

PERSONNEL

INTRODUCTION.....	3
PERSONNEL POLICIES.....	4
1. Common Personnel Policy Issues.....	4
PERSONNEL RECORDS.....	6
1. Access to Personnel Records and Confidentiality.....	6
2. Record Retention Requirements.....	6
3. HIPAA.....	7
4. Subpoena of Personnel Records.....	7
FEDERAL REGULATION OF EMPLOYERS.....	8
1. Posting Requirements.....	13
AVOIDING PROBLEMS WHEN HIRING AND FIRING EMPLOYEES.....	14
1. Interviewing Lay Persons.....	14
Examples of Prohibited Questions.....	14
Examples of Permitted Questions.....	14
2. Ministerial Positions.....	15
3. Background Checks – Generally.....	15
<i>Discipline</i> Requirements.....	16
Additional Resources.....	17
4. Background Checks for Ministerial Positions.....	17
5. Job Descriptions and Performance Management.....	17
Additional Resources.....	18
6. Termination of Lay Staff.....	18
EMPLOYEE OR INDEPENDENT CONTRACTOR?.....	20
1. The IRS Three Categories.....	20
2. The Seven Factor Test from <i>Weber</i>	20
3. “The Degree of Control.”.....	21
4. Additional Resources.....	21
APPENDIX.....	23
SAMPLE PERSONNEL POLICIES.....	24
Introduction.....	25
Policies as Applicable to United Methodist Clergy.....	25
Americans with Disabilities Act.....	25
Attendance and Punctuality.....	26
Background Checks.....	27
Compensatory Time for Exempt Employees.....	27
Corrective Action.....	28
Discrimination, Harassment and Retaliation.....	30
Direct Deposit.....	33
Emergency Exit Plan.....	33
Recruitment.....	34
Hours of Work.....	34
Inclement Weather.....	35
Injury/Illness on the Job.....	35
Interns.....	36

Job Descriptions.....	36
Personal Conduct	37
Personal Property	38
References.....	38
Search.....	39
Smoking.....	39
Temporary Modified Duty	39
Time Reporting	40
Use of Information Technology.....	40
Workers' Compensation	40
At Will Employment.....	41
Nepotism.....	41
Pay Periods	41
Payroll Advances	41
Personal Appearance.....	41
Overtime	42
Social Security	42
Death in the Family.....	43
Jury Duty/Court Appearances.....	43
Holidays	43
Leaves	44
Annual Conference Attendance	44
Jurisdictional and General Conference Attendance.....	44
Personnel Files	44
Staff Reviews.....	45
SAMPLE EMPLOYEE HIRE CHECKLIST	46
SAMPLE TERMINATED STAFF FORM	48
HIPAA PRIVACY RULE AND LOCAL CHURCHES	50
Introduction.....	51
Publicizing Prayer Lists and Requests.....	51
What is the Privacy Rule?.....	51
Application of the Privacy Rule to Local Churches	52
Special Situations and Privacy Concerns.....	53
Local Church Employees	53
Local Churches as Health Care Providers.	55
State Privacy Laws.....	56
Summary.....	58
Consent	58
Too Much Information.....	59
Church Employees	59
Churches as Health Care Providers.....	59
“The Golden Rule”	59
Additional Resource	60

INTRODUCTION

The area of employment law has become increasingly important in recent years, as challenges to personnel decisions, additional government regulation, and the need to avoid legal liability have heightened the awareness of employers to the need to be careful when making decisions involving the hiring, supervision, and termination of personnel.

Church organizations are not totally immune to these issues. While many government laws, rules, and regulations exempt religious organizations, there are certain requirements that do apply to religious organizations (*e.g.*, many state workers' compensation, disability, and discrimination laws do not exempt churches).

Increasingly, disgruntled and former employees of religious organizations – including clergy – are filing lawsuits. Generally, courts will not involve themselves in disputes between persons serving in ministerial positions and church organizations, as it will typically be impossible to address such issues without becoming entangled in the church's polity and ecclesiastical affairs. This is due to the protection, afforded to religious organizations by the First Amendment of the United States Constitution (and many state constitutions), against such court involvement in church polity.

It is important to understand that, even though such limits exist, they do not prevent clergy from filing suit against a church organization. Thus, while the organization may ultimately be able to defend a lawsuit on the basis of the First Amendment, it may have to expend considerable expense to do so. Additionally, such limits generally do not apply to claims of unlawful practices in relation to non-ministerial employees. For example, a local church could be subject to liability for systematically refusing to hire individuals of a certain age, race, gender, or ethnicity for janitorial positions.

Therefore, despite the existence of constitutional limitations, local churches, annual conferences, and other church entities are strongly encouraged to develop personnel policies that provide guidance in handling common personnel problems. In this regard, the Church's Social Principles provide an overall basis for fair and just treatment of employees. In addition, many annual conferences have developed policies for addressing sexual abuse, misconduct, and harassment. Sample policies are included in this Section to assist local churches and annual conferences in development of policies.

PERSONNEL POLICIES

There are several important advantages to having written personnel policies:

- **Strong statement of acceptable and unacceptable conduct:** They send a strong message to staff and others about conduct that is acceptable and unacceptable in a work setting. The existence of a policy makes it more difficult for a staff person to claim lack of understanding that a particular type of behavior was deemed unacceptable. Examples include policies on the use of alcohol during work hours or while traveling on church business, on non-reimbursement of certain business expenses, on the prohibited uses of the internet and e-mail, and on sexual abuse/misconduct/harassment.
- **Uniform statement of information:** They provide a uniform method of providing staff with information about issues such as benefits, continuing education, vacation, and evaluations.
- **Consistency:** They can help ensure that similar situations are handled in a consistent manner and that all staff is treated equally.
- **Protection against liability:** They can help protect a church or church organization from liability by preventing misunderstandings and by deterring misconduct.

There is, however, one major consideration in developing personnel policies. If an organization adopts a policy and then does not follow it – or follows it inconsistently or only with respect to certain staff – there is an increased risk of liability to the organization. In other words, it is very important that the organization follows its own policies and procedures when dealing with personnel issues.

1. Common Personnel Policy Issues.

Each church entity, in close consultation with legal counsel, needs to decide for itself whether to establish personnel policies, who should be covered by the policies and what issues the policies will cover. Subjects commonly covered by personnel policies include:

- **Hiring** – For example, recruitment, job posting, immigration, references, hiring of relatives, promotions, and statement of “at-will” employment;
- **Compensation administration** – Like pay periods, overtime, time card procedures, wage assignments, and exempt / non-exempt classifications;
- **Operations** – Such topics such as work schedules, parking, and vacation time requests;
- **Benefits** – A host of areas, including health insurance, disability, life insurance, pension, bereavement leave, worker’s compensation, social

security, unemployment compensation, vacation, holidays, maternity and paternity leave, sick leave, jury duty, personal days, attendance records, leave of absence, family and medical leave, and continuing education;

- **Reimbursement of expenses**
- **Retirement, termination, and resignation** – Eligibility, mandatory retirement, and severance.
- **Employee Conduct** – Covering activity such as race and gender issues, sexual abuse/misconduct/ harassment, workplace violence, code of ethics, internet/e-mail use, confidentiality, complaint procedures, performance reviews, and discipline procedures.

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PERSONNEL RECORDS

Local churches, annual conferences, and other church entities should understand not only the importance of keeping good personnel records, but also what those records should contain. For example, if a local church lay staff person arrives late to work three out of five days every week, and if the local church has repeatedly told the staff person that such lateness is unacceptable, this information should be documented in the staff person's personnel file. If the local church terminates the staff person, the file will contain records of what transpired, when it transpired, the expectations given to the staff person and how the church handled the situation. Should the terminated staff person try to challenge the firing, the file will assist the church in defending its actions.

The *Discipline* directs GCFA, in consultation with General Board of Higher Education & Ministry and the General Board of Pension and Health Benefits to produce guidelines for the maintenance of personnel and supervisory records relating to clergy.¹ These guidelines are posted on GCFA's [website](#).

1. Access to Personnel Records and Confidentiality.

There are state and federal laws that provide access to, or protect the confidentiality of, certain personnel records. Annual conferences and local churches should review these requirements with legal counsel.

Medical information is particularly sensitive. It should be requested, retained, and disclosed only when there is a legitimate business reason to do so, and in strict compliance with applicable state and federal laws. Written consent, which specifies the information to be released and is signed and dated by the employee, must be obtained by the employer before the release of any medical information. This information should be kept in a separate file – not the employee's personnel file – and access should be limited to those with the clear need to know. A sample confidentiality of employee records policy is included in the Appendix to this Section.

2. Record Retention Requirements.

An employer should consider maintaining three separate types of files on an employee: an official personnel file (including application, employment agreement if applicable, evaluations, and formal corrective actions); a confidential file (including interview, reference check, EEO, credit check, and legal action or internal complaint information); and a medical information file. If a medical information file is maintained, the employer should ensure this is kept both separate and confidential. The employee's Form I-9 should not be kept in their employment file. A separate

¹ See ¶¶ 416.7, 419.8, 606.9.

Form I-9 file should be maintained for all employees.

3. HIPAA.

The retention of employee medical information requires special attention on the part of the employer. The privacy of medical information has become a major public policy issue in the United States. Congress recognized the need for national patient record privacy when it enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Numerous regulations have resulted from the enactment of this legislation. They are intended to protect medical records and other personal health information maintained by health care providers, hospitals, health plans and health insurers, and health care clearinghouses. The effect and application of HIPAA is addressed in the Appendix to this Section.

4. Subpoena of Personnel Records.

Secular courts have the power to issue a subpoena. If an organization, such as a local church, receives a subpoena, it will typically require the organization to produce a particular set of documents or other type of record. If the subpoena relates to employee records or files, the organization should consult with legal counsel to determine whether the disclosure is permitted under state law and how the organization should proceed. The organization should also notify the employee whose records are being sought. If the employee objects, the employee's own attorney may act to quash or modify the subpoena. At the same time, the employer should notify the attorney who issued the subpoena of the employee's objection.

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FEDERAL REGULATION OF EMPLOYERS

There are many federal laws that regulate employers. The basis for these federal controls is usually the “Commerce Clause,” under which the federal government may assert jurisdiction over organizations engaged in interstate commerce. Typically, organizations having a certain number of employees are assumed to be engaged in interstate commerce. Therefore, many federal laws set a minimum employee threshold that triggers the application of the law. When in doubt, organizations should assume that they are subject to these federal requirements.

The following is a short summary of key federal laws affecting employers who have the requisite number of employees:

- **Title VII of the Civil Rights Act of 1964, as amended:**² Bans employment discrimination on the basis of race, gender, national origin, and religion. It applies to organizations with 15 or more employees. There is a limited exception that permits religious organizations to restrict job positions to those who adhere to the same religious faith.³ The United States Supreme Court recognizes religious organizations’ broad powers to prescribe religious qualifications for their employees.⁴ Most states and large cities have similar civil rights laws, many of which have a lower employee threshold. The Pregnancy Discrimination Act of 1978 amended Title VII’s prohibition of discrimination on the basis of “sex” to include pregnancy, childbirth, and related medical issues.⁵
- **Age Discrimination in Employment Act of 1967 (ADEA):**⁶ Absent limited exceptions, the ADEA prohibits discrimination against employees aged 40 and older. The Older Worker Benefit Protection Act of 1990 amended several ADEA sections to prohibit age discrimination in the provision of benefits. The ADEA applies to organizations of 20 or more employees. Most states and large cities have parallel laws. Although exemption from the ADEA is not as settled, generally speaking, the First Amendment protects the Church’s right to set a mandatory retirement age for ministerial staff.

² 42 U.S.C. § 2000d et seq.

³ § 2000e-1(a).

⁴ *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, [483 U.S. 327](#) (1987). This case holds that the exemption extends to employees holding “nonreligious” jobs. *See also, NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

⁵ *See* § 2000e(k).

⁶ [29 U.S.C. §§ 621-34](#).

