

PERSONNEL

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INTRODUCTION

The area of employment law has become increasingly important in recent years, as challenges to personnel decisions, additional government regulation, and the fear of 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 protection is available, it does not prohibit clergy from filing suit against a church organization. Thus, while the organization may ultimately be able to successfully defend a lawsuit on the basis of the First Amendment, it may have to expend considerable expense to do so. Additionally, such protections do not insulate church organizations from engaging in otherwise 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 protections, 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. Local churches were required by the 1996 and 2000 General Conferences to develop such policies, as well. Sample policies are included in this Section to assist local churches and annual conferences in their development.

PERSONNEL POLICIES

There are several important advantages to having a written personnel policy:

- **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 that he or she did not understand 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 the reimbursement or non-reimbursement of certain business expenses, on the use 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 (health insurance, pension, etc.), continuing education, vacation, and evaluations and of ensuring that the same information is given to all employees.
- **Consistency:** They can help ensure that similar situations are handled in a consistent manner (e.g., holidays, work schedules, reimbursement of business expenses) 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 deterring misconduct.

There is, however, one major disadvantage to 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 a personnel policy, who should be covered by any policy (laity or clergy, full or part-time, etc.), and what issues the policy will cover. Subjects commonly covered by personnel policies include:

- **Hiring** – Recruitment, job posting, immigration, references, hiring of relatives, promotions, statement of “at-will” employment, etc.;

- **Salary administration** – Pay periods, overtime, time card procedures, wage assignments, performance reviews, etc.;
- **Operations** – Work schedules, parking, vacation time requests, etc.;
- **Benefits** – 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, continuing education, etc.;
- **Reimbursement of expenses** – See Section VI of this Manual;
- **Retirement, termination, and resignation** – Eligibility, mandatory retirement, severance, etc.
- **Employee Conduct** – Race and gender issues, sexual abuse/misconduct/harassment, workplace violence, code of ethics, internet/e-mail use, confidentiality, complaint procedures, discipline procedures, etc.

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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 3 out of 5 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, and how the church handled it. Should the terminated staff person try to challenge the firing, the file will assist the church in defending its actions.

The *Discipline* directs GCFA and the General Board of Higher Education & Ministry to produce guidelines for the maintenance of personnel and supervisory records relating to clergy.¹

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 gathered, 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 sign 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 – i.e., 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.

The types of personnel records that must be retained by federal law include, but are not necessarily limited to, those relating to:

- Payroll;
- Retirement and pension;
- Hiring (job advertisements, resumes, applications, etc.), termination, transfer, and promotion;
- Legal actions or discrimination complaints;

¹ See ¶¶ 416.7, 419.8, 606.9.

- Time sheets;
- Job related illness and injury;
- Family Medical Leave Act records; and
- Immigration Reform and Control Act records.

An employer should consider maintaining three separate types of files on an employee: an official personnel file; a confidential file (including interview, evaluation, reference check, EEO/affirmative action, 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.

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 new regulations 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 a memo found 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. Should a church entity receive a subpoena in relation to employee records or files, it should consult with legal counsel to determine whether the disclosure is permitted under state law and how it 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 In the leading case on the matter, the United States Supreme Court gave religious organizations very 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 Employment Act of 1967 (ADEA):**⁶ Absent limited exceptions (e.g., if age is a bona fide occupational qualification, mandatory retirement age of 70 for tenured faculty at institutions of higher education, etc.), 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

² [42 U.S.C. § 2000e](#).

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.

⁵ See [§ 2000e\(k\)](#).

⁶ [29 U.S.C. §§ 621-34](#).

exemption from the ADEA is not as settled here, generally speaking, the First Amendment protects the Church's right to set a mandatory retirement age for ministerial staff.

- **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 exempted, certain religious activities are not subject to OSHA.⁹
- **Americans with Disabilities Act of 1990 (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

⁷ [29 U.S.C. §§ 615-78](#) (statute), [29 C.F.R. §§ 1902-90](#) (regulations).

⁸ [29 C.F.R. § 1904.1](#).

⁹ [§ 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](#).

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 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 (non-managerial) employees who work over 40 hours in one week. The FLSA also regulates child labor and provides for a minimum wage. Any religious camp that operates no more than seven months out of a year is exempted from the minimum wage and maximum hour restrictions.¹⁴ The Department of Labor may view any entity with employees as covered by the Act, including churches. The operation of a day care facility or school will subject a church to coverage by the Act. Further, the requirements of the Act cannot be avoided by classifying a worker as an independent contractor. While clergy are professional employees and therefore exempt from the overtime pay requirement, most other church employees are covered. Changes to the FLSA in 2004 brought many formerly exempt church employees under the law, including part time employees, if the employee earned less than \$455 per week.¹⁵ Many states also have wage and hour laws.
- **Equal Pay Act of 1963:**¹⁶ 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:**¹⁷ 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; care of a newborn; placement for adoption or foster care; care of a spouse, child, or parent with a serious health condition; or the employee's own serious health condition.¹⁸ 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.¹⁹ Additionally, the

¹¹ [§ 12113\(c\)](#).

¹² [§ 12187](#). Note, however, that the *Discipline* contains requirements regarding the accessibility of church buildings.

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

¹⁴ [§ 213\(a\)\(3\)](#).

¹⁵ See [29 C.F.R. § 541](#).

¹⁶ <http://www.eeoc.gov/laws/statutes/epa.cfm>.

¹⁷ [29 U.S.C. §§ 2601-54](#).

¹⁸ [§ 2612\(a\)\(1\)](#).

¹⁹ [§ 2611\(2\)](#).

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.²⁰ While there is no specific exception for religious organizations, local churches that have less than 50 employees would be exempt. 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 purpose covered by the Act.²¹ The employer should require medical certification from the affected person's physician. 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:**²² 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 day care centers, nurseries, schools, and possibly 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 1999, by the Volunteers for Children Act, 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 qualified entities in your state, contact a local attorney.
- **Employee Polygraph Protection Act (EPPA):**²³ 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:**²⁴ 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. The employer is not required to re-employ in limited circumstances. Guidance for clergy serving as chaplains can be found at GBHEM's [website](#).
- **Unemployment:** Organizations that are exempt from federal income tax pursuant to § 501(c)(3) are also exempt from Federal Unemployment Tax.

²⁰ *Id.*

²¹ See [29 C.F.R. §§ 825.300-304](#).

²² [42 U.S.C. § 5119](#).

²³ [29 U.S.C. §§ 2001-09](#).

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

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.

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 able to legally work in this country?" instead of "Are you from the United States?"). Because religious organizations may generally "discriminate" based on religion, a church organization may require that the employee be United Methodist or may indicate that applicants who are United Methodist will be given preference.

If it is necessary to compile applicant tracking information (e.g., for affirmative action purposes), do not ask for this information on the employment application unless it is on a perforated section that will be separated from the application and not available to the decision maker.

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 ages?
- Have you ever been fired or otherwise had your employment involuntarily terminated?
- There is a gap in the time frames shown on your resume. Tell me about that.
- 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 able to perform essential functions of this job with or without accommodation?
- 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 on the bases of race, ethnic origin, sex, marital status, age or disability.²⁵ 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, 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, church entities should obtain a written release from the applicant and avoid

²⁵ See ¶ 140.

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 the bearer. 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.

A sample Notice and Authorization Form, including a request for a credit check and disclosure, is included in the Appendix to this Section.

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

It is likely that church entities that employ non-ministerial personnel, especially general agencies, 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 any required written releases are 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.

