



# **KEEP YOUR CHURCH OUT OF COURT**



## **SEMINAR**

### **Section 1**

## **Legal Summary**



# KEEP YOUR CHURCH OUT OF COURT



## SEMINAR

### Section 1

## Legal Summary

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## Section 1 Outline

### Legal Summary

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#### Corporate (Transactions & Governance)

- 501(c)(3) Subsidiaries – Consider subsidiary governance, boards, property and tax IDs.
- Corporate Governance Structure – See Section 7
  - How are important decisions made?
  - Does this mirror the organization’s constitution and bylaws?
  - Bylaw-defined roles for Lead Pastor, Church Staff, Deacons, Committees and Trustees should be found here.
  - **Follow your governing documents. Not following these documents may constitute grounds for litigation.**

#### Marriage/Gender Identity Views – See Section 6

- Doctrinal Statements are foundational, but may not be enough.
- Answer the questions: Who can be married at my church?  
What marriages may pastors at my church officiate?
- Marriage Definition – Define biblical marriage.
- Other Factors – Counseling, Covenant Marriage

#### Waivers of Liability – See Section 4

- It’s important to recognize that lawsuits can occur at any time and for any reason.
- Waivers simply mitigate risk and deter potential lawsuits.

#### Membership – See Section 7

- Because church membership typically confers special privileges, it is an important milestone.
- In most churches, members can: Serve in leadership, serve on committees, become a deacon, have a marriage ceremony, vote on church business, etc.
- Answer the question: Who can become a member?
- Define a Church Discipline Process in your bylaws.

#### Commercial Real Estate

- Real Estate Transactions
- Land Use and Zoning



### Intellectual Property

- Licensing (CCLI/CVLI)
- Streaming and Social Media Content
- Data Privacy and Data Breaches

### Employment Law

- Personnel Policy and Handbook
- Employee Classification
  - FLSA Classification Tree for Churches and Other Religious Organizations..... 19
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- Background Checks and Drug Screenings
- Housing Allowances – A Minister’s Housing Allowance is designated as the lesser of: The amount actually used to provide a home, the amount officially designated as a rental allowance, or the fair rental value of the home, including furnishings, utilities, garage, etc.
  - Housing Allowance Computation\* ..... 25
- Residency Program and Interns – Be sure to follow Labor Department rules for employee/intern classification, compensation and work hours.
  - “Internship Programs Under the Fair Labor Standards Act” ..... 27  
(Fact Sheet #71) by U.S. Department of Labor\*

### Other General Legal Issues

- Financial Policy
- Church Discipline
- Security and Safety

\* Document Attached

## CHURCH LEGAL MATTERS OVERVIEW

| No.                                            | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Feedback/Recommendation |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <b>CORPORATE (TRANSACTIONS AND GOVERNANCE)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                         |
| 1                                              | Is the church one legal entity or broken into subsidiaries or brother-sister entities (e.g., for different campuses and/or ministries of the church such as a medical clinic, food pantry, etc.)? Does a 501(c)(3) letter exist?                                                                                                                                                                                                                                                                                         |                         |
| 2                                              | Is the church a part of a broader national or international organization or denomination? Explore weekly attendance and plans for the future.                                                                                                                                                                                                                                                                                                                                                                            |                         |
| 3                                              | Describe the church's corporate governance structure and governing documents (elder, deacons, officers, executive team, congregational approval required for certain things, etc.). Discuss attendance at church conference and board/elder meetings, as well as ensuring that the church is following proper corporate formalities and compliance with church constitution and/or bylaws (quorum, notice, voting thresholds and manner of voting, etc.). Discuss minutes and importance thereof. Discuss D&O insurance. |                         |
| 4                                              | Discuss marriage/gender identity views, sanctity of life, other social stances that are codified in the church's governing documents, if any. Addressing these issues in governing documents can reduce the likelihood of disputes and mitigate the intensity of those disputes when they occur. Examples include employment disputes, facilities use (weddings, celebrations), youth group participation, and the like.                                                                                                 |                         |
| 5                                              | Discuss usage of waivers for participation for various events (volunteers, mission trips, youth activities, etc.). Are the waivers implemented ad-hoc (event based) or are waivers systematized as part of new member orientation or volunteer opportunities?                                                                                                                                                                                                                                                            |                         |
| 6                                              | Discuss new member and new volunteer paperwork. Key concepts include: Statement of Faith acknowledgement, church discipline, giving, waiver of claims, data privacy, likeness release for pictures/video marketing, brand ambassador of the church, confidentiality, ministry specific items (for volunteers), concealed carry, intellectual property, privilege/confidentiality, reporting requirements, dispute resolution, etc.                                                                                       |                         |
| 7                                              | How does the church generally engage with vendors (book-keeping, janitorial, landscaping, handy work, service providers, etc.)? Does the church have a template vendor contract form that it uses regularly that protects the church (vendor will have insurance, vendor will indemnify the church for negligent actions, confidentiality, robust representations and warranties from the vendor, intellectual property, dispute resolution provisions favorable to the church, etc.)?                                   |                         |
|                                                | Discuss potential conflicts of interest and best practices, as well as risks to elders/board/officers for fiduciary duty violations – duty of loyalty issue for board member with dual interests, and duty of care issue for others who allow it to happen. Discuss members as vendors.                                                                                                                                                                                                                                  |                         |
| 8                                              | Discuss debt and banking relationships (discuss PPP loan/program). Discuss balance sheet and annual operating budget.                                                                                                                                                                                                                                                                                                                                                                                                    |                         |
| 9                                              | Discuss unrelated business income. Discuss IRS controversy and tax representation work. Paying any UBIT currently? Are financials audited or reviewed?                                                                                                                                                                                                                                                                                                                                                                   |                         |