- **Occupational Safety and Health Act of 1970 (OSHA):**⁷ A regulatory system designed to increase employee safety. The current threshold for the reporting requirements is 11 or more employees.⁸ States and municipalities may have laws that cover organizations with fewer employees. While religious organizations, as a whole, are not exempt, certain religious activities are not subject to OSHA.⁹
- **Americans with Disabilities Act of 1990, as amended (ADA):**¹⁰ The ADA is broad legislation, covering both the treatment of employees, as well as architectural requirements for buildings. The employment provisions apply to organizations of 15 or more employees. Employers must make reasonable accommodations for employees with disabling conditions, including accessibility, training, and job structure. If significant risks to the health and safety of others would arise from the employment of a disabled person, the ADA would not require the hiring of that person. The protection afforded by the ADA applies to qualified individuals with a disability. This law is enforced by the EEOC. The ADA does not prevent religious organizations from requiring individuals to adhere to a certain faith in order to be eligible for employment.¹¹ While there is also an exemption from the

⁷ [29 U.S.C. §§ 651-78](#) (statute), [29 C.F.R. §§ 1902](#) (regulations).

⁸ [29 C.F.R. § 1904.1](#).

⁹ [29 C.F.R. § 1975.4\(c\)](#):

(1) *Churches.* Churches or religious organizations, like charitable and nonprofit organizations, are considered employers under the Act where they employ one or more persons in secular activities. As a matter of enforcement policy, the performance of, or participation in, religious services (as distinguished from secular or proprietary activities whether for charitable or religion-related purposes) will be regarded as not constituting employment under the Act. Any person, while performing religious services or participating in them in any degree is not regarded as an employer or employee under the Act, notwithstanding the fact that such person may be regarded as an employer or employee for other purposes—for example, giving or receiving remuneration in connection with the performance of religious services.

(2) *Examples.* Some examples of coverage of religious organizations as employers would be: A private hospital owned or operated by a religious organization; a private school or orphanage owned or operated by a religious organization; commercial establishments of religious organizations engaged in producing or selling products such as alcoholic beverages, bakery goods, religious goods, etc.; and administrative, executive, and other office personnel employed by religious organizations. Some examples of noncoverage in the case of religious organizations would be: Clergymen while performing or participating in religious services; and other participants in religious services; namely, choir masters, organists, other musicians, choir members, ushers, and the like.

¹⁰ [42 U.S.C. §§ 12101-213](#) (statute), [29 C.F.R. §§ 1630-41](#) (regulations).

¹¹ [42 U.S.C. §§ 12113\(d\)](#).

provisions related to building accessibility and public accommodations,¹² this does not relieve a religious organization of the responsibility to make a reasonable accommodation for a disabled employee (if covered by the ADA or similar state or local laws).

- **Fair Labor Standards Act (FLSA):**¹³ Requires overtime pay of time and one-half to non-exempt employees who work over 40 hours in one week. The FLSA also regulates child labor and provides for a minimum wage. In order to be subject to minimum wage and overtime requirements employees must be “covered” by the FLSA. This is achieved in one of two ways:
 1. The organization is a covered enterprise; or
 2. A particular worker is individually covered.

Nonprofits, such as churches and church-related organizations, are not specifically exempted from the FLSA. However, the DOL has acknowledged that enterprise coverage does not apply to a private, non-profit enterprise where the religious or educational activities are not in substantial competition with other businesses, unless it is operated in conjunction with a hospital, a residential care facility, a school or a commercial enterprise operated for a business purpose. Like all other employers, nonprofits would be covered by the FLSA if they meet the enterprise coverage test. To meet the enterprise coverage test, an entity must have annual revenues from commercial activity of at least \$500,000 or it must operate a hospital, preschool, school, or older adult or disability care facility. Activities that are charitable in nature and income used in furtherance of charitable activities (e.g., donations) do not count towards reaching the \$500,000 threshold. Thus, in order to determine whether a church is a covered enterprise, the following must be considered:

1. The church:
 - a. is engaged in commerce or in the production of goods for commerce; AND
 - b. grosses an amount greater than \$500,000 annually
- OR
2. The church operates a hospital or school (including a preschool), or some other “named enterprise” (assuming the school, preschool, etc. is not a separate employer).

Organizations that are not covered on an enterprise basis may still have some employees who are covered individually. Individual employee coverage is based on the nature of the particular employee’s work activities.

¹² 42 U.S.C. [§ 12187](#). Note, however, that the *Discipline* contains requirements regarding the accessibility of church buildings (See ¶ 2533.6).

¹³ [29 U.S.C. §§ 201-19](#) (statute), [29 C.F.R. §§ 500-870](#) (regulations).

An employee who engages in interstate commerce or in the production of goods for interstate commerce is covered by the FLSA.

A church is covered if an employee engages in any interstate or foreign commerce, including selling or packaging goods made in another state, or even regularly sending mail, making telephone calls or other communication, or travelling to other states.

No exemption for clergy is included in the FLSA. That being said, some courts have held that the FLSA does not apply to clergy employees. There currently is no definitive guidance on which employees would be considered “other religious workers” and this decision, in any event, is dependent on the particular facts and circumstances. Additionally, while the DOL has not formally adopted any exemption in promulgated regulations, its Field Operations Handbook includes language indicating that “clergy and other religious works” are not covered by the FLSA.

The requirements of the Act cannot be avoided by classifying a worker as an independent contractor. Additionally, many states also have wage and hour laws.

- **Equal Pay Act of 1963:**¹⁴ The FLSA was amended by the Equal Pay Act to require equal pay for equal work, regardless of the employee’s sex.
- **Family Medical Leave Act of 1993 (“FMLA”):**¹⁵ Provides that “eligible employees” may take up to 12 weeks of unpaid, job-protected leave, with continued benefits, during a 12-month period, for: the birth of a child; placement for adoption or foster care; care of a spouse, child, or parent with a serious health condition; the employee’s own serious health condition; or any qualifying exigency arising due to the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.¹⁶ To be an “eligible employee,” the individual must have worked for the employer for at least 12 months and for at least 1250 hours during the immediately preceding 12 months.¹⁷ Additionally, the employee must work at a site that includes at least 50 employees, unless there are more than 50 total employees within a 75-mile radius.¹⁸ The employer’s obligation is triggered by the employee’s prior notice to the employer of the need to take leave under the Act, or upon the employer’s learning that the leave is for a

¹⁴ <http://www.eeoc.gov/laws/statutes/epa.cfm>.

¹⁵ 29 U.S.C. §§ 2601-54.

¹⁶ 29 U.S.C. § 2612(a).

¹⁷ 29 U.S.C. § 2611(2).

¹⁸ *Id.*

purpose covered by the Act.¹⁹ Many states have family medical leave statutes. Due to the complexity of this law, it is a good idea to work with an attorney who specializes in employment law to ensure compliance.

- **National Child Care Protection Act of 1993:**²⁰ This Act allows states to require that certain child-care providers conduct mandatory background checks on child care workers (both employees and volunteers). States have the right to designate certain organizations, such as child care centers, nurseries, schools, and Sunday schools, as child care providers. Church organizations should be aware of their state's requirements regarding the designation of child care providers. The Act was amended in 1998, by the Volunteers for Children Act,²¹ to allow certain child care providers to request a nationwide criminal fingerprint background check from an authorized state agency. To find out if churches are designated as affected entities in your state, contact a local attorney.
- **Employee Polygraph Protection Act (EPPA):**²² This Act applies to all organizations engaged in interstate commerce and prohibits requiring or suggesting that an employee or job applicant submit to a polygraph test.
- **Uniformed Services Employment and Re-employment Rights Act of 1994:**²³ Generally, this law provides that an employee who leaves to train or serve in the uniformed services must be re-employed upon return and has a right to certain benefits during absence and upon return. There is no exemption for churches or small employers.
- **Unemployment:** Organizations that are exempt from federal income tax pursuant to § 501(c)(3) are also exempt from Federal Unemployment Tax. However, some states may have unemployment requirements that apply to such entities.
- **Workers' Compensation:** This is a matter of state law. There is no per se exemption for churches. Any requirements will depend upon the specific state law. Church entities should familiarize themselves with these requirements.

¹⁹ See [29 C.F.R. §§ 825.300-304](#).

²⁰ [42 U.S.C. § 5119](#).

²¹ Public Law 105-251.

²² [29 U.S.C. §§ 2001-09](#).

²³ [38 U.S.C. §§ 4301-34](#) (statute); [5 C.F.R. Part 353](#) (regulations).

1. Posting Requirements.

Some of the federal laws discussed above – including the FLSA, OSHA, EPPA, FMLA, and Title VII – require employers to post certain notices to employees. If a religious organization is subject to a particular federal law, it must adhere to that law’s posting requirement.

The Department of Labor has created a [Poster Adviser](#) to assist organizations in determining which particular notices they must display. It is a useful tool, but is limited to matters handled by the Department of Labor and the Equal Employment Opportunity Commission. It should not be considered as conclusive guidance, especially as to the requirements of states and other federal agencies.

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AVOIDING PROBLEMS WHEN HIRING AND FIRING EMPLOYEES

1. Interviewing Lay Persons.

In formulating questions for interviewing lay persons, the two most important steps are ensuring that each question is related to the position and that the same questions are asked of each applicant. Questions should not be formulated to draw out the applicant's race, marital status, age, sex, national origin, citizenship, or disability. Many employers may inadvertently ask such questions in an effort to obtain legitimate information. In such situations, employers should make every effort to narrowly tailor the question(s) to determine only the needed information (e.g., to avoid hiring a person who cannot legally work in the U.S., an employer should ask "Are you authorized to legally work in this country?" instead of "Are you from the United States?"). Because religious organizations are, at times, allowed to make hiring decisions based on religion, a church organization may require, in certain circumstances, that the employee be United Methodist or may indicate that applicants who are United Methodist will be given preference.

See also the Sample Employee Hire Checklist found in the Appendix to this Section.

Examples of Prohibited Questions.

- What year did you graduate from high school? How old are you? What is your date of birth? How much longer do you plan to work before you retire? (Age discrimination)
- Please enclose a photograph with your resume. (Can learn of race, national origin, sex or age)
- Are you married? What is your maiden name? (Illegal inquiry about marital status)
- What is your native language? Are you a U.S. citizen? Where were you born? How long have you lived here? (National origin discrimination)
- Are you disabled? What is the nature or severity of your disability? What caused your disability? Do you take drugs? (Disability discrimination)
- Do you plan to have children? Do you have children? What are your childcare arrangements? Are you pregnant? If you get pregnant, do you plan on coming back? (Gender/sex/pregnancy discrimination)
- How do you feel about supervising men/women?

Examples of Permitted Questions.

- If hired, can you prove you are at least 18 years of age?
- Have you ever been fired or otherwise had your employment involuntarily terminated?
- Can you show proof of eligibility to work in the United States?

- What languages can you speak, read, and/or write fluently?
- What is your current address and phone number?
- Have you worked or earned a degree under any other name?
- Are you available to work overtime?
- Would you be willing to travel?
- You may be required to travel or work overtime on short notice. Will this be a problem for you?
- Do you have experience working with children/teenagers/elderly/etc.?
- When were you last responsible for doing this kind of work?
- Tell me about your experience managing others.
- Where do you see yourself a year from now? In three years? Five years? Ten years?
- Do you use illegal drugs?

2. Ministerial Positions.

In the civil law arena, the First Amendment protections give much greater flexibility in posing questions to a person being considered for a ministerial position. However, the *Discipline* discourages discrimination.²⁴ Thus, interview questions must comply with the *Discipline*.

3. Background Checks – Generally.

Failure to properly investigate a prospective employee’s background could result in legal liability if that employee later seriously harms another. A criminal background check is especially important for employees who will be working with children or vulnerable adults, providing counseling services, or operating church vehicles. Criminal background and credit history checks can be important when considering individuals for positions involving the receipt or distribution of funds. An investigation of the applicant’s background should involve contacting personal and employment references, as well as conducting a criminal records investigation. When conducting background checks directly, church entities should obtain a written release from the applicant and avoid asking questions of references that would be illegal if asked of the applicant. The release should be included on the employment application. An example of release language is:

I hereby authorize _____ to verify and obtain any information from any reference, school, residential management agent, former and current employer, religious body, criminal justice agency, court, business, individual and other resource relating to my activities. This information may include, but it is not limited to, academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal conviction records, and any judicial or ecclesiastical proceedings involving me. I hereby direct and authorize you to release such information upon request to

²⁴ See ¶ 140.