Background checks are regulated by the federal Fair Credit Reporting Act.²⁶ The FCRA prohibits checks except with the applicant's written permission and requires that specific notice be given to an applicant if adverse action is taken.

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,

²⁶ [15 U.S.C. § 1681.](#)

which could include the use of background checks.²⁷ 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.²⁸

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 written accusations or convictions for felony, misdemeanor, or incident of sexual misconduct or child abuse, or certifying that the candidate has neither been accused in writing nor convicted of a felony, misdemeanor, or any incident 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,²⁹ licenses for pastoral ministry,³⁰ election to associate membership,³¹ provisional membership in an annual conference,³² and clergy from other annual conferences and other denominations.³³

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

5. Other Checks and Balances for Lay and Clergy Applicants and Staff.

Background checks will only uncover information about the person's history. A "clean" background check is not necessarily a good predictor of a person's future behavior. Thus, other internal controls and checks and balances are necessary.

It is more difficult to monitor individuals once they have been hired. However, there are things that church entities can do to reduce the possibility of incidents. Local churches, especially, should have clear guidelines on conduct, procedures, and requirements relating to

²⁷ ¶ 256.2a.

²⁸ Resolution No. 3084.

²⁹ ¶ 310.2b.

³⁰ ¶ 315.6a.

³¹ ¶ 322.1.

³² ¶ 324.12.

³³ ¶¶ 346.2, 347.2-.3.

childcare, children and youth ministries, and counseling. Even such things as the design and layout of the facility (e.g., having windows in doors) and having certain rules for childcare and counseling services (requiring doors to be open or unlocked, prohibitions on after hours sessions, etc.) can help.

Hiring any person who has been involved in previous serious criminal acts is extraordinarily risky for a church organization. It is typically hard for a church to balance the seeming conflict between Biblical notions of forgiveness and redemption and the unfortunate reality that someone, in a church setting, may cause injury to a member. Before making any decisions in this area, Church organizations should seek out all available information and guidance, both legal and ecclesial.

Additional Resources.

For more information about checks and balances for reducing the risk of abuse in the Church, see *Safe Sanctuaries: Reducing the Risk of Abuse in the Church for Children and Youth (Anniversary Edition)*, by Joy Thornburg Melton.³⁴ 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*.³⁵ Church leaders should also review the relevant United Methodist policies and procedures, as set forth by the *Discipline*³⁶ and *The Book of Resolutions*.³⁷ 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.

If reference and background checks reveal previous incidents of sexual misconduct, Richard Hammar's *Pastor, Church and Law* recommends that the following factors be considered before hiring the person: "(a) the nature and severity of the previous misconduct; (b) the frequency of the previous misconduct; (c) how long ago the misconduct occurred; (d) whether the minister received counseling; (e) the competency and effectiveness of any counseling received; (f) the likelihood that the minister will repeat the same type of misconduct now; (g) the possibility of legal liability if a jury concludes, on the basis of all evidence, that the church [organization] was negligent in hiring the minister."³⁸

6. 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

³⁴ <http://www.cokesbury.com/forms/ProductDetail.aspx?pid=686384>.

³⁵ <http://www.cokesbury.com/forms/ProductDetail.aspx?pid=359826>.

³⁶ ¶¶ 161H, 161I.

³⁷ Resolution Nos. 2044, 2045, 3084.

³⁸ <http://store.churchlawtodaystore.com/pachlaw4thed.html>.

with Disabilities Act (i.e., in determining whether or not reasonable accommodations can be made for a particular applicant/employee as to that position), and for the employee discipline process. The 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 "Pastor-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](#).

7. 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, discharging an employee in retaliation for exercising a right or obligation under state or federal law, such as the filing of an EEOC complaint for race discrimination, may be found liable for wrongful discharge.

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.³⁹
12. Be the Church. Treat the employee with care, compassion and dignity.

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³⁹ 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.⁴⁰ 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 Twenty Factor Test.

The IRS has previously created a 20-factor test to determine whether a person is an employee for tax purposes. This test was first stated in Revenue Ruling 87-41 and then later incorporated into Publication No. 937. The factors are intended to provide guidance in determining whether an individual is an employee or an independent contractor under the common law. In connection with this test, the IRS has stated the following:

These factors should be considered guidelines. Not every factor is applicable in every situation, and the degree of importance of each factor varies depending on the type of work and individual circumstances. However, all relevant factors are considered in making a determination, and no one factor is decisive. It does not matter that a written agreement may take a position with regard to any factors or state that certain factors do not apply, if the facts indicate otherwise.⁴¹

The 20 factors set forth by the IRS are:

1. **Instructions.** An employee must comply with instructions about when, where, and how to work. Even if no instructions are actually given, the control factor is present if the employer has the right to give instructions. Independent contractors direct themselves as to when, where and how to do their work.

⁴⁰ See [I.R.S. Publication 15-A](#) 9-10, [Weber v. Commissioner](#), 60 F.3d 1104 (4th Cir. 1995).

⁴¹ I.R.S. Publication 937 at 4.

2. **Training.** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
3. **Integration.** An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
4. **Services rendered personally.** An employee renders services personally. This shows that the employer is interested in the methods as well as the results. Independent contractors are generally free to hire assistants or to sub-contract their work, since they are directing their own operations and making their own decisions about how to get the job done.
5. **Hiring, supervising and paying assistants.** An employee works for an employer who hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
6. **Continuing relationship.** An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. An independent contractor ordinarily is hired to do a particular job and then moves on to do work elsewhere for another organization.
7. **Set hours of work.** An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.
8. **Full-time work.** An employee normally works full-time for an employer. An independent contractor can work when and for whom he or she chooses.
9. **Work done on employer's premises.** An employee works on the premises of an employer, or works on a route or at a location designated by an employer. An independent contractor ordinarily sets his/her own place of work.
10. **Order or sequence set.** An individual who must perform services in the order or sequence set by an employer looks like an employee, subject to direction and control.
11. **Oral or written reports.** A person who regularly submits reports to a supervisor looks like an employee, who must account to the employer for his or her actions.
12. **Payments.** An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
13. **Expenses.** An employee's business expenses are customarily paid by an employer. This shows that the employee is subject to regulation and

control. An independent contractor ordinarily pays for his/her own business expenses.

14. **Tools and materials.** An employee is furnished significant tools, materials, and other equipment by an employer (examples in a church: computer, books, music, uniforms)
15. **Investment.** An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.
16. **Profit or loss.** An independent contractor can make a financial profit or suffer a financial loss, whereas an employee ordinarily does not suffer any financial losses associated with his/her work.
17. **Works for more than one person or firm.** An independent contractor offers and ordinarily gives his or her services to two or more unrelated persons or firms at the same time (example: an outside snow removal or lawn service used by a church would do the same work for a number of clients and would be considered an independent contractor; a facilities maintenance person who does full time work for the church that includes snow removal and lawn service and does not have a snow removal/lawn service business for other clients probably would be considered an employee, absent other unique circumstances).
18. **Offers services to general public.** An independent contractor makes his or her services available to the general public.
19. **Right to Fire.** An employer can fire an employee. An independent contractor typically cannot be terminated so long as he or she produces a result that meets the specifications of the contract for the services.
20. **Right to quit.** An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.⁴²

2. The IRS Three Categories.

The IRS has stated that “evidence of the degree of control and independence fall into three categories.”⁴³ The categories are “behavioral,” “financial,” and “type of relationship.” Like the twenty factors, these three categories are intended to provide guidance in making a common law determination.

⁴² *Id.*

⁴³ <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-%28Self-Employed%29-or-Employee>.

