


# Church HR Files



## and Federal Laws by Staff Size

A church needs five Human Resource files for each employee, and to adhere to federal rules based on the size of its staff

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The first part of this ebook talks about the essential Human Recourse records that a church must keep. The second part details federal directives based on the number of employees a church may have.

Whether a church has one employee or hundreds of staff, there are the same requirements for Human Resource (HR) files that need to be maintained. No church is too small to get a pass from having these files. Churches should have five separate HR files for each employee— Personnel, Citizenship & Immigration, Medical, Financial, and Injury. These five files are a baseline requirement for churches of all sizes.

Churches will have additional records compared to most businesses. For example, ordination certificates should be kept with the minister's personnel records. Since churches do not pay FICA for ministers but the minister pays SECA, there will be additional records. What complicates issues is that churches can have ministerial exceptions concerning some federal directives.

These five files for each employee must only be available to HR personnel or supervisors with a genuine need to know. Generally, supervisors only need access to the Personnel Records and Injury Records, not the other three files.

Churches must safeguard these five files. They contain private employee medical and financial information. Confidential reviews and action letters need access only by those with the need to know. If adequate security and backup measures are in place, these files can be stored on a computer. They can also be housed in a locked file cabinet.

As a staff grows, the church should be aware of additional federal directives based on organizational size. For example, when a church has fifty or more employees, they need to abide by the Family and Medical Leave Act (FMLA). The complexity of HR issues increases as a church adds more staff members.

# Five HR Files

Let's start by using the timeline of when you are seeking a new staff person. The first document is the employee application—going into the Personnel folder. You will have initial hiring documents for citizenship, insurance and paying the new employee—each with its own folder. At some point, your employee may be injured and need the fifth file.

From the start of hiring and onboarding an employee, you will create five files for each employee—Personnel, Citizenship & Immigration, Medical, Financial, and Injury. These files will be updated at least annually.

## 1—Personnel Records

The first file is for personnel records. The relationship with your church begins when a potential employee completes and signs an application.

- The person's signed employment application.
- The resume that the person submitted.
- A copy of the job posting as it was publicized.
- Background checks that you made.
- Reference checks and their documentation.
- Employment tests—such as typing or computer skills.
- Initial job description and then later all updates.
- Reviews, warnings and action plans.
- Notices and letters of termination or resignation.
- Ordination, commissioning or licensing certificates or letters for all ministerial staff.
- Signed copies of the signature page of the Personnel Handbook.
- Signature pages from church policies, arbitration clauses, etc., including signed copies in the future.
- Applications and resumes for all people that you have **not hired**, keeping these for at least one year.

## 2—Citizenship and Immigration Records

- Signed Form I-9 for each employee.

Most employees will not need to update Form I-9. If an employee has an employment authorization document (EAD) or receipt, this will need to be updated when it expires. The U.S. Citizenship and Immigration Services says about Employment Eligibility Verification:

*All U.S. employers must properly complete Form I-9 for each individual they hire. This includes citizens and non-citizens. Both employees and employers must complete the form. An employee must attest to his or her employment authorization. The employee must also present the employer with acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine. Employers must retain Form I-9 for a designated period and make it available for inspection by authorized government officers.*

## 3—Medical Records

The Americans with Disabilities Act (ADA) requires you to keep medical records separate.

- Drug tests on hiring and ongoing. Drug tests are useful for people who operate a vehicle or dangerous machinery, such as a scissor lift.
- Insurance enrollment documents—medical, dental, life and workers' compensation.
- Insurance renewal documents.
- All other items of medical information. This could include an application for the Family and Medical Leave Act (FMLA)—up to twelve weeks of unpaid leave following the birth, adoption, or foster placement; or serious family illness.
- COBRA files for previous employees, if you have such insurance.

Promotions, demotions or terminations can't be based on information in the medical file. If there are health or disability issues, you need to make a *reasonable accommodation* for that person. Generally only HR personnel need access to the medical folder—supervisors are discouraged from reviewing it unless there is a specific need, such as examining a drug test.

The U.S. Department of Health & Human Services notes: *Your employer can ask you for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance. Your provider cannot give your employer information without your authorization unless other laws require them to do so. Generally, the Privacy Rule applies to the disclosures made by your health care provider, not the questions your employer may ask.*

## 4—Financial Records

- Credit checks on hiring. For those who oversee finances, you may do periodic credit checks as well.
- Payroll source data—this includes the employee's Social Security Number and bank auto-draft account numbers.
- IRS Employee Withholding Certificate (W-4).
- Directives from a court pertaining for garnishing wages.
- Retirement and pension plan information. Keep a signed record of what the employee wants to contribute along with updates.
- Ministerial Housing Allowance approvals.
- Letter from a minister who has opted out of Social Security.
- Any other item of protected financial data.
- List of perks, such as a non-taxable cell phone allowance, or a taxable automobile allowance.
- Intellectual Property agreements between the church and the employee.