_____. I hereby release
_____ and any individual or group,
including records custodian, from any and all liability for damages of whatever kind
or nature which may at any time result to me on account of compliance, or any
attempts to comply, with this authorization.

Note that the language above is *only effective to release information directly to the employer*. Background checks conducted by background check companies are regulated by the federal Fair Credit Reporting Act.²⁵ The FCRA prohibits checks except with the applicant's written permission on a specifically-worded authorization that is *separate from the application*, and requires that specific notice be given to an applicant if adverse action is taken. Reputable background check companies will have sample forms that must be used.

If the information obtained in a reference check is inappropriately used or disclosed, the employer could later be deemed liable for defamation, invasion of privacy, or violation of the FCRA. Church organizations should develop reference checking procedures, in consultation with legal counsel.

It is likely that church entities that employ non-ministerial personnel will from time to time receive inquiries from other organizations seeking information about former or current employees of the church entity. In such instances, it is important to ensure that a written release for such information is obtained before any information is disseminated. Also, as the former or current employer, the church entity should be sure to only make statements to the inquiring party that are true. Incorrect information that leads to the applicant not getting the job could subject the church entity to liability for defamation, or other similar actions. All supervisors should follow the policies of their respective entity regarding these issues. One approach is to have a policy that only employment dates will be communicated.

Discipline Requirements.

When a local church has a coordinator of children's ministries, that person must work with other church leaders to assure that policies and procedures exist to keep all children safe, which could include the use of background checks.²⁶ Additionally, *The Book of Resolutions* states that local churches should adopt screening procedures, such as background checks, for those who work directly or indirectly with children.²⁷

²⁵ [15 U.S.C. § 1681](#).

²⁶ ¶ 256.2a.

²⁷ Resolution No. 3084 (2016).

Additional Resources.

For more information about checks and balances for reducing the risk of abuse in the Church, see the Safe Sanctuaries information on the Discipleship Ministries [website](#). For more information about checks and balances regarding clergy sexual ethics, see the General Board of Higher Education and Ministry's *Living the Sacred Trust: Clergy Sexual Ethics*.²⁸ Church leaders should also review the relevant United Methodist policies and procedures, as set forth by the *Discipline*²⁹ and *The Book of Resolutions*.³⁰ State law requirements also should be reviewed, as the number of states that have special laws to protect children or other vulnerable people is increasing.

4. Background Checks for Ministerial Positions.

Paragraph 315.6 requires all candidates for a license for pastoral ministry to provide a notarized statement detailing any convictions for felony, misdemeanor, or written accusations of sexual misconduct or child abuse, or one certifying that the candidate has neither been convicted of a felony, misdemeanor, or accused in writing of sexual misconduct or child abuse. These statements are not the equivalents of a background check, as they include only the candidate's own disclosure of information and are dependent upon the truthfulness and completeness of such disclosure. Background checks can be useful in supplementing and/or verifying these disclosures.

Neither the *Discipline* nor *The Book of Resolutions* addresses background checks of clergy or other persons serving in ministerial positions in any universal manner. The *Discipline* does address the issue in specific instances, including in relation to candidacy for licensed and ordained ministry,³¹ licenses for pastoral ministry,³² election to associate membership,³³ provisional membership in an annual conference,³⁴ and clergy from other annual conferences and other denominations.³⁵

The General Board of Higher Education and Ministry's [Form 114](#) may be used to submit the required *Discipline* disclosures.

5. Job Descriptions and Performance Management.

Job descriptions define the essential and nonessential functions of a position. They are useful in providing guidance for performance appraisals, in situations involving the Americans with Disabilities Act (i.e., in determining whether or not reasonable accommodations can be made

²⁸ <http://www.cokesbury.com/forms/ProductDetail.aspx?pid=359826>.

²⁹ ¶¶ 161H, 161I.

³⁰ Resolution Nos. 2044, 2045, 3084.

³¹ ¶ 310.2b.

³² ¶ 315.6a.

³³ ¶ 322.1.

³⁴ ¶ 324.12.

³⁵ ¶¶ 346.2, 347.2-.3.

for a particular applicant/employee as to that position), and for the employee discipline process. A performance appraisal should be conducted at least annually. Supervisors should review employee performance throughout the year and document all conversations with the employee regarding performance. Any documentation should contain only facts, not generalizations or assumptions. If performance appraisal is an ongoing process, the annual performance review should not contain assessments that surprise the employee.

Performance appraisals should be accurate and forthright. It is unhelpful to both the employee and the church employer to gloss over, or fail to document, performance problems. Truthful appraisals are necessary for the defense of adverse personnel actions and the improvement of performance.

Employees should be given an opportunity to review and comment on the performance appraisal. To memorialize this review, both the employee and supervisor should sign the written appraisal. It should be made clear that the employee's signature does not indicate that he or she agrees with the appraisal, but only that the employee has reviewed it. If the employee refuses to indicate, via signature, that the review has occurred, the supervisor should note that refusal on the appraisal form.

Additional Resources.

The "Staff-Parish Relations" entry in the [Guidelines for Leading Your Congregation](#) series is a useful source of information in this area. Also, the General Board of Higher Education and Ministry has produced [Guidelines for Developing Church Job Descriptions](#).

6. Termination of Lay Staff.

Before terminating a lay employee, church organizations should determine if employment in their state is "at will." An "at will" employment relationship is one that may be terminated by either the employee or the employer, at any time, with or without cause. If an employment contract exists, the employment is not "at-will" and the employee's rights upon termination will be governed by that contract. A few states recognize oral and implied employment contracts. In those states, the employment contract may not have to be in writing to be enforceable. The Appendix to this Section includes a sample policy on employment "at will" that may defeat an employee's claim that there was an employment contract.

There are several scenarios in which the termination could be subject to legal challenge. For example, a lay employee cannot be discharged on the basis of age, sex, race, or any other unlawful reason. In addition, an organization may be found liable for wrongful discharge if the discharge was in retaliation for the employee exercising a right or obligation under state or federal law, such as the filing of an EEOC complaint for race discrimination. Some states also protect other activities from retaliation such as voting, jury duty, asserting worker's compensation rights, etc.

Problems with termination of lay staff can be avoided or minimized by following a few basic guidelines:

1. Do your homework and document.
2. Follow your own policies.
3. Do not discharge an employee in haste or anger.
4. Investigate the facts before you act.
5. Review the personnel file to be sure the performance or behavior issues are well documented and to familiarize yourself with the employee's work history. If the work history and problems are not well documented, then work with your attorney to develop a plan to obtain the documentation that can be crucial to supporting the termination.
6. Consider all options. Is termination really the best way to address the situation? Would some other form of discipline meet your needs? Should you give the employee an opportunity to resign?
7. Consistency. Are you treating this employee in the same manner that you have treated other employees who have had the same or similar problems?
8. Consult with legal counsel.
9. Prepare for the termination meeting. Have a witness present at the meeting. Be honest and straightforward about the decision at the meeting.
10. Be prepared to address office details: returning office property and keys, computer access and security; what you will say about the decision; summarizing the termination meeting in a memo to the file; continuing benefits; accrued vacation; etc. See the Sample Termination Checklist included in the Appendix to this Section.
11. Be prepared for what you will say when called to give a reference for the person.³⁶
12. Be the Church. Treat the employee with care, compassion and dignity.

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³⁶ See discussion *supra* Subheading 3 (Background Checks – Generally).

EMPLOYEE OR INDEPENDENT CONTRACTOR?

An important question arises when a church retains a new person to perform a particular job for the church – is the person an employee or independent contractor? Serious tax consequences may result if a person is misclassified. Most persons retained to do the day to day work of any organization, including a church, are considered employees. The Internal Revenue Service (“IRS”) and the courts have determined that United Methodist clergy at the local church are to be classified as employees for income tax purposes.³⁷ Because of previous abuses and the general stance that persons who are working for an organization should be considered employees for income tax purposes, the IRS views independent contractor arrangements with suspicion and scrutiny.

A number of different tests have been promulgated in this area. The more prominent of these tests are outlined below.

1. The IRS Three Categories.

The IRS has stated that “evidence of the degree of control and independence fall into three common-law categories.”³⁸ The categories are “behavioral,” “financial,” and “type of relationship.” These three categories are intended to provide guidance in making a common law determination.

2. The Seven Factor Test from *Weber*.

One of the tests created via a court decision is the seven factors test from *Weber v. Commissioner*. This case determined the reporting status of United Methodist ministers. In concluding that United Methodist ministers are employees, the 4th Circuit adopted the decision of the Tax Court, which enumerated the seven factors:

1. The degree of control exercised by the principal over the details of the work;
2. Which party invests in the facilities used in the work;
3. The opportunity of the individual for profit or loss;
4. Whether or not the principal has the right to discharge the individual;
5. Whether the work is part of the principal’s regular business;
6. The permanency of the relationship; and

³⁷ See [I.R.S. Publication 15-A](#) 9-10, *Weber v. Commissioner*, 60 F.3d 1104 (4th Cir. 1995). Additionally, ministers “who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination” and “...given the authority to conduct religious worship, perform sacerdotal functions, and administer ordinances and sacraments according to the prescribed tenets and practices of that religious organization” are exempt from federal income tax withholding and considered self-employed for social security purposes. Also See [I.R.S. Publication 517](#).

³⁸<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-%28Self-Employed%29-or-Employee>.

7. The relationship the parties believe they are creating.³⁹

3. “The Degree of Control.”

The important thing to understand in this context is that, regardless of the specific test that is applied, these determinations are ultimately about the amount and degree of control that a church organization – be it the local church, the annual conference, or the denomination – can exert over the individual. Indeed, the Tax Court in *Weber* devoted several pages of its decision to an analysis of the structure and rules of The United Methodist Church connection and of the restrictions on, and regulation of, United Methodist ministers by the *Discipline*.⁴⁰

Thus, the more control the church organization has over the individual, the more likely it is that the person is an employee. The following are examples of situations that may arise in a church setting. These examples are not to be treated as a conclusive determination regarding how the IRS would view such a situation. Instead, they are intended to illustrate how subtle differences in the relationship between the church entity and the individual (i.e., the amount of control afforded to the church entity) can bring about a different result.

- A church organist/music director, who holds the position of Minister of Music, works 35 hours a week, and works under the direction of the church, is most likely an employee.
- An organist who works for six area churches when their regular organist is sick or on vacation, and who offers services to other churches, is likely an independent contractor.
- A maintenance person who works 20 hours a week for the church on evenings, weekends, and after weddings and funerals, has a regular day job elsewhere, but does not have a facilities maintenance business, is likely an employee.
- A maintenance person who works for ABC Maintenance Company and is sent to various job locations, including the church, depending on the work schedule set by ABC, would likely be an employee of ABC Maintenance Company, with the company being considered an independent contractor.
- A painter who walks in off the street and offers to spend the next four weeks painting the church for a flat fee is likely an independent contractor.

4. Additional Resources.

Church organizations sometimes have fact scenarios that are somewhere in between these extremes. Each church organization needs to do its own analysis, in close consultation with legal counsel, for any “job” that is in a gray area. Church entities that consistently or frequently retain

³⁹ *Weber* at 1110.

⁴⁰ *Id.* at 1106-10.

the services of individuals in any gray area can use [IRS Form SS-8](#). Through the submission of this Form, the IRS will conclusively determine the status of the individual. [IRS Publication 15-A](#) also contains guidance in this area.

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APPENDIX

SAMPLE PERSONNEL POLICIES

In the pages that follow is a sample Staff Reference Manual that includes examples of common personnel policy provisions. They are meant to be nothing more than samples. It is important that personnel policies are developed to fit the needs of each church organization and reviewed in light of each state's unique laws. Hence, these examples should only be used as starting points for the development of a tailored personnel policy, not as an end result. GCFA Legal Services is not recommending or endorsing any of these policies. Finally, this sample set should not be considered as all-inclusive. There likely are areas not covered here that may be important to certain church organizations. Similarly, some of these examples may be unnecessary for other church organizations.