3. The Seven Factor Test from *Weber*.

One of the tests created via a court decision is the seven factors 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
7. The relationship the parties believe they are creating.⁴⁴

For a more in-depth discussion of Weber, see Section VI of this Manual.

4. "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 and of the restrictions on, and regulation of, United Methodist ministers by the *Discipline*.⁴⁵

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 as to 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

⁴⁴ *Weber* at 1110.

⁴⁵ *Id.* at 1106-10.

- An organist who works for six area churches when their regular organist is sick or on vacation, and who offers his or her 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.

5. 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 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 when, in the sole opinion of management, the employee's job performance and/or conduct is found unsatisfactory, for any reason.

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.

Staff Member Qualifications

All staff shall have, at a minimum, the following qualifications:

- They shall be persons who are sympathetic with the Christian faith and purposes of The United Methodist denomination;
- They shall possess the special aptitudes, skills and capacities which are required in their respective fields of work;
- They shall be persons who can win and hold the cooperation and goodwill of the people they serve as well as their associates;
- They shall have the ability to maintain and keep confidences;

- They shall be persons who can demonstrate the capacity to learn and to improve their abilities.

Equal Employment Opportunity

[Organization] shall provide equal employment opportunity to all staff members and applicants for employment. No person shall be discriminated against in employment because of race, color, sex, national origin, age, or disability. This policy applies to all terms, conditions and privileges of employment. Any communication from any applicant for employment to a staff member, a government agency, or an attorney concerning any equal employment opportunity matter shall be referred to [list position].

Recruitment

[Organization] shall post information of position openings on all bulletin boards within the offices prior to external announcements.

The recruitment process may also include the public announcement of vacancies through various news media and church journals, and through notification of appropriate institutions, professional organizations, related agencies, and groups with special access to qualified women and racial or ethnic minorities.

Ethics Statement

The following statement shall be presented and signed at the time of appointment, election, or employment and reaffirmed annually:

All funds and property received and administered by the [organization] are entrusted to them by God through the faithful financial support of church members. Therefore, the highest degree of Christian stewardship and fiduciary responsibility is expected of all directors, non-director committee members and staff in matters relating to the receiving, reporting, and use of such funds and property. Ethical, moral, and legal conduct are critical components of Christian stewardship. Fiduciary responsibility also includes loyalty to the objectives and purposes for which funds have been allocated, prudence and care in the administration of entrusted funds and property, and personal commitment to the highest standard of fiscal responsibility.

Therefore, I agree to abide by the highest ethical and moral standards and practices, and all applicable laws and regulations (e.g., civil, criminal, and *Disciplinary*), in all actions that I take on behalf of [organization].

Name

Date

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, for any reason or for no reason.

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.

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.

Overtime

Overtime by support personnel paid on an hourly basis is sometimes necessary and is determined by the departmental supervisor. Payment of overtime is subject to the following requirements and restrictions:

1. All requests for overtime must be approved in advance by [position];
2. All overtime worked up to and including 40 hours is computed at straight pay, all overtime worked in excess of 40 hours is computed at time-and-one-half pay, all unworked hours (vacation days, holidays, sick leave, etc.) are not included in the computation;

3. For purposes of computing overtime, the work week begins on Monday and ends on Sunday;
4. Employees desiring to take comp time in lieu of overtime pay must designate that choice at the time overtime is approved;
5. All overtime is to be clearly reported on your time card. If you are taking comp time, that time must be designated on the time card;
6. Approval to use accrued comp time must be secured in advance from your supervisor; and,
7. Employees who elect to take comp time in lieu of overtime pay must do so in the same pay period in which the time is earned.

Overtime pay is not available for exempt, salaried staff. If you would rather take comp time but cannot do so within the pay period, you may take overtime pay and then, at a later date, take some time without pay. [NOTE: It is important to work with a local attorney to define “exempt” and “non-exempt” staff, especially if these terms are unclear to the organization]

Wage Assignments

A wage assignment or a garnishment is a legal order requiring an employer to withhold part of the employee's wages in order to pay a debt. Wage assignments which meet legal requirements will be honored when issued. At that time, employees are presented with written notification of the garnishment.

Social Security

All lay employees are covered by the Federal Old Age and Survivors Benefits Act to provide the protection offered by 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.

Assisting Employees With Life-threatening Illnesses

[Organization] recognizes that staff with life-threatening illnesses including, but not limited to, cancer, heart disease, and AIDS may be covered by short-term and long-term disability benefits. As long as a staff person is able to meet acceptable performance standards, and medical evidence indicates that their conditions are not a threat to themselves or others, staff with life-threatening illnesses will be treated consistently with other staff.

[Organization] seeks to provide a safe work environment for all staff. Therefore, precautions will be taken to ensure that a staff person's condition does not present a health and/or safety threat to other staff. Education, counseling, referrals to agencies, and benefit consultation to assist employees in effectively managing health, leave, and other benefits is available in [department].

There is usually no medical basis for staff refusing to work with fellow staff or others with life-threatening illnesses. The concerns of staff who fear fellow workers or others with life-threatening illness will be taken seriously and addressed with appropriate information. Where such measures are unsuccessful, and where [organization] determines that any staff person's refusal, or threat of refusal, to work with another staff person is impeding and/or disrupting the [organization's] work, the [position] will consider appropriate corrective or *Disciplinary* action against the threatening or disruptive staff person. Such *Disciplinary* action may include transfer and/or dismissal from employment.

Appropriate revisions to this policy to reflect current information, both medical and legal, will be made as necessary.

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.

Uniformed Services

The purpose of the uniformed services leave policy is to insure employee rights to job protection when serving with the military, National Guard, or Reserve. [Organization] supports and complies with the Uniformed Services Employment and Reemployment Rights Act of 1994 and applicable state laws.

Active, Full-Time Uniformed Services Duty

Any staff person who leaves [Organization] to perform full-time active duty in the armed forces for a period not to exceed five (5) years, is considered to be on “active full-time military duty.”

Staff ordered to active full-time military duty shall be entitled to payment of the differential between their military pay and their salary for a period up to 20 (twenty) working days, said payment to be made only where military pay is less than the salary, to commence at such time as the staff person becomes eligible for payment for his/her active full-time military duty.

In order to qualify for reemployment, a staff person must meet the following requirements (this is only a general summary of the requirements set forth by the relevant federal statute – different situations may be subject to different requirements):

- Advance notice is given of the service;
- Service must not exceed five years;
- The employment was not “for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period;”
- Application for reemployment is made within the appropriate time period; and
- Satisfactory completion of the period of active duty, and presentation of certificate to that effect.

Reserve/National Guard

- A. **Initial Active Duty** — Staff who become members of the military Reserve or National Guard will be considered to be on military leave of absence during their “initial period of active duty training”. This initial training period is normally of a 3 to 6 month duration.

Any staff person who meets the requirements set forth will be reinstated to his or her former position or to a position of similar seniority, status and pay, except a Reservist or National Guard member on initial active duty for training must apply for reemployment within 31 days after release from training or discharge from hospitalization not exceeding one year.

- B. **Short-term Military Training** — Staff who are Reservists or National Guard members must request a military leave of absence to perform short-term training such as weekly drills, summer encampments, or similar types of training. This request will be granted by the organization.

When possible, thirty days prior notice of such absences should be given to the supervisor and to [list position]. Staff on military leave for short-term training are required to report back to work for the next regularly scheduled work period after training ends, with a reasonable time allowed for travel.

The [organization] is required to accommodate the employee's Reserve and National Guard obligations by scheduling his/her work around periods of short term training.

