-9

Volunteers v. Employees

- Individuals who volunteer their services in...not-for-profit organizations for religious...objectives, without contemplation or receipt of compensation, are not considered employees due compensation under the FLSA.
 - However, employees may not volunteer to perform the same services they are employed to perform.
 - Employees are entitled to:
 - Minimum wage, overtime
 - Employers must:
 - Provide workers' compensation insurance, keep employment records, pay payroll taxes, etc.

Employees v. Independent Contractors

Employee v. Independent Contractor

Determining Employment Status

- Does the principal have the right to control the manner and means of accomplishing a desired result?
 - Distinct occupation or business
 - Industry custom
 - Skill
 - Tools and place of work
 - Length of service
 - Method of payment regular business
 - Principal's actual exercise of control
 - Benefit to principal

Employee v. Independent Contractor Cont'd

Penalties for Misclassification

- Civil penalties between \$5,000 and \$25,000 (Labor Code §226.8)
- Payment of missed Federal Income Taxes and California State Income Tax – personal liability
- EDD Sanctions
- Workers' Compensation Appeals Board Sanctions
- National Labor Relations Act Penalties

Wage & Hour Laws

Wage & Hour Law

- Determining Wages or Salaries
 - California Minimum Wage: \$9.00/hr
 - Oakland: \$12.25/hr in March 2015
 - San Francisco: \$12.25/hr (gradual increase to \$15.00 by 2017)
 - California employers must pay at least the California minimum wage to all non-exempt workers for all hours worked.
- Healthy Workplaces, Healthy Families Act of 2014 (Assembly Bill 1522 – July 1, 2015)
 - Mandatory sick leave accrual - 1 hour for every 30 hours worked

Wage & Hour Law cont'd

- Meal & Rest Breaks
 - Nearly all non-exempt employees are entitled to a 30 minute meal break for every 5 hours worked
 - Employee must be relieved of all duty on his/her meal break
 - Penalty: one hour of pay for each missed meal break
 - All employees must be "authorized and permitted" to take a paid 10 minute rest breaks for every 4 hours worked
 - Employers do not have to pay for meal breaks if the employee is completely relieved of duties for at least 30 consecutive minutes

Wage & Hour Law cont'd

- Overtime Pay
 - Generally an employee is entitled to overtime pay if he/she:
 - Works more than 40 hours in one week;
 - More than 8 hours in one day; or
 - 7 days in a row
 - Rates:
 - 1.5 times the rate of pay for hours 8-12
 - 2 times the rate of pay for hours 12 and up
 - Exempt Employees
 - Executives, professionals, administrators (not administrative assistants)

Earnings for Clergy

- A licensed, commissioned, or ordained minister is generally the common law employee of the church, denomination, sect, or organization that employs him or her to provide ministerial services.
 - Exception: traveling evangelists who are independent contractors (self-employed)
- All of your earnings for performing ministerial services (marriages, baptisms, funerals, etc.) are subject to income tax
- Itemized Deductions:
 - Fair rental value of a home (Housing Allowance)
 - Business expenses

Contracts and Written Agreements

What is a contract?

- **Contract:** an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration

Contract Terms

- **Payment Terms:** when the payment is due, how the payment will be made, penalties for late payments, any other conditions required to secure payment
- **Warranties:** what level of service can be expected and what is the protocol if the service/product does not perform as expected
- **Termination Clauses:** how can the contract be terminated, written notice, oral notice, is there an opportunity to correct the problem
- **Indemnification:** who defends you/who you have to defend in the event of a dispute or claim; what does it cover, personal injury, products liability, property damage, etc.

Remedies for a Breached Contract

Compensatory Damages

- Compensation for the loss, detriment, or injury, natural and direct consequences

Punitive Damages

- Awarded in addition to compensatory damages to punish the wrongdoer

Specific Performance

- The wrongdoer is required to do, or not do a specific act

Policies & Procedures

Policies and procedures are the rules to the game and put everybody on the same page.

- Children
 - Background checks on workers
 - Training for workers regarding child abuse reporting requirements
 - Training for workers on appropriate interactions with children
- Company Handbook
 - Vacation time
 - Sick leave
 - Benefits

Action Items

- Review the Bylaws
- Review/create employment policies/procedures
- Create and implement an organizational handbook
- Consult with an attorney and an accountant when you have questions

Any Questions???

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Church Law Guide