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Introduction

The principal function of this Staff Reference Manual is to provide a current, accurate and readily accessible reference source for use by the staff of [organization]. This Manual is to be interpreted and used by [organization] in its absolute discretion.

All employees of [organization] are employed at will and not by contract. Employment at [organization] means you and [organization] are each free to terminate the employment relationship at any time without notice, and for any reason. This Manual is not an employment contract and is not to be construed as such. It is a statement of operating procedures and policies. Whether or not the disciplinary procedures described here are followed, all employees are subject to dismissal without notice at any time.

The Manual is designed to assemble descriptions of privileges and benefits to which employees are entitled. From a policy standpoint, it details those administrative policies and procedures presently authorized for members of the staff. It is not a static document. From time to time, revisions and additions to this Manual will be made. Any such changes will be controlling.

Occasionally a question will arise which has not been discussed in the Manual or elaboration will be needed on a topic already covered. In such cases, please contact the [list position] for additional information.

Policies as Applicable to United Methodist Clergy

Whenever there is a conflict between the personnel policies of [organization] and *The Book of Discipline of The United Methodist Church* with respect to ordained United Methodist clergy, the *Discipline* takes precedence.

Americans with Disabilities Act

[Organization] supports the Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 and will take all actions to comply with the requirements of the ADA and ADAAA. Under the ADA, reasonable accommodation must be made for individuals who have a physical or mental impairment that substantially limits one or more major life activities, has made such impairment known to his or her employer or is being regarded as having such as impairment. The ADA Amendments Act of 2008 (ADAAA) made clear that there are a broad range of activities which are included in the definition of “major life activity” and that any measures which an employee might undertake to mitigate the disability cannot be considered in reaching a determination if someone has a disability. Further the ADAAA provides that if the impairment is an episodic impairment or is an impairment that is in remission, such impairments may be a disability if they would substantially limit a major life activity when active. Employees and their managers/HR should engage in an interactive dialogue regarding the need for a reasonable accommodation. In some cases, this interactive process may be triggered without a request from the employee, such as when the organization receives notice from its own observation

or another source that a medical impairment may be impacting the employee's ability to perform his or her essential job functions.

Employees who believe they need an accommodation must specify, preferably in writing, what barriers or limitations prompted the request. The organization will evaluate information obtained from the employee, and possibly his or her health care provider or another appropriate health care provider, regarding any reported or apparent barriers or limitations, and will then work with the employee to identify possible accommodations, if any, that will help to eliminate or otherwise address the barrier(s) or limitation(s). If an identified accommodation is reasonable and will not impose an undue hardship on the organization and/or a direct threat to the health and/or safety of the individual or others, [Organization] will generally make the accommodation, or it may propose another reasonable accommodation which may also be effective. Employees are required to cooperate with this process by providing all necessary documentation supporting the need for accommodation, and being willing to consider alternative accommodations when applicable.

Attendance and Punctuality

[Organization] recognizes the need for employees to be absent from work due to illness or the need to take care of personal business during the normal workday. We instituted sick time and personal days to provide for these needs as they arose. Employees also may qualify for a leave of absence for their own major illness, the major illness of a family member, the birth or adoption of a child, workers' compensation injury, or military and/or National Guard duty.

Having provided for these personal situations, it is important to remember that excessive absenteeism, tardiness, and/or leaving early causes the burden of filling in for the absent employee to fall on other employees within the [organization]. It is a requirement of each job that an employee report to work punctually and work all scheduled work hours as well as any required additional time.

Periodically, special circumstances will occur that warrant an employee being excused from work without sufficient leave to cover the absence. To ensure fairness throughout [organization], these types of requests require the approval of the employee's department manager.

An employee who is going to be absent, tardy, or leave early from work is responsible for notifying his/her supervisor as soon as possible, regardless of whether the employee has sufficient paid leave to cover the absence. An employee who is absent and fails to notify his/her supervisor will be subject to corrective action for failure to notify. An employee who has been absent for three consecutive days without notifying his/her supervisor may be considered to have voluntarily resigned.

Occasionally, nonexempt employees may be permitted to make up missed time with the prior approval of their supervisor. The supervisor will determine the exact amount of time the

employee will be allowed to make up in a workweek. Each supervisor must be consistent in allowing employees to make up time within the department. No employee will be permitted to work more than 40 hours during the workweek for the purpose of making up time without the prior approval of his/her supervisor.

If an employee terminates employment with a negative balance in his/her leave account(s), the amount will be deducted from his/her final paycheck, unless written authorization is required.

Background Checks

To protect [organization] and its employees, all applicants will be subject to various background checks and drug screening checks prior to being offered a position with [organization].

All applicants applying for any position with [organization] will be subject to reference checks with former employers and/or managers. Individuals' claims to have certain educational credentials, either in writing or in an interview, are subject to verification. In addition, all applicants will be subject to a criminal background check. Only individuals in Human Resources that are authorized to do so may initiate or receive criminal background information.

Positions that have responsibility for initiating or affecting financial transactions will require a credit check of any individual offered such a position. These responsibilities could include, among other things, collecting or handling cash or checks, writing checks or approving them, access to a direct money stream or as a fiduciary to the organization.

All offers of employment shall be contingent upon the successful completion, as determined in the sole discretion of [organization], of the appropriate background checks.

Information gained from any of the above background checks will be held in confidence and shared with management individuals only on a need-to-know basis. [Organization] also reserves the right to obtain and to review an applicant's or an employee's criminal conviction record, and related information, and to use such information when making employment decisions, but only to the extent permissible under applicable law.

Compensatory Time for Exempt Employees

Compensatory time is time off awarded to allow physical and mental recovery to an exempt employee because of service beyond normal expectations.

In order to recognize those times when additional days are required of exempt employees due to special projects or increased workloads, [organization] gives these employees an additional benefit by allowing them to accrue compensatory time. Exempt employees are eligible to receive one day of compensatory time for each seven consecutive days worked.

For purposes of computing compensatory time, a workweek begins on Monday and ends on Sunday. Paid holidays are considered as days worked for the purpose of accruing compensatory

time. All other benefit time will not be included as time worked in the computation for accruing compensatory time. Travel time will be considered as time worked for the purpose of awarding compensatory time.

The use of compensatory time must be approved and scheduled by the employee's supervisor. Compensatory time must be taken in a minimum of half day increments. Compensatory time shall be taken within one month after the event for which the compensatory time was earned. An exempt employee who terminates at any time prior to taking compensatory time will not be eligible for payment, since their salary is intended to compensate him/her for all hours worked. However, if the exempt employee is laid off, he/she will be paid for all of his/her compensatory time day(s). [organization]-sponsored events are not considered as time worked for the purpose of accruing compensatory time.

Corrective Action

When it becomes necessary to address an employee's actions in the workplace, general guidelines of acceptable business conduct will govern. Depending upon the nature and seriousness of the employee's actions, corrective action may begin at any step of the corrective action process. The process should ensure that employees are informed of exactly what behavior needs to be corrected, inform employees of the measures they must take to correct unacceptable behavior, and give employees adequate opportunity to correct the situation. This policy lets employees know what to expect but gives managers the ability to accelerate the process for significant performance problems. Any acceleration requires the approval of Human Resources to ensure fairness.

Nothing contained in this Corrective Action Policy creates a contract of employment between an employee and [organization] and is not to be construed as such. It is a statement of operation procedures and policies for [organization]. Employees and [organization] each remain free to terminate the employment relationship at any time, without notice.

Step One: Record of Conversation

The immediate supervisor of the employee will meet with the employee and inform him/her of the specific behavior that is unacceptable. The behavior will be clearly identified and a time by which the situation must be rectified is set. A written record of this conversation should be forwarded to Human Resources to be placed in the employee's personnel file. The Record of Conversation must be signed by both the employee and the supervisor. Signature does not indicate acceptance, only that both parties have read the document.

Step Two: Final Written Notice

The same procedure as the Record of Conversation will be followed. The Final Written Notice must specify that the consequences of failure to remedy the behavior will be termination of employment. In conjunction with issuing an employee a Final Written Notice, a supervisor also

may grant an employee a one-day paid Decision-Making Leave of Absence in order to impress upon the employee the seriousness of his/her situation. A Decision-Making Leave of Absence must be documented in the Final Written Notice and approved by Human Resources. Employees will be permitted only one Decision-Making Leave of Absence during their employment.

Step Three: Termination

An employee who does not correct his/her behavior after receiving Step One and Step Two warnings will be terminated if the behavior continues. In cases involving more serious problems or violations of policy, the process may be accelerated. All documentation may be considered to establish an overall conduct record. Any acceleration must be reviewed with the Human Resources prior to it taking place.

On rare occasions, an employee may be terminated for a single occurrence of behavior or violation of policy without having been previously warned. Such action may be justified because the offense is so severe as to make a warning unnecessary – that any employee normally would know that such behavior is unacceptable. In these cases, supervisors may suspend the employee pending a complete investigation of the situation before terminating the employee. Any terminations of this nature must be reviewed with Human Resources prior to the termination taking place.

In cases where the supervisor feels an employee should be terminated immediately, the supervisor should:

- Inform Human Resources of the circumstances with a recommendation for termination;
- Meet with the employee, with a representative of the Human Resources department, to advise the employee about his/her employment status; and
- Request the employee to immediately leave the premises.

Suspension may take place at any time during the Corrective Action Process. A supervisor may, with the approval of Human Resources, place an individual on suspension without pay for up to five working days. An employee may be placed on suspension when he/she commits a serious act, but not so severe as to warrant immediate termination. Discretion should be used in applying suspension as a management tool.

Any new employee will be in his/her introductory period for the first 90 days of his/her employment. If corrective action needs to be taken during the introductory period, the employee will be issued a Final Written Notice that clearly states any additional occurrence of unacceptable behavior within the 90-day introductory period will result in termination. The new employee will be asked to sign the document indicating that he/she has read the notice. The notice will then be placed in the employee's personnel file.

Discrimination, Harassment and Retaliation

[Organization] is committed to providing a work environment free of discrimination, harassment, disrespectful or other unprofessional conduct. This policy applies to all persons involved in the operation of [organization] and prohibits such conduct by any employee, including supervisors and managers, as well as vendors, customers, independent contractors and any other persons. [Organization] policy prohibits discrimination and harassment based on race, color, religion, sex (including pregnancy and gender), sexual orientation, national origin, disability, age, military or veteran status, genetic information, or any other classification protected by applicable federal, state, or local law, ordinance or regulation. This policy also prohibits unlawful harassment based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy also prohibits retaliation against any employee for raising, in good faith, any concern of discrimination or harassment or for participating in or providing any information in aid of an investigation into any allegation of discrimination or retaliation. All prohibited conduct violates this [organization]'s policy. Appropriate remedial action, up to and including termination of employment, will be taken against any employee who has engaged in proven conduct of discrimination, harassment or retaliation.

Discrimination

Except as mandated by ¶ 715.5 of *the 2012 Book of Discipline*, or where preference in hiring, selection and promotion may be given to professing members of The United Methodist Church where such is a bona fide occupational qualification for the position, employment decisions or other actions affecting any aspect of the employment relationship that are taken based on one of the categories listed in that policy and which interferes with an employee's equal employment opportunities may constitute discrimination.

Harassment

Harassment on the basis of any legally protected classification is prohibited, including harassment based on: veteran status, uniformed service member status, race, color, religion, sex, age (40 and over), pregnancy (including childbirth, lactation and related medical conditions), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics) or any other consideration protected by federal, state or local law. Prohibited harassment may include behavior similar to the illustrations above pertaining to sexual harassment. They include conduct such as:

- Verbal conduct including threats, epithets, derogatory comments or slurs based on an individual's protected classification;
- Visual conduct including derogatory posters, photography, cartoons, drawings or gestures based on protected classification; and
- Physical conduct including assault, unwanted touching or blocking normal movement because of an individual's protected status.

Harassment harms us all and conflicts with our values in addition to being illegal under federal and state laws.