C. **Other Provisions** — The following provisions are applicable to all persons on military leave of absence:

- Staff on military leave will not receive a regular agency salary except as otherwise noted.
- Regular pension contributions will be made on the staff person's behalf on any wages paid by the agency during the time of leave;
- Staff are not required to take paid vacation time during their period of active duty or short-term training; and
- Staff returning to work in accordance with other provisions of this policy will resume accrual of vacation and sick time at the normally scheduled rates as though no leave had occurred.

Jury Duty/Court Appearances

[Organization] assures full salary while fulfilling jury duty or other court appearance obligations to all full-time staff and part-time staff with 20 or more hours of regularly scheduled service a week. Under normal circumstances, [organization] will not provide excuses for jury duty. [Optional: If the staff person is paid a jury duty fee in addition to jury duty travel expenses, then such fee must be turned over to [organization] or deducted from the staff person's pay check.]

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 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] maintains a personnel file for each staff person. These files are kept in [location] and are open to inspection by the employee, subject to the restrictions of [state statute that governs personnel records].

[Organization] attempts to maintain those documents which are, have been, or are intended to be used in determining a staff person's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action.

A staff person has the right to inspect certain portions of his/her personnel file up to two times during the calendar year. Such a request must be submitted in writing using the form provided for this purpose. Once such a request has been received, the [position] will schedule an appointment within seven (7) working days of the request.

This information is generally not to be released to a third party. Requests for the release of personnel file information to third parties should be cleared with the [position] and be in writing.

Contents of Personnel Files

Each personnel file will usually include the following items, which are subject to inspection:

- Employment application
- Resume (when appropriate)
- I-9 verification
- Plan participant enrollment forms (SPP, MPP, DBP, Beneficiary forms, etc.)
- Employment offer form
- Emergency notification form
- Performance appraisals,
- Attendance calendars (used for employment transfer, promotion, etc.),
- Employee benefit verification form,
- Change of address forms,
- Garnishments,
- Post-employment training,
- Payroll information originating from HR,
- Probationary forms (beginning and completion, employment counseling reports, etc.), and
- Salary history.

Documents which may be included in a staff person's personnel file but are not open to inspection include:

- Letters of references;
- Tests and results, except cumulative scores;

- Records that may be produced in a judicial proceeding as part of a pending claim between the employer and the staff person;
- Information used for management planning, bonuses, operational goals, expansion, future salary increases, job assignments, other wage treatments, development, closing, except when such material relates only to the staff person in question;
- Information of a personal nature about a person other than the staff person which might be construed as an unwarranted invasion of that other person's privacy;
- Medical records; and
- Records regarding [organization's] investigation of alleged criminal activity (except when [organization] acts adversely based on information in those records).

Staff may receive copies of items in their personnel file upon payment of a per page copy charge. All such requests shall be made in writing on the form provided and submitted to [position].

Staff Reviews

A progress review is intended to provide a periodic means of appraising a staff person's job performance.

Review Dates – Introductory Period of Employment

There shall be an introductory period of employment of three months following initial employment. If the staff person does not meet performance standards, employment can be terminated at any time during the three months or thereafter. Approximately two weeks before the end of this period, the supervisor shall conduct a "Performance Appraisal" covering the staff person's performance during the period. The completed form will be sent to [position] for inclusion in the staff person's file.

If performance is satisfactory, this period will end, although the staff person will continue to be an at will employee. No implied employment contract shall result from an employing satisfying the introductory period. If performance is not satisfactory, this period may be extended, in writing, or the staff person may be terminated.

Review Dates – Annual Review

By September 30 of each year, the performance of every staff person will be evaluated utilizing the current “Performance Appraisal Form.” These reports will be placed in each employee's personnel file. Staff persons will have an opportunity to file a response to their evaluations. [Note: Portions of this policy would not apply to clergy staff.]

Volunteer in Mission Participation by Staff

[Organization] feels that the participation of staff in United Methodist Church Volunteer in Mission projects would benefit both the staff person and the mission project. To enable such participation and involvement in United Methodist projects, [organization] allows for a combination of vacation days and work days to be used. Authorization for participation in any Volunteer in Mission trip must be given by the supervisor and the [list position]. Approval is within the sole discretion of the [position]. Approval also will be contingent on available funds. A staff person may request approval for such participation no more than once a quadrennium.

If the staff person is not able to finance the trip and funds are not available from other sources, the employee may apply for assistance from [organization] to enable the employee to join a Volunteer in Mission team. This assistance shall be for no more than one week's pay and must be applied to the trip expenses. If the staff person receives financial assistance from [organization] to join a team, vacation days only may be used for time out of the office. If a staff person is able to finance his/her trip, then [organization] shall award up to one week's time for the trip and not require the use of the staff person's vacation days for the entire trip.

Electronic Communications Policy

[Organization] is committed to providing an environment that encourages the use of computers and electronic communications as essential tools to support [organization's] ministry. In utilizing [organization's] computers and electronic communications systems, including, but not limited to, electronic mail and access to the Internet, it is important for all staff (“users”) to be aware of [organization's] policy regarding responsible use. It is the responsibility of each User to ensure that this technology is used for proper business purposes and in a manner that 1) is responsible, professional, and legal; 2) does not compromise the confidentiality of proprietary or other sensitive information; 3) does not compromise the security of [organization's] computer resources; and 4) is consistent with good stewardship and the mission and ministry of [organization].

The purpose of this policy is to ensure the appropriate use of computer resources, to monitor and maintain productivity of employees, to assist in preventing harm to the interests of [organization] and its employees, and to prevent the violation of various state and federal laws.

No Privacy.

Users do not have a personal privacy right in any matter created, received, sent, or stored on [organization's] computer resources, whether or not the matter is designated as "private" or "confidential." [Organization] reserves the right to access all computer resources for the purpose of supporting its mission and ministry, assisting with the management of [organization's] information systems, and assuring compliance with statutory and internal policy requirements.

All aspects of [organization's] computer, technology and communications systems, including but not limited to hardware, software, and all files and message contents, are the property of [organization]. The computer, technology and communications systems, including e-mail and Internet access, are business tools provided by [organization] which should be used for business purposes only.

[Organization] reserves the right to monitor and review e-mail messages and Internet access, without prior notice. This includes the right to monitor Internet sites visited, duration of employee's Internet use, and files which have been viewed, accessed, or downloaded. E-mail messages and Internet access are not private. An employee's access code or password does not give him or her any right to privacy with respect to using the agency's e-mail and Internet systems.

Any violation of this policy may result in disciplinary action, including termination of employment.

Internet Access

[Organization] provides access to the Internet through an Internet browser. [Organization] staff designated to have access to the Internet are required to use such access in a legal, responsible, and informed manner, conforming to network etiquette, customs, and courtesies. Internet E-Mail access/usage is subject to [organization's] policies and guidelines related to E-Mail.

[Organization] management will determine:

- The extent to which staff may use the Internet to accomplish job responsibilities. Any questions about the appropriateness of a particular use of the Internet should be discussed with the staff person's supervisor;
- The appropriateness of using the Internet for professional contacts and career development activities during office hours; and
- Training required of staff using the Internet and work time that may be used to practice/acquire skills needed to effectively access and use the Internet.

The Internet is not a secure communication channel and should not be used for sending or receiving confidential or sensitive information.