| No.                           | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Feedback/Recommendation |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 10                            | Discuss campus and church acquisitions (i.e., history, plans for future, confidentiality, corporate governance hurdles, potential liabilities/structure, real estate component, governmental and landlord consents, due diligence checklist, etc.).                                                                                                                                                                                                                                                        |                         |
| 11                            | Does the church use a template confidentiality or non-disclosure agreement for joint venture, growth opportunities, pre-vendor RFP, or any scenario where the church is divulging sensitive information to a third party? Unilateral and reciprocal. Discuss email disclaimers.                                                                                                                                                                                                                            |                         |
| 12                            | Discuss document retention and contract management. Is there a policy and if so it is regularly communicated and adhered to? Discuss contractual signing authority (signature/authority matrix). With respect to execution, who currently has signature authority? Who actually signs? Who decides?                                                                                                                                                                                                        |                         |
| <b>COMMERCIAL REAL ESTATE</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                         |
| 13                            | Does the church have rented or owned facilities? Are there multiple locations? What are the plans? Are there separate real estate subsidiaries? Discuss real estate related transactions (buying or selling, leasing, financing, refinancing, etc.)?                                                                                                                                                                                                                                                       |                         |
| 14                            | Does the church allow groups to use the space? If so, on what terms? Discuss the importance of a Facility Use Agreement (i.e., indemnification, rules and regulations, insurance coverage/additional insured, confidentiality, values/mission alignment, etc.).                                                                                                                                                                                                                                            |                         |
| 15                            | Discuss any tax issues related to any owned real property (exemptions for real estate are generally based upon active religious use on a date certain).                                                                                                                                                                                                                                                                                                                                                    |                         |
| 16                            | Discuss land use and zoning. Discuss eminent domain, restrictive covenants, adverse possession, and any relevant real property disputes.                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 17                            | Discuss cemeteries and playgrounds. Discuss premises liability categories – brief overview, duties to trespassers, attractive nuisance. <ul style="list-style-type: none"> <li>- Discuss the “bouncy house” problem – balancing the tension between outreach events with low barriers to participation with the protective component of stewardship responsibility.</li> <li>- Discuss removing individuals from the premises (i.e., de-escalation verbally, physical removal, who, how, etc.).</li> </ul> |                         |
| <b>INTELLECTUAL PROPERTY</b>  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                         |
| 18                            | Does the church (or should the church) have any trademarks? Discuss common law and federal registrations (name of church, ministry, logos, slogans, and combinations and variations thereof).                                                                                                                                                                                                                                                                                                              |                         |
| 19                            | Does the church have an Intellectual Property Policy (who owns sermons created or songs written)? Are there licensing or royalty agreements? Is intellectual property adequately addressed in employee handbook or employment agreements? Use of church assets (supplies, equipment, personnel), outside of scope of employment on church time or no?                                                                                                                                                      |                         |
| 20                            | Discuss CCL/CVLI License and streaming services via internet.                                                                                                                                                                                                                                                                                                                                                                                                                                              |                         |
| 21                            | Discuss social media content, guest speakers and copyrights. Who owns the website?                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |
| 22                            | Discuss Terms and Conditions of Use/Privacy Policy (addressing terms like waivers, dispute resolution, intellectual property/ownership of web content, copyright dispute resolution mechanism/notice, use of information submitted by users, prohibited activities, disclaimers, etc.). Discuss Wi-Fi terms/conditions (guest and employees).                                                                                                                                                              |                         |