Sexual Harassment

Sexual harassment includes unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made a term or condition of employment; or
- Submission to, or rejection of, such conduct is used as a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment also includes various forms of offensive behavior based on sex. The following is a partial list:

- Unwanted sexual advances.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, posters, websites, emails or text messages.
- Verbal conduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, or comments about an employee's body or dress.
- Verbal sexual advances or propositions.
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- Physical conduct: touching, assault, impeding or blocking movements.
- Retaliation for making reports or threatening to report sexual harassment.

A Higher Standard. Unprofessional or inappropriate behavior, even when it does not rise to the level of illegal harassment under federal, state or local law, is against our values. We hold that all employees are to be treated with respect and dignity. Consequently, conduct that may not technically be in violation of the law may still be in violation of this policy. Such conduct, while not illegal, is unacceptable in the [organization] workplace. Unprofessional conduct may include but is not limited to mistreatment or bullying of one or more employees using ridicule, humiliation, intimidation, embarrassment or denigration of performance. Unprofessional or inappropriate behavior can exist at any level of an organization. Examples of unprofessional or inappropriate conduct can include but are not limited to:

1. Unwanted social bantering or teasing;
2. Verbal abuse and profanity, humiliation, constant criticism;
3. Gossip;
4. Personal and professional denigration;
5. Overt threats;
6. Abusive and/or derogatory language that in a subtle or overt manner belittles, humiliates, impugns, or defames a person or a group of persons;
7. Behavior (individual, group or institutional) which abuses, bullies, belittles, humiliates, defames or demeans a person or a group of persons; or
8. Documentation, printed or visual, which abuses, bullies, humiliates, defames or demeans a person or group of persons.

Retaliation

Retaliation occurs when an employee engages in protected activity and, because of that activity, a materially adverse employment action is taken against the employee. Protected activities include:

1. Making an internal complaint regarding conduct that the employee believes in good faith to be harassing, discriminatory, or unlawful;
2. Filing administrative complaints with government agencies regarding workplace conditions;
3. Filing a lawsuit;
4. Participating in an internal investigation or an investigation conducted by [organization] or an administrative agency regarding workplace conditions;
5. Requesting a work accommodation;
6. Requesting or taking leave under federal or state leave laws;
7. Pursuing a claim for worker's compensation benefits; or
8. Refusing to follow directions from a superior that an employee believes in good faith to violate local, state or federal laws.

[Organization] is committed to providing a workplace free from unlawful retaliation and will not tolerate retaliation against any employee, either by a supervisor or a co-worker.

All parties contacted in the course of an investigation will be expressly reminded that [organization] will not tolerate retaliation in any form against any employee who believes that retaliation has occurred and reports such conduct pursuant to this policy. Moreover, [organization] will protect any employee who participates in any investigation from any resulting retaliatory conduct. If an employee believes that he or she is experiencing retaliation, he or she must promptly report the conduct.

In the course of any investigation, [organization] will take appropriate measures to maintain the confidentiality of the participants to the extent possible. Although it may be necessary to divulge some information to ensure that a fair investigation is conducted, [organization] will limit information to only those individuals with a need to know of the complaint or of the investigation or be involved in some way.

Complaint Procedure

Any employee who believes that he or she has been harassed, discriminated against or subject to retaliation by a co-worker, supervisor, agent, client, vendor or customer of [organization], in violation of the foregoing policies, or who is aware of such harassment, discrimination or retaliation against others, should immediately provide a written or verbal report to his or her supervisor, any other member of management or to Human Resources to report such incidents. After a report is received, a thorough and objective investigation by management will be undertaken. The investigation will be completed and a determination made and communicated to the employee as soon as practical. The organization expects that all employees fully cooperate with any investigation conducted by the organization into a complaint of proscribed harassment, discrimination or retaliation, or regarding the alleged violation of any other organization policies.

If we determine that this policy has been violated, remedial action will be taken, commensurate with the severity of the offense. Appropriate action will also be taken to deter any future harassment or discrimination prohibited by this policy. If a complaint of prohibited harassment, discrimination or retaliation is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken.

The Equal Employment Opportunity Commission ("EEOC") and equivalent state agencies will accept and investigate charges of unlawful discrimination or harassment at no charge to the complaining party.

Direct Deposit

For the sake of convenience and efficiency for both the employee and the organization, employees must have their payroll checks processed through direct deposit. The Payroll Department will split an employee's paycheck between up to ten different checking or savings accounts.

Emergency Exit Plan

Each cubicle and office will have a copy of the Emergency Exit Plan placed in it that is specific to the relevant floor. Red arrows will indicate the pathways of egress. Employees should be aware of the alternate routes to both stairwells.

In Case of Fire

- If an employee discovers a fire, the employee should activate the nearest fire alarm.
- When the fire alarm horn & lights activate, exit the building by the nearest available stair tower at either end of the building.
- Do not use the elevators.
- (Explain where to meet).
- Do not re-enter the building until instructed Building Services personnel.

In Case of Severe Weather

- When notified of severe weather, exit into the stairwells.
- Proceed to the lowest level.
- Do not exit the building.
- Do not open exterior stairwell doors.
- Do not re-enter the office spaces until instructed by Building Services personnel.

Visitors

- If an employee has a visitor in the building at the time of an emergency, the employee should guide the visitor in following the proper procedures.

All employees are expected to follow the emergency procedures outlined above for all drills.

Recruitment

The recruiting process has been developed to attract a diverse applicant pool. Further, the selection process ensures all new hires clearly understand the terms and conditions of their employment, that all terms and conditions of employment are in writing, that no “off-the-books” agreements are made, that the new hires fall within the existing salary structure, and that proper controls are in place to ensure that management supports all new/replacement hiring.

[Organization] prohibits discrimination and harassment of any type and affords equal employment opportunities to employees and applicants without regard to race, color, religion, sex, national origin, disability status, protected veteran status, or any other characteristic protected by law.

Hours of Work

The standard workweek is [number of] hours. The standard workday is [number of hours] hours for nonexempt workers. Workday lengths for exempt employees are determined primarily by their current workloads. General office hours are from 8:30 a.m. to 4:30 p.m., Monday through Friday. As starting and ending times vary within departments and office locations, each

department manager will determine the schedule for his/her department. The workweek commences on Monday morning at 12:01 a.m. and ends the following Sunday evening at midnight.

Meal Breaks: An uninterrupted unpaid meal period is provided to any employee who works a minimum of six hours on that day. The normal meal period should occur approximately halfway through the workday and should not be scheduled before or during the first hour of work. However, certain departments may require alternate meal periods. The length of the meal period is 45 minutes. Nonexempt employees should clock out when leaving for lunch and clock back in upon their return. All employees are encouraged to leave their workstations during all breaks in order to receive the full benefit of those breaks and meal periods.

Breaks: Employees are encouraged to take breaks as necessary for personal matters (e.g., restroom breaks, coffee breaks, etc.). The total duration of time for each morning and afternoon break should not exceed 15 minutes. Breaks cannot be combined with lunch to provide a longer meal period.

Inclement Weather

Inclement weather sometimes warrants closing [organization's] offices during normal hours of operation. [Organization] will make the decision on whether or not to close the office. If the office is closed, no further action is required on the part of employees. However, if the office is open, employees must make a reasonable effort to report to work as scheduled. Employees should not take unnecessary risks to report to work in unsafe conditions. If an employee is unable to come to work either because of driving conditions or because of dependents that require the employee's care, the employee must notify his/her supervisor that the employee will not be coming in to the office. The day may be charged either as personal or vacation time. For employees that do not have personal or vacation time available, nonexempt employees will be paid only for time worked and exempt employees will not be paid for full-day absences due to inclement weather.

Injury/Illness on the Job

Any employee reporting an on-the-job injury or illness will receive immediate and appropriate medical treatment. All applicable federal, state, and local laws or regulations pertaining to occupational injuries or illnesses will be followed and complied with at all times.

Failure to report an injury or illness as required by state law and [organization] policy could result in loss of compensation benefits, and possibly lead to corrective action up to and including termination.

In the event the injury requires outside medical treatment, employees will be paid for their entire shift and should not clock out. If subsequent medical visits are necessary, employees should schedule those during non-work hours, if possible. Employees should clock out if the appointment is during their regular work shift. If employees must miss work in order to receive authorized

medical follow-up treatments for a work-related injury or illness, they will receive pay for up to two hours per visit.

Interns

Interns may be used to complete one-time, nonrecurring projects and should not be employed in regular full- or part-time positions. All interns must sign waivers that state clearly all work done during their internship belongs to the organization and that acknowledge their obligation to maintain confidential and/or proprietary information even after they leave the organization.

[Organization] will offer internships to candidates on a periodic basis to assist with various projects as the need arises or for the purpose of evaluating each candidate for full-time employment. No intern shall be employed for longer than six months in any 12-month period. All interns must be at least 18 years of age and may not be used to displace a regular employee or occupy a vacant open position. All intern candidates must be enrolled in an accredited school, vocational program, college, or university.

Interns will be considered temporary employees and must abide by all [organization] rules and regulations. They are not entitled to receive any fringe benefits with the exception of those mandated by local, state, and federal laws. Interns will not necessarily be guaranteed a job upon completion of their internship and/or their education and must apply for an open position to be considered for employment.

Job Descriptions

A job description is a formal document describing the nature, scope, physical requirements, and responsibilities of a specific job. Job descriptions are used for the purposes of training and development, annual performance appraisals, promotions, recruiting, and hiring. Job descriptions are prepared by Human Resources with input from the incumbent employee, the supervisor, and the department manager.

Human Resources is responsible for:

- Administering the overall job description program;
- Providing the necessary training, instructional materials, and assistance to employees, supervisors, and department managers;
- Monitoring job descriptions for proper format;
- Maintaining a central file of all current job descriptions; and
- Ensuring that all positions have a job description.

Supervisors and department managers are responsible for reviewing and approving job descriptions for their areas.

[Organization's] job evaluation program provides a systematic and equitable method of evaluating all jobs.

Personal Conduct

[Organization] expects all employees to observe certain standards of behavior while at work and at [organization]-sponsored events. Employees shall be responsible for ensuring the conduct of their guests at a [organization]-sponsored function is respectful and would not reasonably be considered offensive to anyone in attendance. These standards are not intended to restrict employees, but to ensure a consistent application of the policies and procedures for all employees.

These standards include, but are not limited to, the following:

- Completing all documents and records accurately;
- Attending all mandatory [organization] meetings;
- Refraining from altering and/or destroying any documents or records without proper authorization or in violation of any applicable [organization] policy;
- Maintaining satisfactory attendance and punctuality;
- Performing duties and operating equipment with care to protect the safety of employees, coworkers, and the public;
- Carrying out assigned duties and following reasonable instructions or requests from supervisors and/or management;
- Refraining from soliciting funds or selling any item, commodity, or service, except as authorized by applicable [organization] policy;
- Refraining from possessing weapons on the premises;
- Refraining from any manner or form of discrimination and/or harassment, regardless of whether it is sexual, racial, religious, or related to another's gender, age, sexual orientation, or disability;
- Using [organization]'s or another employee's property in an inappropriate manner;
- Refraining from misuse, theft, or destruction of [organization]'s time and/or property or another employee's property;
- Remaining in the employee's work area, on the job, and awake during working hours;
- Reporting to work fit for duty and not under the influence of alcohol and/or drugs;
- Refraining from using, selling, or possessing illegal drugs on the premises or while on [organization] business;
- Possessing and/or taking only those drugs that are medically authorized, approved, and determined by the employee, the employee's physician, and the organization not to impair job performance or cause a safety hazard;
- Notifying a supervisor when taking prescription medication that would affect job performance;

- Passing a mandatory drug and/or alcohol test or not refusing to take a drug and/or alcohol test;
- Refraining from fighting, threatening, intimidating, or coercing fellow employees during working hours or at [organization]-sponsored functions;
- Refraining from the use of foul or offensive language;
- Disclosing or using confidential or proprietary information only with proper authorization;
- Using [organization]'s telephones for [organization] purposes and limited personal business;
- Failing to obtain or maintain a current license, certification, or other qualification required by law or [organization] as a condition of continued employment;
- Engaging in conduct unbecoming of a [organization] employee and/or conduct that appears to reflect badly upon the organization;
- Refraining from being convicted of a felony; and
- Refraining from participating in any action that would in any way interfere with or disturb the normal operation of the organization or that would interfere with the ability of management to manage.