Use of the Internet is a privilege, not a right, and may be revoked at any time for inappropriate conduct. Misuse of Internet access by any employee may result in other disciplinary action, including termination of employment. Examples of inappropriate conduct include, but are not limited to: use of inappropriate or offensive or abusive language in either public or private messages; unlawful activities; gambling; defamation; infringement of copyrights; misrepresentation of oneself or [organization]; logging on or accessing obscene, pornographic, sexually explicit, racist, or violent sites; pirating software or transmitting software programs or other copyrighted or trademarked material; engaging in transactions or activity for personal financial gain; jeopardizing [organization's] tax exempt status; creating unauthorized contractual liability for [organization]; violating any [organization] policy or procedure; engaging in any activity or communication that is inconsistent with norms of professional and business conduct; and sending messages that might result in congestion or disruption of networks and systems.

Employees must abide by security policies, procedures, and guidelines in their use of the Internet, and are to refrain from practices which might jeopardize [organization's] computers, data, network, systems security, or work, in general. Employees must guard against computer viruses and security breaches of any kind. Employees who use the Internet:

- May not transfer or install any software or files from the Internet to any [organization] computer or information system except in consultation with appropriate technical staff (i.e. no downloading of software, programs, games, etc.); and
- May not use the Internet to connect to secure accounts (accounts requiring proprietary password log-in) on computer systems outside the [organization] network without prior approval from your supervisor.

Personal Use

The Internet is not "free." Valuable and scarce resources are used to establish, operate and maintain [organization's] access to the Internet, including the valuable use of staff time needed to make inquiries, send and receive E-mail, and participate in discussion groups on the Internet. All employees are expected to be good stewards in the use of these valuable resources. Personal use may be allowed in consultation with a supervisor. Personal use should not occur during working hours.

Electronic Mail

Electronic mail (E-mail) has been established for agency purposes related to the mission

of [organization]. [Organization] offers the use of E-mail by its employees as an opportunity to enhance their ability to carry out their job responsibilities. Electronic communications, including internal and Internet E-mail, other forms of electronic media and all of their components parts, such as hardware, software, messages and other data ("E-mail"), are the property of [organization]. It may be used for personal purposes only in accordance with [organization] guidelines and may never be used in any way that may be disruptive or offensive to others. E-mail may not be used to solicit participation in any activity not directly related to or sponsored by [organization] (e.g., personal, religious, political, or charitable causes).

E-mail is to be used as an agency tool. E-mail should be drafted with the same thought and concern devoted to written or verbal communications. The E-mail system should not be used to create any offensive or disruptive messages. Users must identify themselves with their full E-mail address or legal name. [Organization] neither assumes nor shares responsibility for incidents of harassment, slander, malice, defamation of character, copyright violations, or any civil or criminal actions that occur or are alleged to have occurred through any personal or inappropriate use of E-mail. The responsibility for and defense against such actions or claims is solely that of the individual.

E-mail is not a private, confidential communication. The confidentiality of any message should not be assumed. Messages should be treated as confidential by other employees and accessed only by the intended recipient. Employees are not authorized to retrieve nor read any E-mail messages that are not sent to them. Any exception to this policy must receive prior approval from the user's supervisor.

In the use of E-mail, users should not use pass codes, access a file, nor retrieve any stored information unless authorized to do so. All computer pass codes must be provided to supervisors. No pass code may be used that is unknown to [organization].

[Organization] reserves the right to access and disclose all messages, for any purpose and at any time, without the permission of the user.

Workplace Violence Policy

[Organization] recognizes that a place of employment safe from violence and the fear of violence is fundamental to the health and well-being of staff. The policy of [organization] is that its staff should work in environments free from physical attack, threats, and menacing or harassing behaviors.

As used in this policy, violence is defined to include the following:

- A **Physical attack** is an unwanted or hostile contact, such as hitting, fighting, pushing, shoving, or throwing objects;

- A **Threat** is any expression of intent to cause physical or mental harm;
- **Harassment** is behavior or communication designed or intended to intimidate, menace, or frighten another person; and
- **Property damage** is behavior or acts that contribute to the destruction or damage of another's property, including the property of [organization].

At [organization], physical attacks, threats, harassment, and property damage are always prohibited.

Any staff person who experiences or witnesses such acts, conduct, behavior, or communication must immediately contact his or her supervisor and [position].

Any supervisor or manager who receives a complaint of violence, threats, harassment, or property damage, or who has reason to suspect that these acts or behaviors are occurring, must notify [position].

Upon being informed of an allegation of violence, threat, or harassment, [position] will investigate the matter.

Upon conclusion of the investigation, [organization] will determine how to respond. In the interim, [organization] will respond as it deems appropriate.

Appropriate disciplinary action, including termination, will be taken in instances of misconduct, as judged by [organization].

Employees who know of information about violence, threats, or harassment, but did not notify an appropriate person consistent with this procedure, will be subject to appropriate discipline, including termination.

A staff person will not be retaliated against by [organization] for reporting violence, threats, harassment, or property damage.

Voluntary Termination (Resignations)

Should a staff person decide to leave the employ of [organization], it is expected that at least two weeks written notice will be given. A written letter of resignation should be submitted to the supervisor, with a copy to the [position], stating the date of the resignation and including any additional comments the staff person may wish to make. This letter will be placed in the staff person's personnel file.

Misconduct or Unsatisfactory Performance

Proper conduct and satisfactory performance are necessary to ensure an efficient and effective working system. Should a staff person fail to display these qualities, the supervisor will discuss the problem with [position] to determine what course of action appears appropriate. Substantiated misconduct and/or continuous unsatisfactory performance are cause for immediate dismissal. This may include theft, physical abuse, gross insubordination, or criminal conduct.

Probation

Any staff person being considered for involuntary termination – except in the case of reorganization, substantial misconduct, or other reasons set forth herein – ordinarily will be placed on probation and given an opportunity to correct the problem(s). However, [organization] reserves the right to discharge a staff person at any time without a probationary period. Identification of the problem(s) and terms of the probation shall be put in written form and discussed with the staff person by the supervisor. If the staff person is placed on probation, the term of the probation shall include a date on which the probation period ends.

A progress review may be scheduled at the end of the probationary period. In the event the staff person does not improve and the problem continues, [organization] retains the right to terminate the staff person's employment at any time during the probation period.

Before leaving, staff must return all [organization] property, such as office keys, credit cards, access cards, telephone cards, the Staff Reference Manual, and personnel lists.

Exit Interview

Before the staff person leaves [organization's] employment, the [position] will conduct a formal Exit Interview. This document will become part of the exiting staff person's personnel file.

Harassment

[Organization] will not condone or tolerate harassment of one staff person by another. Harassment may take the form of remarks about age, race, religion, sexually suggestive actions, or statements or any other activity which defames, ridicules, intimidates, or embarrasses an employee. Harassment in the work place violates federal and/or state law.

Racial Harassment

Racial harassment is an act of covert or overt racism. When prejudicial and/or racist attitudes are expressed in a behavior that is focused specifically on the abuse, humiliation, and

defamation of persons because of their race or ethnicity, this will be considered racial harassment. The 1996 General Conference defined racial harassment as the following:

1. Abusive and/or derogatory language that in a subtle or overt manner belittles, humiliates, impugns, or defames a person or a group of persons based on racial and ethnic traits, heritage, and characteristics.
2. A behavior (individual, group, or institutional) which abuses, belittles, humiliates, defames or demeans a person or group of persons based on racial and ethnic traits, heritage, and characteristics.
3. Documentation, printed or visual, which abuses, humiliates, defames or demeans a person or group of persons based on racial and ethnic heritage and traits, or on heritage, or characteristics.