| No. | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Feedback/Recommendation |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
|     | <p><u>Key Concepts/Terms and Conditions of Use</u></p> <ul style="list-style-type: none"> <li>- Copyright protection</li> <li>- Limitation of liability</li> <li>- Disclaimers</li> <li>- Dispute resolution</li> <li>- Authorized and unauthorized use of the website</li> <li>- Prohibited activities</li> <li>- Representations/Covenants of users (viruses, etc.)</li> </ul> <p><u>Key Concepts/Privacy Policy</u></p> <ul style="list-style-type: none"> <li>- Generally required by law if collect or use any personal information from users</li> <li>- Inform users about your collection and use</li> <li>- Procure authorization</li> </ul>                                                                                                                                                                                                                                                                   |                         |
| 23  | Discuss data privacy and use/storage/disposal of member and employee information. Discuss giving/donors and storage of information. Discuss the prevalence of data breach.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                         |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |
|     | <p><b>EMPLOYMENT LAW</b></p> <p>Discuss employee policies. Is there a handbook? When was the last time it was updated and/or reviewed by legal counsel?</p> <ul style="list-style-type: none"> <li>• Reference Statement of Faith (require adherence/membership)</li> <li>• Dispute resolution (perhaps under religious principles)</li> <li>• Conflict of interests (disclosed)</li> <li>• Image Likeness (photos/videos, etc.)</li> <li>• Brand Ambassador/Core Values</li> <li>• Confidentiality</li> <li>• Intellectual Property Ownership</li> <li>• Authorization of Background Checks/Drug and Alcohol Screenings</li> <li>• Social Media Policy</li> <li>• Compensation and Benefits/TBD by Employer</li> <li>• Pay Policies</li> <li>• Leave and Time Off</li> <li>• Performance Reviews</li> <li>• Commitment to Growth/Flexibility/Teamwork Mentality</li> <li>• Whistleblower Section/Harassment</li> </ul> |                         |



| No. | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Feedback/Recommendation |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
|     | <ul style="list-style-type: none"> <li>• Remote Work/Device Usage Policy (BYOD v. Company Owned)</li> <li>• Equal opportunity employer (how aligns with views on marriage?)</li> <li>• Sexual Abuse/Reporting</li> <li>• Concealed Carry/Security</li> <li>• Facility Usage</li> <li>• Politics/Tax Exempt Status</li> <li>• Document Retention</li> <li>• Catch-All Compliance with other employer guidelines, handbooks, policies, directives</li> <li>• At-will status</li> <li>• Exclusivity/No Moonlighting?</li> <li>• Benefits</li> </ul>                                                                                                       |                         |
| 25  | Discuss classification issues (W-2 versus 1099; discuss childcare workers and musicians; factors: control (when/where), equipment, indefinite time, other work and independent business judgment, key aspect of organization, training and instruction, does worker make investments, higher v. lower level skill, who sets the hours, etc.).                                                                                                                                                                                                                                                                                                          |                         |
| 26  | Discuss wage and hour practices (exempt/non-exempt, i.e., salary threshold + “Executive, Administrative, Learned Professional/Creative Professional, Computer Employee, or Outside Sales Employee”). The key difference between exempt and non-exempt employees is that non-exempt workers are entitled to certain protections under the Fair Labor Standards Act, a federal law that sets minimum wage and overtime requirements. And although the FLSA has evolved since its passage in 1938, one thing remains the same – employers must classify their employees correctly or risk costly compliance violations.                                   |                         |
| 27  | <p>Does the organization use background checks and drug and alcohol screenings (i.e., employees, volunteers (all or some), renewals, permission, reference checks, etc.)?</p> <ul style="list-style-type: none"> <li>- Consider categories w/r/t background check results - working with minors, drivers, working with money, general.</li> <li>- Consider tracking by volunteer coordinators as well (esp. for multi-site churches).</li> <li>- Also discuss (i) timing for how often background checks are re-run, and (ii) whether references are checked in addition to the background check.</li> <li>- Credit checks/reference checks</li> </ul> |                         |
| 28  | Discuss employee/minor policies (background checks, location, no adult alone with a child, texting with minors, bathroom policies/hallway, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |
| 29  | Discuss Title VII of the Civil Rights Act of 1964 (prohibits employment discrimination based on race, color, religion, sex and national origin), the ministerial exception under the Constitution, the statutory Title VII exception and recent cases, etc. Discuss the importance of regular performance reviews, objective feedback, more than one person making hiring/firing decisions, diversity training, etc.                                                                                                                                                                                                                                   |                         |
| 30  | Discuss housing allowances; discuss benefits/retirement plans (i.e., a 403(b)(9) plan is a defined contribution plan geared towards the distinctive needs of evangelical churches or church organizations. Unlike typical 403(b) plans, the 403(b)(9) plan is not subject to ERISA requirements. In addition, this plan offers special distribution methods for retired ministers).                                                                                                                                                                                                                                                                    |                         |



