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Top 5 Employment Issues

for Churches in 2022

Legal Information

This presentation addresses general issues and principles. Nothing in this presentation should be understood to provide legal advice or create an attorney-client relationship. Participants are encouraged to consult with an attorney licensed in their jurisdiction to determine how local, state, and federal law applies to specific circumstances.

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Follow Employment Best Practices

- **DOCUMENTATION** – write down what you believe, what you expect
- **APPLICATION** - consistently apply policies to everyone
- **COMMUNICATION** – address issues before they become problems
- **CONSULTATION** – speak with a local attorney when unsure



Employee vs. Independent Contractor

- Does the ministry control or have the right to control what the worker does and how the worker does the job?
- Does the ministry control the business aspects of the worker's job? These include arrangements like how the worker is paid, whether expenses are reimbursed, and who provides tools and supplies.
- Is there a written contract or employee benefits such as a pension plan, insurance, or vacation pay?
- Will the relationship continue and is the work a key aspect of the ministry's operations?



Employee vs. Independent Contractor

The 10-Factor Test

1. How much control by the employer?
2. Is the occupation distinct, exclusive?
3. Does the employer direct the work?
4. Does the job require unique skills?
5. Who supplies the tools, equipment, or workplace?
6. Employment: Temporary or Permanent?
7. Worker paid by the time or job?
8. Is the work a regular part of the business?
9. What do the parties think?
10. Is the owner in the same business as the worker?



Employee vs. Independent Contractor

California A-B-C Test

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.



Defending Faith-Based Employment Claims

TITLE VII RELIGIOUS EXEMPTIONS	MINISTERIAL EXCEPTION	CHURCH AUTONOMY DOCTRINE
APPLIES TO: Claims of religious discrimination	APPLIES TO: All claims of discrimination	APPLIES TO: All claims of discrimination
EMPLOYEES: Ministerial and non-ministerial	EMPLOYEES: Ministerial employees only	EMPLOYEES: Ministerial and non-ministerial

Faith-Based Employment Decisions

Ministries can take steps to ensure they are protected:

- Weave beliefs into governing documents
 - e.g., Bylaws, Statement of Faith, Statement of Beliefs
- AND operational documents given to employees and volunteers
 - Employee Handbook, Conduct Policy, Morals Policy
- Be consistent in applying policies
- Document all interactions



FLSA Classification of Workers

Exempt

- Perform specific duties (typically, executive, administrative, professional, computer professional, and creative professional)
- Are paid on a salary basis (no deductions from weekly pay for quality or quantity of work)
 - Salary must not be less than \$684 per week (\$35,568 per year) as of January 1, 2020

Nonexempt

- Paid at least
 - State minimum wage
 - Overtime wage (generally 40+ hours/week or 8+ hours/day_
- If an employee performs exempt duties but is not paid the minimum salary level, generally treat as a non-exempt employee

‘Ministers’ are exempt from FLSA’s wage-and-hour requirements and may be paid on a salary basis, even if they do not meet the annual threshold

Employee Discipline: Progressive Discipline vs. Corrective Options

- A “progressive discipline policy” can hinder management’s ability to take the necessary action immediately
- Instead, consider informing employees of a range of corrective options that may be used that best fit a problem or history of problems.



Employee Handbooks

Critical Policies

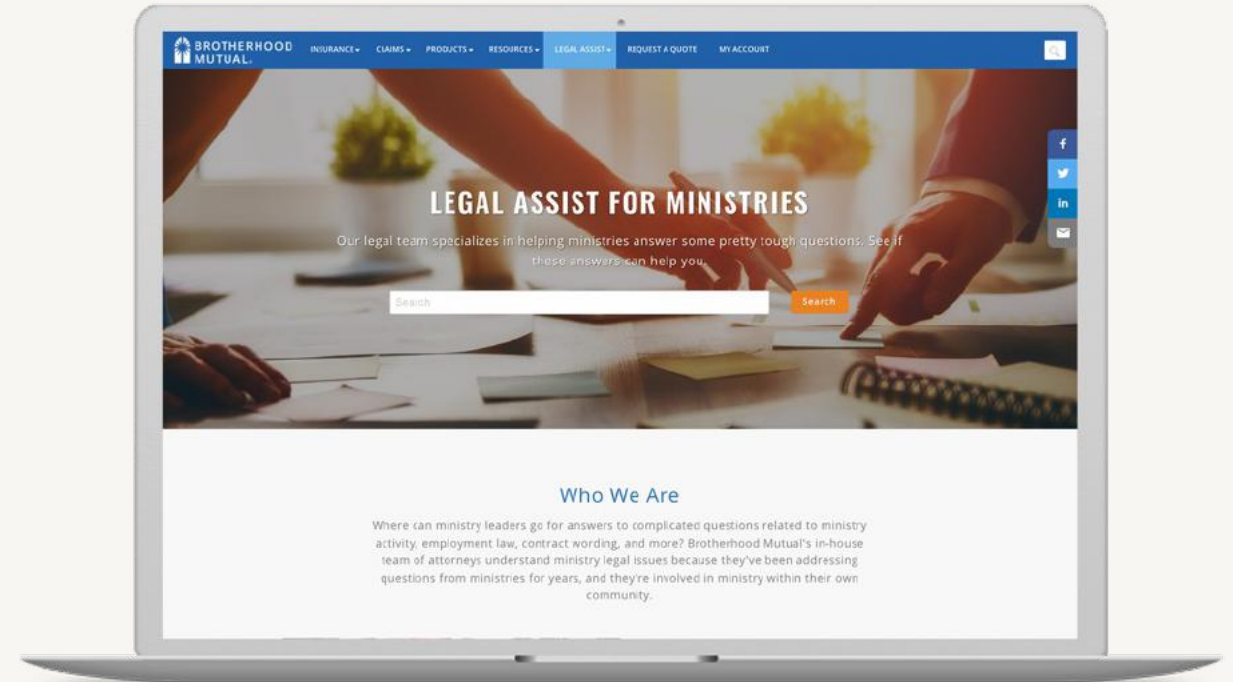
- “About this Handbook”
- FLSA Classifications
- Reporting Pathways for Harassment/Discrimination Claims
- Personal Relationships at Work
- Expected Conduct

CONSIDER: How are employees made aware of your handbook and policies?



Legal Assist

- A free service for ministries from Brotherhood Mutual
 - Responses to FAQs
 - Personal response service
 - Attorney referral service



Submit your question at
brotherhoodmutual.com/legalassist

Legal FAQs

Free Resource: *Top Legal Trends for 2021*

Menu

Covid-19 resources to help keep your people safe.

WELCOME TO LEGAL FAQs

Find guidance on some of the questions that ministry leaders most frequently ask our Legal Assist team. Questions are arranged according to topic and ministry focus.

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Working Together: A Guide to Employment Practices for Christian Employers

Newly updated online
resource available at
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