Sexual Harassment

Sexual harassment can take many forms. It is commonly defined as any sexually related behavior that is unwelcome, offensive, or which fails to respect the rights of others. It can be, but is not limited to, the following: verbal harassment consisting of suggestive comments, innuendo, insults, offensive humor or jokes, propositions, or threats; non-verbal harassment consisting of obscene gestures, leering, or ogling; and physical harassment consisting of unwelcome touching, patting, pinching, brushing of the body, coerced sexual intercourse, or assault.

According to the Equal Employment Opportunity Commission, sexual harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when the following conditions exist:

1. When submission to such conduct is a term or condition of employment; when submitting to sexual harassment is an implicit or explicit provision of attaining or maintaining employment;
2. When submission to or rejecting such conduct is a basis for employment decisions affecting the individual's promotions, transfers, job assignments, and/or performance appraisals;
3. When the harassment unreasonably interferes with the employee's work or creates an intimidating, hostile, or offensive working environment.

Gender Harassment

Gender harassment is unwelcome or unwanted conduct which is gender specific, either cross gender or same gender. Although not specifically "sexual", gender harassment may be recognized in patterns of behavior creating a hostile or abusive working environment. Both sexual and gender harassment are exploitations of power and are discriminatory by law.

Training

[Organization] is committed to ongoing training for its entire staff to better understand racial, gender and sexual harassment and their consequences, both to the victim and the perpetrator. This training will be carried out with the help of the General Commission on the Status and Role of Women and the General Commission on Religion and Race.

Grievance Procedures

The purpose of a grievance policy and procedure is to ensure just treatment of all staff and to resolve problems so that constructive working relationships and an effective working climate may be maintained for the benefit of all.

Resolution of differences should be accomplished as expeditiously as possible by all parties concerned. All grievance procedures and resolutions shall be documented and filed independent of the confidential personnel files of those employees involved, located in [department]. Every effort will be made to treat complaints in a confidential manner, with care taken to ensure there is no retaliation or intimidation toward the staff person(s) making the complaint, the staff person(s) complained of, or those serving as witnesses. Likewise, there shall be no retaliation or intimidation should the subject of the complaint be found innocent.

Informal Approach

In many cases, work related problems can be resolved by honest and frank discussions between those persons involved. The [position] will provide conciliatory assistance on request when a direct approach to the department or section head does not seem feasible.

If an informal approach through the above mentioned process does not provide for satisfactory hearings and agreed upon suggestions for resolution of the problem, the staff person may wish to file a formal grievance.

Formal Approach

If a staff person chooses to present a formal grievance, the procedure is as follows:

Step 1 The employee will bring the situation to the attention of [position] in writing, explaining the nature of the problem and a possible suggested resolution.

After being informed of the grievance, the [position] will investigate and provide a resolution or an explanation to the complainant within ten working days.

The investigation will proceed according to established guidelines:

- A. Interview by [position] with complainant;
- B. Interview by [position] with accused party;
- C. Interview by [position] with witnesses or other persons, as needed;
- D. Discussion, with both complainant and accused present, with [position] presenting possible resolutions and timeline for their implementation;
- E. If it is determined that harassment has occurred, [position] will outline the consequences of refusal to cooperate or to change behavior, (e.g., probation, dismissal, or other disciplinary action, as appropriate);
- F. Monitoring of resolution by [position] by means of follow-up interviews;
- G. Explanation of availability of outside sources to provide hearing and resolutions, (e.g., General Commission on Religion and Race, General Commission on Status and Role of Women, and Equal Employment Opportunity Commission).

Step 2 If the staff member is dissatisfied with the resolution, there will be an additional ten working days to appeal the grievance to the [(higher) position].

When the [(higher) position] receives the written Grievance Report, it will be determined if Step 1 was followed. If Step 1 has been followed, the [(higher) position] will:

- A. Interview all parties involved;
- B. In consultation with the General Commission on Religion and Race or the General Commission on the Status and Role of Women, the [(higher) position] will resolve the problem.

[Note: Provisions must also be included for scenarios in which either of the decision makers above is the accused party.]

SAMPLE NOTICE AND AUTHORIZATION FOR BACKGROUND CHECKS

**THIS IS AN IMPORTANT LEGAL DOCUMENT THAT REQUIRES YOUR
ATTENTION
PLEASE REVIEW IT CAREFULLY**

If you wish to be considered for employment at [organization], you must sign this Notice and Authorization.

As part of a pre-employment background check, [organization] may obtain a report about you from a credit reporting agency and/or may obtain an investigative consumer report for the purpose of evaluating you for employment. If you are hired, [organization] may obtain additional consumer reports or investigative consumer reports about you for the purpose of evaluating you for promotion, reassignment or retention as an employee.

Under the provisions of the Fair Credit Reporting Act U.S.C., Sec. 1681, et seq., the Americans with Disability Act and all applicable federal, state and local laws, I hereby authorize and permit the Company to obtain, any person, firm or entity to release to the [organization], the following: 1) my employment record; 2) records concerning any criminal history; 3) records concerning my credit history; and 4) verification of my academic and/or professional credentials. The above items which constitute an "investigative consumer report" may include information as to my character, general reputation, personal characteristics, and mode of living. I agree that a copy of this authorization has the same effect as an original. I hereby release and hold harmless any person, firm or entity that discloses matters in accordance with this authorization and [organization] from liability that might otherwise result from the request for use of and/or disclosure of any or all the foregoing information.

You are further advised under said act that you may request a copy of the report from the consumer reporting agency, _____, that compiled said report after proper identification has been received.

APPLICANT REFERENCE RELEASE

I authorize any references, schools, current or former supervisors, churches or denominational agencies, or any other person or organization, whether or not identified in this application, to give you any information (including opinions) regarding my character and fitness for employment. I hereby release any individual, employer, church, denominational agency or official, reference, or any other person or organization, including record custodians, both collectively and individually, and whether or not identified in this application, from any and all liability for damages of whatever kind or nature which may at any time result to me, my heirs, or

family, on account of compliance or any attempts to comply with this authorization, excepting only the communication of knowingly false information. A facsimile or photocopy of this authorization shall be valid as the original.

Should my application be accepted, I agree to be bound by all rules and policies of [organization]. I understand and agree that nothing in this application for employment or in any pre-employment interview is intended to or shall create a contract between myself and [organization] for either employment or the providing of any benefit.

By this document, [organization] discloses to you that a consumer report may be obtained for employment purposes as part of the pre-employment background investigation and at any time during your employment. Please sign below to signify receipt of the foregoing disclosure.

PLEASE PRINT CLEARLY

Full Name _____

Other Name Previously Used _____

Social Security Number _____

Birth Date _____

Street Address _____

City, State, Zip Code _____

I understand this authorization and release and authorize [organization] to obtain consumer reports and references as explained above.

Signature _____

Dated _____

SEXUAL HARASSMENT/MISCONDUCT **INVESTIGATION GUIDELINES**

(Prepared by the General Commission on the Status and Role of Women)

Objectives

Bishops, Cabinets, conferences, and churches need to develop prompt, thorough and consistent procedures for the handling of allegations of sexual harassment and/or misconduct and for developing and implementing corrective actions as warranted. Churches, conferences and institutions, as well as individuals in a supervisory capacity, are legally most vulnerable to litigation when they are perceived as indifferent or slipshod in their approaches to investigation and remediation of a complaint of sexual harassment or misconduct. If victimized persons feel that their church won't listen to them, they're far more likely to seek a secular court that will. Persons who are involved in investigating these complaints should keep in mind two key objectives--first to provide a just process that is fair to the complainant and the accused, and second, to be sure to document the process to be able to demonstrate its fairness in the event of subsequent scrutiny of the process.