## 5—Injury Records

After an incident, this is the file that churches often forget to create.

- Injury reports. This include whether or not the employee sought a doctor's help or filed for workers' compensation. Document all injuries on the job, whether on church property or away on church business.
- Claim information on all injuries.

## Federal HR Laws by Staff Size

Church are subject to federal laws and directives. These are based on the number of employees. Any church with one or more employees must abide by many directives.

### One and More Employees

- Consumer Credit Protection Act—wage garnishing issues.
- Employee Polygraph Protection Act—no lie detector tests.
- Employment Retirement Income Security Act (ERISA)—private pension and health plans issues, COBRA included. Churches are exempt.
- Equal Pay Act (EPA)—equal pay for equal work. Ministerial exception here.
- Fair and Accurate Credit Transactions Act—detailing how credit information is handled.
- Fair Labor Standards Act (FLSA)—minimum wage, rest breaks, overtime and child labor. A church may be exempt but individual employees might not be.
- Federal Insurance Contribution Act (FICA)—to fund Social Security and Medicare. Ministers are exempt and must pay SECA.

- ❑ Federal Income Tax Withholding—ministers are exempt and must pay their own estimated taxes at least quarterly by April 15, June 15, September 15 and January 15. Ministers can ask their churches to forward the funds to the government from their paychecks.
- ❑ Health Insurance Portability and Accountability Act (HIPAA)—protection of employee health information. A best practice is to have separate locations for health insurance and personnel files.
- ❑ Immigration Reform and Control Act—required employee I-9 forms.
- ❑ National Labor Relations Act (NLRA)—unions can be formed. Most churches are exempt.
- ❑ Occupational Safety and Health Act (OSHA)—standards for work conditions.
- ❑ Sarbanes-Oxley Act—corporate responsibility, combat fraud and provide financial disclosures. Churches are exempt.
- ❑ Uniform Guidelines for Employment Selection Procedures—no discrimination on the basis of race, color, religion, sex, or national origin. There are some first amendment considerations and overrides for churches.
- ❑ Uniformed Services Employment and Reemployment Rights Act—military duty with reemployment rights.

## **Eleven and More Employees**

- ❑ The Occupational Safety and Health Act (OSHA)—records maintenance.

## Fifteen and More Employees

- ❑ Americans with Disabilities Act (ADA)—no discrimination for disabilities in employment and public accommodation. Churches are often exempt.
- ❑ Genetic Information Nondiscrimination Act (GINA)—no discrimination based on genetic information.

Title VII, Civil Rights Act of 1964—prohibits sexual harassment and sex discrimination. Includes the Lilly Ledbetter Fair Pay Act and the Civil Rights Act of 1991. There are some church overrides with the ministerial exception. From the Equal Employment Opportunity Commission:

*Clergy members generally cannot bring claims under the federal employment discrimination laws, including Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and the Americans with Disabilities Act. Some courts have made an exception for harassment claims where they concluded that analysis of the case would not implicate these constitutional constraints.*

## Twenty and More Employees

- ❑ Age Discrimination in Employment Act (ADEA)—no discrimination in hiring workers age 40+. There is a ministerial exception.
- ❑ Consolidated Omnibus Budget Reconciliation Act (COBRA)—must offer to continue health insurance for 18-36 months after employment. Churches can be exempt.



## **Fifty and More Employees**

- Affirmative Action Program (AAP)—recruit and train minorities, women, disabled persons and veterans, with record keeping. Churches can be exempt.
- Affordable Care Act (ACA)—must offer health insurance with strict record keeping stipulations. 50+ full-time equivalent workers.
- Family and Medical Leave Act (FMLA)—up to twelve weeks of unpaid leave following the birth, adoption, or foster placement; or serious family illness.

## **One Hundred and More Employees**

- EEO-1 Survey Filing (Title VII, Civil Rights Act of 1964)—diversity records for workplaces and individual employees.
- Worker Adjustment Retraining Notification Act (WARN)—notify employees at least sixty days in advance of workplace closings and mass layoffs.

**You may have items to add**

**Send your thoughts to Fletch: [drfletcher@XPastor.org](mailto:drfletcher@XPastor.org)**

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