Failure to observe the above standards could lead to corrective action up to and including termination.

Personal Property

Personal belongings brought onto [organization]'s premises are the employees' responsibility. While [organization] does all it can to protect employee's property, it cannot be held responsible for the loss or theft of personal belongings. If employees find property missing or damaged, they should report it to their supervisor immediately.

References

All reference inquiries regarding employees who are currently employed or have been previously employed by [organization] must be referred to Human Resources. All information regarding an employee's character or abilities is considered confidential and shall not be released in response to a reference request, without written authorization from the employee. Otherwise, Human Resources should only verify employment starting and ending dates.

Human Resources may release salary information to credit institutions when such information will assist the employee in securing credit, provided the request for salary information is made in writing and the employee authorizes release of the information.

Search

This policy provides for employee safety and is intended to keep illegal drugs, alcohol, firearms, explosives, or other improper materials off the premises.

Access to [organization]'s premises is conditioned upon [organization]'s right to inspect or search the person, vehicle, or personal effects of any employee or visitor. This may include any employee's office, desk, file cabinet, closet, or similar place and any packages or items that the employee may be carrying. Because even a routine inspection or search might result in the viewing of an employee's personal possessions, employees are encouraged not to bring any item of personal property to the workplace that they do not want revealed to the organization. These items are subject to inspection and search at any time, with or without prior notice. [Organization] will not tolerate any employee's refusal to submit to a search.

Smoking

Smoking and any other use of tobacco, vapor producing, and/or non-prescription nicotine replacement devices (i.e., electronic smoking devices or e-cigarettes) ("smoking products") are prohibited inside [organization]'s facilities. The use of smoking products is permitted only in designated outside spaces. Appropriate signage will be placed at entrances to all buildings advising employees and visitors that [organization] maintains a smoking-free environment. This policy relates to all work areas at all times, including before and after normal working hours. Employees that violate this policy or who tamper with "no smoking" signs may be subject to disciplinary action up to and including termination.

Temporary Modified Duty

[Organization] is committed to providing work, when possible, for employees who have been restricted by a health care provider due to a work-related injury or illness. Such work will be provided subject to availability. Work will be assigned according to the nature of the injury or illness and the limitations set forth by the treating health care provider. Every effort will be made to place employees in positions within their own departments. If necessary, an employee will be placed wherever an appropriate position is available.

While on temporary modified duty, employees will continue to receive their regular rate of pay. Employees who are placed outside their department will continue to have their salary charged to their regular department.

Employees on temporary modified duty must furnish a written update of their medical condition to Human Resources from the treating health care provider after each visit in order to remain in the reassigned job. Temporary modified duty assignments are generally limited to a period of 90 days, subject to review and extension if required by law. Being placed on a temporary modified duty assignment does not excuse an employee from following all rules and regulations.

Time Reporting

[Organization] shall comply with applicable wage and hour laws, including the Fair Labor Standards Act.

Nonexempt employees are required to keep daily records of their hours worked. Falsifying or altering any employee's time record is a violation of [organization] policy and is grounds for termination.

Use of Information Technology

[Organization] requires all employees to use [organization]-owned information technology only for appropriate business purposes. For the purposes of this policy, "information technology" includes, but is not necessarily limited to, telephones, cell phones, computers and related peripherals, tablets, Internet access, and all software and applications used in conjunction with the foregoing.

Workers' Compensation

[Organization] shall maintain appropriate workers' compensation insurance covering each employee, as required by law.

An employee is required to immediately report any work-related injury or illness to the employee's supervisor or to Human Resources. Employees may be denied workers' compensation benefits if written notice of the injury is not provided within 30 days of the injury or illness.

Any claim for an injury or illness caused by an employee's willful misconduct or alcohol or drug usage will not be compensable. [Organization] retains the right, at its discretion, to require post-accident alcohol and/or drug testing. If an employee refuses to submit to a drug or alcohol test, or returns a positive test result, it will be presumed that alcohol or drug use was the cause of injury, which will result in denial of benefits.

Generally, injury or illness resulting from an employee's voluntary participation in recreational, social, athletic, or exercise activities (including, but not limited to, athletic events, competitions, parties, picnics, and exercise programs sponsored by [organization]) is not compensable.

Workers' compensation fraud is a crime, punishable by fines and/or jail time and may also be grounds for disciplinary action, up to and including termination. [Organization] will prosecute any individual found to be fraudulently claiming a work-related illness or injury.

If the employee's physician returns the employee to work with specific temporary restrictions (light duty) and [Organization] provides a job within those restrictions, the employee must return to work and attempt the light duty. Employees who decline temporary modified duty

or who fail to return to work after being released by an approved physician will be considered to have resigned and their employment will be terminated. If employees are eligible for family and medical leave because of the employees' personal health condition, they will have their workers' compensation benefits terminated if they refuse temporary modified duty for which the employee is qualified.

At Will Employment

All employees are at will. This means that you and [organization] are free to terminate the employment relationship at any time, without notice and for any nondiscriminatory reason or for no reason.

[Organization]'s employment manual is not an employment contract and is not to be construed as such.

Nepotism

A person shall not become a regular full-time or regular part-time staff member for any position that would require that person to directly supervise, or be directly supervised by, a member of that person's family (spouse, parent, children, in-laws, etc.). Any exceptions to this policy must be authorized by the [committee or position] prior to employment. If two employees marry, become related, or enter into an intimate relationship, they may not remain in a reporting relationship or in positions where one individual may affect the compensation or other terms or conditions of employment of the other individual.

Pay Periods

All staff are paid on the 15th and 30th of each month. If a payday falls on a holiday, Saturday or Sunday, salary checks will be dated and distributed on the prior work-day.

Payroll Advances

[Organization] will not provide payroll advances or extend credit to staff.

Personal Appearance

While it is [organization]'s intent that all employees dress for their own comfort during work hours, the professional image of our organization is maintained, in part, by the image that our employees.

Employees working in office areas should dress conservatively and professionally. Under no circumstances may employees wear halter tops, strapless tops, spaghetti straps, tank tops, cropped tops, clothing with offensive or inappropriate wording or pictures, clothing that shows undergarments, torn clothing, clothing with holes in it, or tight-fitting, revealing, or oversized

clothing. All clothing must be clean, neat, and fit properly. Safe, neat, and clean shoes should be worn at all times. [Can add more specific descriptive language appropriate for your work setting]

For all employees, professional appearance also means an expectation that all employees maintain good hygiene and grooming while working. Facial hair is permitted as long as it is neat and well-trimmed. All tattoos must be small in size or covered at all times and may not be offensive in nature. Employees are expected to be conservative in the wearing of makeup, scented products, and hairstyles.

All employees should practice common sense rules of neatness, good taste, and comfort. Provocative clothing is prohibited. [Organization] reserves the right to determine appropriate dress at all times and in all circumstances and may send employees home on their own time to change clothes should it be determined their dress is not appropriate.

Overtime

For a non-exempt employee, the first 40 hours of work in any one work week shall be computed at the employee's regular hourly rate. Any time worked that exceeds 40 hours in any given work week shall be computed at 1.5 times the employee's regular hourly rate. Unworked hours (vacation, holidays, sick leave, etc.) do not count towards hours worked for overtime computation purposes. For purposes of this policy, the workweek begins on Monday and ends on Sunday. All requests for overtime must be approved, in advance, by the supervisor. Working overtime without prior authorization may result in disciplinary action.

All non-exempt employees must fill out a time record each day to track their hours worked. These time records are used to compute earnings. All hours worked must be clearly reported on the time card. Working off-the-clock is not allowed. Each employee is responsible for the accuracy of his/her time records. Falsifying or altering any employee's time records is expressly prohibited and is grounds for termination.

Social Security

[Organization] is required by state and federal laws to make certain deductions from your paycheck each pay period. Such deductions typically include federal and state taxes and Social Security. Social Security tax is paid half by the employee and half by the employer. The percentage of salary deduction and the maximum amount of salary subject to taxation will vary depending upon federal legislation.

Clergy pay the total cost for Social Security coverage as "self-employed" persons for Social Security purposes. Employees are urged to check the accuracy of their accounts with the Federal Social Security Administration at least once every three years.

Death in the Family

[Organization] provides for its staff, in the event of death in their family, by offering time away from the office. If there is a death in a staff person's immediate family (spouse, parent, child, or family member living in the immediate household), leave may be arranged, without loss of pay, for up to five days. For other family members (brother, sister, father-in-law, mother-in-law or grandparent), leave of up to three days, with pay, may be arranged, depending upon distance involved.

In the event of the death of a more distant relative, arrangements may be made for one such day to be taken.

Jury Duty/Court Appearances

Any full-time or part-time employee called to serve on a jury will be paid for the day or days in which the court requires attendance.

If an employee is subpoenaed to appear in court as a witness for a matter unrelated to [organization], the employee will be excused from work in order to comply with the subpoena but will not be paid for the time off. In such circumstances, the employee may use accrued vacation days or personal days, if available.

The employee must present any summons to their supervisor on the first working day after receiving the notice. If an employee is not required to serve on a day he/she is normally scheduled to work or if the employee is excused before serving three hours of jury duty, he/she is expected to report to work.

The employee will not be required to reimburse [organization] for any money received as compensation or expense allowance for jury duty. Any employee required to appear in court for a matter related to [organization] will be paid the employee's standard base rate of pay for such time and will be reimbursed for any out-of-pocket expenses incurred in making such an appearance.

Holidays

[Organization] recognizes eleven (11) paid holidays for its employees:

New Year's Day

Martin Luther King Jr.'s Birthday (third Monday in January)

Good Friday

Monday after Easter

Memorial Day (last Monday in May or day observed)

Independence Day

Labor Day (first Monday in September)

Thanksgiving Day

Friday following Thanksgiving
Day preceding Christmas Day
Christmas Day

These are paid holidays that are subject to the following provisions:

- A. When any of these holidays falls on a weekend, the following Monday shall be considered a holiday;
- B. Should the holiday be on the day part-time employees of [organization] are not scheduled to work, an equivalent day shall be granted, in consultation with one's supervisor, during the calendar year;
- C. Temporary/seasonal (full-time or part-time) employees are not eligible for holiday pay;
- D. Persons on leave of absence are not eligible for holiday pay; and
- E. Holiday hours shall not be counted as hours worked in computing overtime for the week in which the holiday falls.

Leaves

[The organization's sick and other leave policies should be included in the staff reference manual.]

Annual Conference Attendance

Clergy and lay staff who are members of an annual conference shall be granted time off with pay to attend the conference. Such time off shall not be charged to vacation.

Jurisdictional and General Conference Attendance

Staff who are elected delegates or reserve delegates to a jurisdictional or general conference shall be granted time off with pay to attend the conference. Such time off shall not be charged to vacation.

Personnel Files

[Organization] shall keep accurate, up-to-date employment records on all employees to ensure compliance with state and federal regulations, to keep benefits information up to date, and to make certain that important mailings reach all employees. All information contained in personnel files is the property of [organization] and is considered confidential.

Employees must inform [organization] of any necessary updates to their personnel file, such as changes to addresses, telephone numbers, emergency contacts, marital status, dependents, or military status. Employees also should inform their supervisor and [organization] of any outside training, professional certifications, education, or any other change in status.

[Organization] will respond to all requests for verification of dates of employment and job titles to outside entities. Except for what is required by law, no other information will be communicated about an employee without written authorization from the employee.

All current employees will be permitted to review their personnel files at reasonable times upon reasonable, written notice in the presence of a representative of [organization].

Staff Reviews

Supervisors are to conduct regular, timely performance reviews. All employees should be reviewed 90 days after their initial hire date and annually thereafter. Each year, the schedule for annual performance reviews will be set and communicated in a timely fashion. These reviews should take place regardless of whether the employee is eligible for an increase in compensation. A performance evaluation is not necessarily linked with an increase in compensation. Supervisors may review performance more often than is required by this policy.