Preliminary Considerations

- A. Consider using a team of two unbiased investigators.
 - 1. Greater reliability in gathering facts.
 - 2. Check on each other's conduct during the investigation.
 - 3. Collective decisions more probative than unilateral ones – “Two heads are better than one.”
 - 4. Corroboration of each other's testimony, in the event of a subsequent trial.
- B. Create a separate file on the investigation for notes, statements taken, the report of the investigation and any disciplinary actions taken.
 - 1. Avoid editorial comment or personal opinions.
 - 2. Record facts leading to conclusions.
 - 3. File access confidentiality.

Gathering Facts

- A. Be acquainted with existing conference sexual harassment/misconduct policies as well as any previously adopted by the church or institution, General Conference resolutions, relevant provisions in the Book of Discipline, pertinent Judicial Council decisions, and document the review of existing policies.
- B. Interviewing the alleged victim (complainant).

1. Take the complaint seriously.
2. Consider the use of a victim advocate.
3. Explain at the outset what the investigation/complaint process will involve.
4. Do not promise complete confidentiality, but do indicate those with knowledge of the complaint and the investigation will be limited by the investigators' best efforts.
5. Listen and find out what happened from the complainant. Remember this may be your best opportunity to hear the complainant's story in a non-adversarial setting.
6. Note specific facts and ask open-ended questions--in particular what it was that happened? When? Who? Where? Welcome or unwelcome? Who did complainant tell? Witnesses?
7. Find out the effect of the conduct on the complainant from the complainant.
8. Ask the complainant what he/she wants to happen and whether they will give their permission to be identified.
9. Explain what procedures available and how complainant can access them.
 - a. Third party mediation.
 - b. Grievance/complaint process.
10. Assess the complainant's credibility.
 - a. Demeanor.
 - b. Believability – motive to lie?
 - c. Refusal to provide information such as witnesses, specifics as to the misconduct – ***DOCUMENT***.
11. Obtain a written statement from the complainant. Make it concise and specific (date, place, specific events).
12. Type up interview notes for file.

C. Interviewing the accused perpetrator (respondent).

1. Explain the purpose and indicate that no decision has been reached concerning the truth of the allegation.
2. Identify the alleged victim (if permission has been previously obtained) and the specific basis of complaint.
3. Warn against any retaliation or reprisal against either the alleged victim or any witnesses.
4. Elicit response to the allegations - ask follow up questions, determine who are corroborating witnesses.
5. If cooperation with the investigation is refused, document the refusal
6. Assess credibility (see B.10 above).
7. Take statement, if warranted and/or offer the opportunity to submit a written statement.
8. Type notes for file.

D. Interviewing Witnesses

1. Find out what witness knows – get specifics.
2. Distinguish between firsthand (eyewitness) and secondhand (hearsay, rumor) information.
3. Assess credibility (see B.10 above).
4. Take statement, if warranted (dates, places, specific events).
5. Inquire whether witness may be willing to testify.
6. Type notes for file.

Evaluation

- A. Evaluate the facts from the perspective of the alleged victim – the "reasonable person" standard for objectionable and offensive conduct.
- B. Determine if sexual conduct was "voluntary" or "unwelcome." Take into account the relationship of the parties. Be wary of finding "voluntary" conduct in counseling situations. Due to the relative powerlessness of counselee, some states have enacted statutes establishing criminal misconduct whenever counselors engage in sexual activity with counseles.
- C. Draft thorough, even-handed report.
 1. Describe the process chronologically (dates, places, events).
 2. Provide the exact details of complaint (specific events).
 3. Note what documents, if any, were reviewed and when relevant, attach copies.
 4. Describe interviews, noting where information received was firsthand as opposed to rumor and hearsay.
 5. State conclusions reached and justification for them – be specific.
 6. Recommend corrective action or actions, which will
 - a. Prevent further harassment/misconduct
 - b. Avoid punishing complainant for coming forward
 - c. Be consistent with practice under the policies in place
 - d. If resources available, offer counseling, other assistance
- D. Follow up with complainant and accused perpetrator.

REMEMBER

Prompt, thorough and consistent handling of sexual harassment or sexual misconduct complaints and implementation of corrective and remedial action to prevent future occurrences are the best ways to legally protect a church, conference or institution. The basis of most litigation arising out of allegations of sexual harassment or misconduct is the failure of the organization to take the issue seriously, either at the investigative or the remedial stages.

Why do victims sue? Primarily because they don't feel they are taken seriously by the "system" and therefore must go outside it to get redress in the form of damages for past harassment and corrective action against future misconduct.

[THIS SPACE INTENTIONALLY LEFT BLANK]

SAMPLE EMPLOYEE HIRE CHECKLIST

Employee Name

Date of Hire

Social Security Number

Home Telephone Number

ITEM	COMPLETED	COMMENTS
Employee Application, signed and dated		
Federal W-4 Form, signed and dated		
State W-4 Form, signed and dated		
W-9 Form, signed and dated		
Health Insurance Application		
Other applications: Life		
Disability		
Dental		
Pension		
Other		
Personnel Manual signature sheet, signed and dated		
Signed verification of receipt of job description		
Copies of appropriate licenses, resumes, examination results		
Copies of I-9 information		
Ethics Statement, signed and dated		
Verification of issuance of:		
Keys		
Employee ID		
Equipment		
Parking Pass		
Credit Cards		
Telephone Calling Card		
Other		

Date of completion of checklist

NOTE: This sample checklist is not intended to serve as legal advice or as a substitute for consultation with legal counsel, nor does it establish a standard of care regarding hiring procedures.

SAMPLE EMPLOYEE TERMINATION CHECKLIST

Employee Name

Date of Termination

Social Security Number

Home Telephone Number

ITEM	COMPLETED	COMMENTS
Letter of Resignation, signed and dated		
Health/Dental Insurance Continuation Rights Notification to Employee, signed and dated		
Life Insurance Conversion Notice, signed and dated		
Disability Insurance Coverage Notice (if applicable), signed and dated		
Receipt of Certified Carrier (If appropriate)		
Verification of Receipt of Returned Property:		
Keys		
Employee ID		
Equipment		
Manuals		
Parking Pass		
Credit Cards		
Telephone Calling Card		
Other		
Copy of Final Paycheck Detailing		
Copy of Employee's Election Form for Health/Dental Continuation, signed and dated		
Copy of Termination Notice to all insurance carriers		
Exit Interview notes		

Date of completion of checklist

NOTE: This sample checklist is not intended to serve as legal advice or as a substitute for consultation with legal counsel, nor does it establish a standard of care regarding hiring procedures.

HIPAA PRIVACY RULE AND LOCAL CHURCHES



One Music Circle North
Nashville, TN 37203

GCFA Legal Department
866-367-4232
legal@gcfa.org

THE UNITED METHODIST CHURCH

MEMORANDUM

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. In this memorandum we discuss these legal issues and provide some general guidelines for local churches to consider when disclosing health related information about parishioners and other individuals.

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Introduction

HIPAA. These five little letters have caused a great deal of confusion and anxiety lately. The purpose of this memorandum is to take some of the mystery out of HIPAA and address the most common questions concerning the impact of HIPAA on local churches.

It may be best to begin at the beginning. 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. The subject of this memorandum is another set of HIPAA rules – 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.

This probably comes as no surprise, but the privacy rule is both complex and astonishingly far-reaching. And because it is so vast and so new, health law professionals (and even the government) are still trying to figure out how it will apply in the myriad of situations where the privacy of an individual's health related information is an issue. Hence, it is also no surprise the general public is confused and, of course, confusion, misinformation, and fear travel much more quickly than the truth.

Perhaps you have seen some of the "scary" articles circulating around discussing the severe penalties for violating the privacy rule. Indeed there are serious civil and criminal penalties for violating the privacy rule, but not everything cited in these articles actually is a violation of the rule. Over time, most of this uncertainty and confusion will sort itself out and we will all become more familiar and comfortable with this new rule. While this memorandum can only begin to address the most basic aspects of this complex rule, we hope it can 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 new 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. After the privacy rule became effective, many churches expressed concern that these traditional practices would no longer be permitted. Fortunately, most of these concerns are unfounded.

In general, the HIPAA Privacy Rule does not apply to churches' 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. But, as with life itself, there are few absolutes. Indeed, there are some exceptional circumstances where the privacy rule and other federal and state laws may apply to these practices and we will discuss some of these special privacy concerns later in this memorandum.

Before we proceed with the technical legal discussion, this might be a good place to reflect on all the "chaos" caused by the privacy rule. As noted above, the privacy rule does not restrict traditional church practices in most circumstances. But all the discussion about the privacy rule has had an indirect benefit. For perhaps the first time, we have all been forced to think seriously about the issue of "privacy" – what it really means and how it should be respected. In the long run, that may be the most important legacy of this (painful) experience.

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

What is the HIPAA Privacy Rule?

In the most simple terms:

The HIPAA 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.

The privacy rule defines the critical terms “protected health information” and “covered entities” in great detail but the following definitions should suffice for most purposes:

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 (who electronically transmit certain health care related information), and (iii) health care clearinghouses.

It follows from the above definition that 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. (On the other hand, workers' compensation, life insurance, and short and long term disability plans are generally not "health plans" as defined by the privacy rule.)

Covered entities also include “health care providers” such as doctors, hospitals, clinics, and counseling centers, provided they transmit certain health care related information electronically. More specifically, health care providers will be covered entities if they electronically transmit health related information in connection with any of the so called “standard transactions” described in the privacy rule. These standard transactions include all the basic communications that are the “lifblood” of third-party health care billing in America today, e.g., submitting health claims, paying health claims, inquiries about benefit eligibility, and referrals to other providers. In short, it would be a rare professional health care provider who is not a covered entity subject to the privacy rule. (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 in this memorandum.

Application of the HIPAA Privacy Rule to Local Churches

We said earlier the privacy rule does not generally apply to a church's disclosure of health related information concerning an individual. This follows from the statement of the rule and the definitions given above. 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. If Betty did not have Mary's permission to inform the congregation, was the disclosure a violation of the privacy rule? No, except in the unusual case where Betty is a covered entity (or connected with a covered entity). For example, Betty (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. Otherwise, there is no violation of the privacy rule.

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. These special privacy issues are discussed in the next section.

Special Situations and Privacy Concerns

Local Church Employees

Disclosure of health related information about church employees can raise several privacy issues. And these issues are the same for all church employees, regardless of whether 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 under 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 health plans 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 plan 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 that the privacy

rule indirectly regulates the disclosure of PHI by the employer who is generally not a covered entity subject to the rule.)

As an example, suppose 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 subject to 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 can be 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's "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. Thus, for example, the record of Mary and Jane's accumulated days of sick leave in the church's personnel files would not be PHI.) It is also important to note that we have discussed this example solely 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 that also considers what Betty should have done and we will return to that point in the last section of the memorandum.

Before leaving the issue of church employees, churches need to be aware that there are numerous other laws, besides the HIPAA 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. Recall that health care providers who transmit claims, billing, referral, or certain other types of health care related information electronically will be covered entities subject to the privacy rule. The same is true for churches that provide health care.

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 that the clinic electronically bills Medicaid, Medicare, private insurance companies, or patients' credit cards for their services. Then the church (not just the health clinic) will be a covered health care provider subject to the privacy rule in all respects. In particular, such a 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.

As discussed in the above example, if a local church engages in health care activities or functions that make it a covered entity, the entire church is subject to the requirements of the privacy rule, not just the part of the church that engages in the covered activities or functions. 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 basically 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. If the hybrid entity is created properly, then basically, the health care components will be treated as covered entities subject to the privacy rule and the other components will not be subject to the rule.

Note that even after a covered entity becomes a hybrid entity, the covered entity is still responsible for insuring that its health care components comply with the privacy rule in all

respects. For example, the health care component will need to comply with the privacy rule's administrative requirements. In the case of a covered health care provider, these requirements include developing and implementing written privacy policies and procedures, designating a privacy official, training members of its workforce on the privacy policies, and implementing safeguards to protect its data. Because of the complexity of creating a hybrid entity, we recommend churches seek professional legal advice to assist with this process.

In the example discussed earlier in this section, suppose the church designated itself as a hybrid entity with the inner city health clinic as its health care component. If there were sufficient safeguards in place to protect against disclosure of PHI by the clinic, then the customary activities of the church, including publicizing prayer lists and requests, could proceed unaffected by the privacy rule.

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.

Thus, it would appear that the sole acts of placing names on prayer lists and requesting prayers for individuals cannot make a church a health care provider as defined under the privacy rule. And 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 in some cases 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 and mental health counseling is covered. 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 with professional psychologists on staff providing services to mentally ill patients and also (electronically) billing 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, we suggest you consult with an attorney who can advise you on your particular situation.

State Privacy Laws.

As discussed earlier, the federal HIPAA Privacy Rule is not the only law regulating the disclosure of an individual's health related information. We noted in our discussion of church employees that the ADA and FMLA may apply in some circumstances. In addition, 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, we will focus on claims (lawsuits) that individuals (plaintiffs) may bring against defendants based on "invasion of privacy" or more precisely, "public disclosure of private facts." Many states recognize this type of claim in one form or another. Generally speaking, for plaintiffs to prevail on an invasion of privacy claim, they must show that the defendant publicized private facts about the plaintiff and that 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 HIPAA Privacy Rule, it illustrates very clearly many of the issues churches need to consider whenever they disclose health related information about an individual. In the next section, we highlight these issues.

Summary.

So, where does all this leave us?

As we have seen, the HIPAA 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 HIPAA Privacy Rule, there are other federal and state laws that may limit the disclosure of such information.

Are there any 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?

No. There are never any guarantees. 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, here are some general principles for churches to consider when publicizing health related information about parishioners and other individuals:

Consent, Consent, and Consent.

In some sense, this entire memorandum is about how much churches can legally do without obtaining the consent of the affected individuals. As it turns out, consent is not legally required in most circumstances. But this is all backwards. *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 requiring more. 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, e.g., 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 that 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.

TMI ("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 discussed earlier. 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. In particular, 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.

As we discussed, 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 we get so focused on the law and what we have the "right to do" we lose sight of the "right thing to do." Obviously, it is essential that we try to 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 we need to 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 you, acting on behalf of the church, are contemplating the disclosure of health related information about someone else, first ask yourself what you would like done if you were in a similar position. Would you care whether you were first asked for your permission before disclosing the information? If you were incapacitated, would you prefer your family or friends to decide what should be disclosed and to whom? Would you possibly be embarrassed if this particular information was publicly disclosed? The answers to these questions will go a long way toward pointing us all in the right direction.

Additional Resources

<http://answers.hhs.gov/categories/201> - The U.S. Department of Health and Human Services (HHS) web site containing “Questions and Answers” about the HIPAA Privacy Rule.

<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.)

This memorandum is intended to provide general information on certain topics. It is not intended to constitute legal advice and The General Council on Finance and Administration does not provide legal advice. If you have any questions concerning the application of the law to your particular circumstances, please consult with an attorney.

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