All formal performance evaluations must be signed by the employee and the employee's supervisor. An employee's signature on his/her performance evaluation only acknowledges that it has been reviewed with the employee. Employees are encouraged to attach any written comments they wish to their performance reviews. Current employees shall have access to all signed performance evaluations.

[THIS SPACE INTENTIONALLY LEFT BLANK]

SAMPLE EMPLOYEE HIRE CHECKLIST

Please print

Employee Start Date:	Date Requested:
*Employee First Name:	*Employee Last Name:
Department:	Manager:
*Job Title:	
Workspace Location:	
For HR use only Birthday: _____ (month/day only) Publish? <input type="checkbox"/> Yes <input type="checkbox"/> No I-9 Form completed _____ Background check completed _____ Employee Application, signed and dated _____ Federal W-4 Form, signed and dated _____ State W-4 Form, signed and dated _____ W-9 Form, if needed, signed and dated _____ Health Insurance Application and Other Application (i.e. Life, Disability, Dental, Pension) _____ Personnel Manual signature sheet, signed and dated _____ Signed verification of receipt of job description _____ Copies of appropriate licenses, resumes, examination results _____	For IT use only Internal Extension: _____ Email: _____

RETURN TO HUMAN RESOURCES WHEN FINISHED

Needed from Building Services
Type of workspace: <input type="checkbox"/> Cubicle <input type="checkbox"/> Office Name plate/signage? <input type="checkbox"/> Yes <input type="checkbox"/> No Building Access: <input type="checkbox"/> General Access (weekdays 6:00 am-10:00 pm) <input type="checkbox"/> Weekend Access Are there any new furniture needs OR cubical construction/reconfiguration needed for this workspace? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please specify:</i> _____ _____ _____

Needed for Telephones

Will this person need a new extension or use the existing extension associated with _____

Needed for Communications and Access

Computer needed:

- Desktop Laptop

Will this person need access to specific computer drives?

- Yes No

If yes, which drive? _____

List software programs this person will need to access:

Does this person need to be added to an email distribution group?

- Yes No

If yes, which group? _____

Department group? _____

Will this person need permission to access additional inboxes?

- Yes No

If yes, please indicate the inbox name and appropriate permissions: _____

- View only Send emails on Behalf of

Will this person need permission to view his/her manager's calendar?

- Yes No

If yes, please indicate the appropriate permissions:

- View only View and Edit

Needed for Credit Card

Will this person need a credit card in their name? Yes No

If yes, please indicate the requested credit limit: _____

What will be the primary use for this credit card? _____

Needed for Business Cards

Will this person need business cards?

- Yes No

Needed for Training

Which training will this person need?

SAMPLE TERMINATED STAFF FORM

Use this form to request termination of employee from Information Technology and Building Services.
 Workflow: Department Head → HR (copies to each, who will then comply, sign, and return to HR)

Please type or print

Employee First Name:	Employee Last Name:
Date Requested:	Department:
Manager:	Job Title:
Term Date:	Date to receive all equipment:

Manager

Manager has received:

Laptop computer <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Desk/cabinet/door key(s): <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Cell Phone <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	iPad <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Cisco Home phone <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Credit Card <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Badge/Key Card <input type="checkbox"/> Yes <input type="checkbox"/> No	Other: _____

Manager's Instructions to IT

Employee's Email address and Outlook Calendar:

Terminated Only Change Password

Grant access to _____

Include a message _____

Other _____

Archive emails

Remove from email list.

Desktop computer access should be:

Terminated

Other _____

Local Files moved to: _____

Access to _____ should be

Terminated

Other _____

Manager's Instructions regarding Telephone Access

Telephone Extension should be:

Terminated

Forwarded to: _____

Other _____

Delete telephone mailbox

Manager's Instructions regarding Building Access

Date and time that **Badge/Key Card** access stops _____

Administrative

Remove from:
 staff directory
 Remove from birthdays, anniversaries, org chart, etc.

HR Requestor:	Date:
Manager:	Date:

Upon Completion:

IT:	Date:
Building Services:	Date:

HIPAA PRIVACY RULE AND LOCAL CHURCHES

In general, the HIPAA Privacy Rule does not apply to the traditional practices of local churches publicizing prayer lists and prayer requests. There are, however, some special circumstances where the HIPAA Privacy Rule or other federal or state laws may restrict these practices. Below are some general guidelines for local churches to consider when disclosing health related information about parishioners and other individuals.

	Page
Introduction	51
Publicizing Prayer Lists and Requests	51
What is the Privacy Rule?	51
Application of the Privacy Rule to Local Churches	52
Special Situations and Privacy Concerns	53
Local Church Employees	53
Local Churches as Health Care Providers	55
State Privacy Laws	56
Summary	58
Additional Resources	60

NOTE: The following discussion is intended to provide general information on certain topics. It is not intended to constitute legal advice and GCFA is not providing legal advice through this discussion. If a church has any questions concerning the application of the law to its particular circumstances, the church should consult with an attorney.

Introduction

HIPAA is an acronym for the Health Insurance Portability and Accountability Act, a federal law passed in 1996. The first HIPAA rules to be implemented dealt with the portability of health insurance for individuals who changed health plans, typically after a change in employment. A different set of HIPAA rules are relevant here – those dealing with protecting the privacy of individuals’ health related information. The final version of the so called HIPAA Privacy Rule (“Privacy Rule”) was issued by the U.S. Department of Health and Human Services (“HHS”) on August 14, 2002, and became effective, in most circumstances, on April 14, 2003.

While the Privacy Rule is complex, we hope to bring some clarity to the narrow issue of how it applies to local churches.

Publicizing Prayer Lists and Requests

By far, the most common questions about the impact of the Privacy Rule on local churches concern a church’s announcement or publication of health related information about its parishioners and other individuals. Typically, this occurs in the context of a request for prayers, or establishing a prayer list or prayer chain.

In general, the Privacy Rule does not apply to a church’s disclosure of health related information about its parishioners or other individuals in the context of publicizing prayer requests and prayer lists.

We will discuss the legal basis for this statement in more detail below. There are some exceptional circumstances where the Privacy Rule and other federal and state laws may apply to these practices, which will also be discussed.

To begin understanding the legal ramifications of the Privacy Rule, we start with a brief overview of the rule itself.

What is the Privacy Rule?

In the simplest terms:

The Privacy Rule regulates the use and disclosure of “protected health information” by “covered entities.”

Said another way, the Privacy Rule sets forth the circumstances and conditions under which a covered entity may use or disclose protected health information.

In simple terms, the Privacy Rule defines “protected health information” and “covered entities” as follows:

Protected health information (“PHI”): Basically, any information that identifies an individual and relates to the past, present, or future: (i) physical or mental health or

condition of that individual, (ii) health care provided to that individual, or (iii) payment of health care provided to that individual.

Covered entities: (i) health plans, (ii) health care providers, and (iii) health care clearinghouses.

Virtually all health related information will be PHI if it also identifies the individual that is the subject of the information. For example, a statement by a plastic surgeon to his next-door neighbor that “I performed cosmetic surgery on your friend, John Smith” would clearly be a disclosure of PHI (about John Smith). Furthermore, any health related information that just reasonably identifies the subject of the information will also be PHI. For example, the statement by the plastic surgeon that “I performed cosmetic surgery on a good friend of yours who lives just down the street” would probably also be PHI even though the statement does not explicitly name the individual.

In the above definition of covered entities, “health plans” include virtually all types of individual and group plans that provide or pay the cost of health care. Some examples are: health, dental, and prescription drug insurers, HMOs, Medicare, Medicaid, and employer sponsored group health plans like those typically offered by United Methodist annual conferences to clergy and church employees.

Covered entities also include “health care providers” such as doctors, hospitals, clinics, and counseling centers, provided they transmit certain health care related information electronically. (Note that if a health care provider is a covered entity, it is subject to the requirements of the privacy rule when it discloses PHI in any form - oral, written, or electronic.)

Finally, “health care clearinghouses” are also covered entities. Health care clearinghouses are typically third-party billing services used by health plans and health care providers. Because these entities have little connection with the activities of local churches, they are not discussed further here.

Application of the Privacy Rule to Local Churches

Again, the Privacy Rule does not generally apply to a church’s disclosure of health related information concerning an individual. Simply put, because churches are not generally “health plans” or “health care providers” (or health care clearinghouses), they are not “covered entities” subject to the rule. Moreover, this is true whether or not the information disclosed by the church would otherwise be PHI.

What about disclosures made by individuals acting on their own, independent of the church? First, obviously nothing prohibits parishioners or other individuals from disclosing as much or as little of their own health related information to as few or as many people as they may choose - including the entire congregation. And taking this a step further, in most circumstances, it is not a violation of the Privacy Rule for an individual to disclose health related information about someone else.

As was the case with churches, unless the individual making the disclosure is a covered entity, the privacy rule does not apply.

As an example, suppose Mary and Betty are members of First United Methodist Church. One Sunday, during the church service, Betty informs the congregation that Mary is in the hospital being treated for injuries she sustained during an assault earlier that week. Betty asks the congregation to pray for Mary's recovery. Betty did not have Mary's permission to inform the congregation. Was the disclosure a violation of the Privacy Rule? No, unless Betty is a covered entity (or connected with a covered entity). For example, Betty – *but not the church* – would have violated the Privacy Rule if Betty was Mary's doctor, a nurse at the hospital where Mary is a patient, or a claims processor for Mary's health insurance company.

In summary, the Privacy Rule does not have the wide-ranging effect on church practices that many had feared. But there are some special circumstances where the Privacy Rule and other federal and state laws can be a significant concern.

Special Situations and Privacy Concerns

Local Church Employees

Disclosure of health related information about church employees can raise several privacy issues, even if they are also parishioners of their church-employer. First, many church employees and their dependents are covered by group health plans sponsored by their church or other church organizations. While the church, in its role as employer or plan sponsor, is generally not a covered entity subject to the privacy rule, the health plan that covers the church employee is a covered entity. As discussed below, what this means is that the Privacy Rule will indirectly govern a church's disclosure of PHI about its employees and their dependents who are covered by the church's health plan.

Because they are covered entities, the Privacy Rule regulates the disclosure of PHI by employer-sponsored health plans. But depending on the structure of the health plan and the degree of the employer's involvement in the administration of the plan, the employer may need a great deal of information from the plan, including PHI. The Privacy Rule permits this type of disclosure from the health plan to the employer under certain conditions.

The Privacy Rule permits a health plan to disclose PHI to the plan's employer-sponsor for plan administration purposes, provided the employer implements specific safeguards to protect the PHI it receives from the plan. In particular, the employer-sponsor must amend its health plan documents to specify which of its employees will have access to PHI and restrict those employees' access and use of PHI to plan administration functions only. Therefore, an employer's improper use or disclosure of PHI it obtained from the health plan would constitute a failure to follow the terms of the plan document and thus, could subject the employer to potential civil liability for breach of fiduciary duty or breach of contract. (It is in this way the Privacy Rule indirectly regulates the disclosure of PHI by the employer.) An example:

Betty is the office manager of Metropolitan United Methodist Church. Metropolitan UMC is a very large church with many employees. Like most churches, Metropolitan UMC is not a covered entity governed by the Privacy Rule but it does sponsor a group health plan for its employees and their dependents through a policy written by First Insurance Company. In fact, one of Betty's duties at Metropolitan UMC is to assist with the administration of the church's health plan. The church has amended its plan documents (as described earlier) to permit First Insurance Company to share PHI with the church for plan administration purposes. But Betty also has several other duties at the church, including supervising the office staff and preparing the prayer requests for publication in the church bulletin.

One day, Betty gets a call from Mary, one of the church's secretaries, saying that she won't be able to come in to work for the next few days because her doctor wants her to be in the hospital while she undergoes some tests. Later that same day, while reviewing some claims for the church's health plan, Betty notices a claim for Jane, one of the assistant pastors. The claim is for cancer treatments Jane began last week before she went out of town for a church meeting. Until that day, Betty knew nothing about either Mary or Jane's medical conditions. With the best of intentions, but without asking permission from either Mary or Jane, Betty puts everything she knows about Mary and Jane in the church bulletin requesting the congregation pray for them both.

How does the privacy rule apply in these two situations? Because the church is not a covered entity, there is no violation of the Privacy Rule. However, Betty's disclosure of Jane's PHI could potentially expose the church to civil liability. When Betty learned the information about Jane, Betty was wearing her plan administrator "hat," and hence, she failed to follow the terms of the plan document by using this information for purposes other than plan administration functions. On the other hand, when Betty learned the information about Mary, Betty was wearing her "employer/employee" hat, fulfilling her duties of supervising the office staff. Because Betty did not learn the information about Mary from the plan, the disclosure did not violate the terms of the plan document. (In general, "employment records" held by the employer in its role as employer, are not considered PHI under the Privacy Rule – e.g., the record of Mary and Jane's accumulated days of sick leave in the church's personnel files would not be PHI.)

The above example is solely analyzed in the context of what would be "legal" and whether the church has any potential liability for Betty's actions. But there is a larger view regarding Betty's actions, which will be discussed later.

Before leaving the issue of church employees, churches need to be aware there are numerous other laws, besides the Privacy Rule, that may restrict the disclosure of health related information about employees. For example, the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act ("FMLA") require that certain employee medical records be kept confidential.

Moreover, many states also have laws regulating the disclosure of health related information about employees. In general, the law provides a great deal of protection for health related information concerning employees and churches should be extremely cautious about disclosing such information without their employees' explicit consent.

Local Churches as Health Care Providers.

In some circumstances, churches can be covered entities subject to the Privacy Rule. For example, suppose a local church operates an inner city health clinic (which is not a distinct legal entity separate from the church). Further suppose the clinic electronically bills Medicaid, Medicare, private insurance companies, or patients' credit cards for their services. In such a scenario, the church (not just the health clinic) would be a covered entity subject to the Privacy Rule. In particular, the church could not disclose PHI about its parishioners or other individuals in its prayer lists or church bulletin without their prior written authorization. Moreover, under a literal reading of the Privacy Rule, the church could not disclose such information regardless of whether it acquired it through its health care activities or from some other independent source, e.g., from a relative or a friend. There is, however, some relief available in these circumstances.

Under certain conditions, the Privacy Rule permits a single legal entity that is a covered entity whose activities include both covered and non-covered functions to elect to become a "hybrid entity." This election to become a hybrid entity frees the non-covered functions of the entity from being subject to the Privacy Rule. To become a hybrid entity in accordance with the Privacy Rule, a covered entity must, in effect, partition itself into "components" - those that perform the functions that make the entity a covered entity (the "health care components") and those that don't perform such functions. It is not necessary to make the components themselves distinct legal entities, but the covered entity must designate its various components in writing. Furthermore, the covered entity must put in place safeguards to insure that PHI does not "leak" from a health care component to its other components.

Note that even after a covered entity becomes a hybrid entity, the health care components must comply with the Privacy Rule in all respects. Because of the complexity of creating a hybrid entity, seek professional legal advice to assist with this process.

As an aside, a church can perform functions or services for a (legally separate) covered entity (e.g., a separately incorporated health clinic) without the church itself becoming a covered entity. However, if those functions or services require access to or use of PHI from the covered entity, the church must enter into a "business associate contract" with the covered entity. As set forth in the Privacy Rule, a business associate contract requires, among other things, that the business associate (i.e., the church) not make any unauthorized use or disclosure of the PHI it receives from the covered entity and to implement safeguards to insure that this does not occur. (Hence, for example, the church could not disclose any PHI it received from the covered entity in a prayer list

or prayer request.) Again, a church should consult with an attorney if it provides any such services to a covered entity.

Finally, in determining whether a church is a health care provider subject to the Privacy Rule, it may be important to first examine whether the activities conducted or performed by the church are actually “health care” as defined by the rule. For example, the preamble to the Privacy Rule states:

“[H]ealth care” as defined under the rule does not include methods of healing that are solely spiritual. Therefore, clergy or other religious practitioners that provide solely religious healing services are not health care providers within the meaning of this rule, and consequently not covered entities for the purposes of this rule.

While this statement in the preamble about spiritual healing is helpful and important, some ambiguities remain. For example, when clergy assist individuals suffering from depression, it may be difficult to clearly classify their assistance as either spiritual healing or mental health counseling. The distinction is important because spiritual healing is not covered by the Privacy Rule, while mental health counseling is. But in any event, it is essential to remember that health care providers will not be covered entities unless they also transmit certain health care related information electronically. As it turns out, this electronic transmission requirement is a rough proxy for identifying entities that are fairly involved in the “business” of providing health care which excludes most (but not all) local churches. For example:

Traditional pastoral counseling provided by churches at no charge to their parishioners does not make the church a covered health care provider subject to the privacy rule.

At the other extreme would be churches that operate counseling centers staffed by professional psychologists who provide services to mentally ill patients and electronically bill their patients’ insurance carriers for their services. These churches are almost certainly covered health care providers subject to the Privacy Rule. In between these two extremes there is a lot of room and the line that separates them can be hard to find. Therefore, if you have a concern that your church may be a covered health care provider subject to the Privacy Rule, you should consult with an attorney who can advise you on your particular situation.

State Privacy Laws.

As discussed earlier, the Privacy Rule is not the only law regulating the disclosure of an individual’s health related information. There are numerous state privacy laws addressing a variety of issues. For example, some states have laws restricting the disclosure of health related information about individuals with AIDS and other communicable diseases. In this section, however, the focus is on claims that individuals may bring against defendants based on “invasion of privacy” causes of action. Many states recognize this type of claim in one form or another. Generally speaking, for a plaintiff to prevail on an invasion of privacy claim, the plaintiff must

show (1) the defendant publicized private facts about the plaintiff and (2) the defendant's actions would be offensive or objectionable to a reasonable person. (Thus, the plaintiff cannot prevail if the information disclosed was already public knowledge or if the disclosed information was insignificant or benign.)

An illustrative case is *Mitnaul v. Fairmount Presbyterian Church*, decided by the Ohio Court of Appeals in 2002. (Note that this case was decided before the HIPAA Privacy Rule became effective.) The plaintiff in *Mitnaul* was at one time the Director of Music Ministries for the defendant church. While serving in that position, plaintiff was hospitalized for treatment of depression and during his hospitalization, the church placed the plaintiff on a medical leave of absence. After his release from the hospital, plaintiff and the church became involved in a dispute about the plaintiff's return to work. Ultimately, plaintiff sued the church alleging, among other things, discrimination based upon disability, retaliatory discharge, breach of contract, and invasion of privacy. The trial court granted summary judgment for the church, rejecting all of plaintiff's claims. On appeal, however, the appeals court remanded some of plaintiff's claims back to the trial court for further proceedings. One of those remanded claims was the invasion of privacy claim.

The basis of plaintiff's invasion of privacy claim was the following statement posted on the church's web site following plaintiff's release from the hospital:

We have good news for you! [Plaintiff] is returning to Fairmount after a long medical leave of absence. Since the summer of last year, [plaintiff] has been treated for bi-polar illness, a condition which at times has resulted in serious depression for him. Various therapies and medications have been tried, and finally, after much experimentation, his health has improved considerably. For that we are all very happy.

In remanding the invasion of privacy claim back to the trial court, the appeals court stated:

[W]hile the church's publication could be based upon informing the congregation of [plaintiff's] return to the church, the inclusion of the additional personal information about his bi-polar illness could be viewed as offensive or objectionable to a reasonable person.

Obviously, this was an unfortunate case where well-meaning people unintentionally exposed their church to legal liability. While this case did not involve the Privacy Rule, it illustrates very clearly many of the issues churches need to consider whenever they disclose health related information about an individual.

Summary

As explained above, the Privacy Rule does not generally apply to a church's disclosure of health related information about its parishioners or other individuals. The two important exceptions where the Privacy Rule is still an issue are (1) disclosures of certain health related information about church employees (and their dependents) who are covered by the church's health plan and (2) situations where the church itself is considered to be a covered health care provider. Also, besides the Privacy Rule, there are other federal and state laws that may limit the disclosure of such information.

Unfortunately, there no policies or procedures a church could implement with respect to publicizing prayer lists and prayer requests that would guarantee the church protection against any potential legal liability. But that is not a sufficient reason for discontinuing these practices, especially in light of the Church's spiritual mission and when there are so many things a church can do to minimize its legal exposure. Specifically, below are some general principles for churches to consider when publicizing health related information about parishioners and other individuals.

Consent

In some sense, the preceding discussion is about how much churches can legally do without obtaining the consent of the affected individual. As it turns out, consent is not legally required in most circumstances. ***But, if consent is easily and readily obtainable, why not obtain it?*** It could be something as simple as the church asking the individual "Would you mind if we shared this information with the congregation?" or "Would you like us to add you to our prayer list?" After all, not only is consent the best legal protection for the church, it is a respectful and courteous thing to do.

Certainly, there are situations where obtaining consent is impractical or impossible, e.g., in the case of incapacitated individuals. In these circumstances, the legal issues discussed in this memorandum need to be considered. But such cases are probably more often the exception rather than the rule. As a routine practice, oral consent from the individual (or when that is not possible, from a close friend or relative) should be sufficient. But if the church is disclosing particularly sensitive information or there is some other legal concern about the disclosure, the church should consider obtaining consent in writing.

Obviously, as a general matter, written consent is better than oral consent and consent directly from the affected individual is better than consent from a third party on behalf of that individual. An even weaker form of "consent" is an "opt-out" procedure. In an opt-out approach, the church would regularly publish a notice, such as in its church bulletin, that it compiles lists of members who are ill or hospitalized as well as information about their conditions and status. The notice would further state the church will publish this information unless an individual objects to the disclosure. Clearly, this opt-out approach is less than perfect. But the point here about all these various forms of consent is that something is always better than nothing.

Too Much Information

When churches disclose health related information without the individual's consent, the general rule should be "less is best." There is a significant difference between a published notice that simply says "John Smith is hospitalized and we pray for his speedy recovery" and the type of notice published by the church in the *Mitnaul* case. With the best of intentions, churches can expose themselves to civil liability for invasion of privacy, among other things, when they disclose private information of a sensitive or potentially embarrassing nature. Common sense can go a long way here.

Some churches have adopted an approach that largely avoids this problem by letting someone else (besides the church) disclose the details about an individual's medical condition. In the absence of prior consent, these churches simply publicize a general notice and expression of concern for the health of the individual together with contact information for a relative or close friend. Parishioners can then contact those persons for more detailed information. In this way, the relative or friend controls what information is disclosed and to whom. Moreover, the relative or friend is probably in a better position than the church to make such decisions consistent with the wishes of individuals who may be incapacitated and unable to decide for themselves.

Church Employees

As a general rule, churches should be extremely cautious about disclosing health related information concerning their employees without their consent. This is true regardless of whether the employees are also parishioners. As already noted, churches can be held legally liable for disclosing health related information about employees (or their dependents) obtained through the church's health plan.

Churches as Health Care Providers

Again, this is a relatively rare situation, but if it this is the case, the Privacy Rule applies in full force and effect to the entire church. Such churches who are covered health care providers should consult with an attorney to assist them in complying with the requirements of the rule.

"The Golden Rule"

Sometimes there is so much focus on the law and what is "legal" that a church loses sight of the "right thing to do." Obviously, it is essential that churches understand and comply with the law in all cases. But sometimes the law isn't clear and frequently it is silent on what to do in particular circumstances. In these situations, churches must resort to other sources of guidance. Fortunately, in the church these are not hard to find. Perhaps the best is the most well-known - The Golden Rule.

When a church representative is contemplating the disclosure of health related information about someone else, the representative should first think about what she would like done if she was in a

similar position. Would she care whether she was first asked for her permission before the information is disclosed? If she was incapacitated, would she prefer her family or friends to decide what should be disclosed and to whom? Would she possibly be embarrassed if this particular information was publicly disclosed? The answers to these questions will go a long way toward pointing her, and her church, in the right direction.

Additional Resource

<http://www.hhs.gov/ocr/privacy/index.html> - The HIPAA web site of the Office for Civil Rights, HHS. (The Office for Civil Rights is the office within HHS responsible for enforcing the HIPAA Privacy Rule.)

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