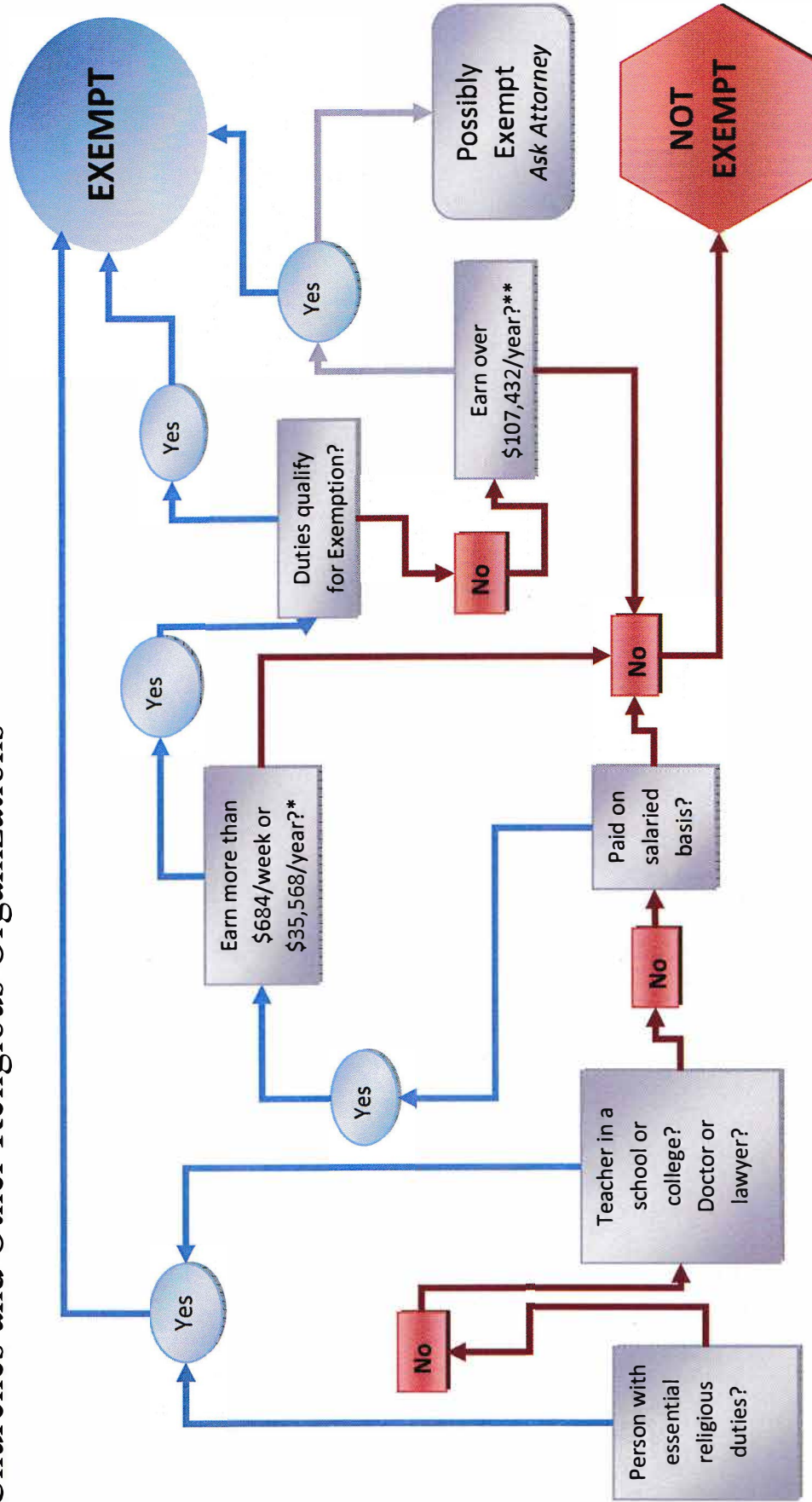
| No.                                      | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Feedback/Recommendation |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 31                                       | Discuss interns (paid versus non-paid, paperwork, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| 32                                       | Discuss offer letters and employment agreements. Discuss job descriptions (and the importance thereof).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                         |
| 33                                       | <p>Does the organization use severance agreements with terminated employees that include a release and are age appropriate? Discuss importance of a severance agreement (i.e., release of claims, non-disparagement and confidentiality provisions, standard fare in business world versus church context, usually no set rule on weeks of pay, etc.).</p> <ul style="list-style-type: none"> <li>- Does the Church participate in an unemployment insurance program, either voluntarily with a state program or through private insurance? Many churches do not have any unemployment insurance and only find out when they terminate someone – who has no “transition period”.</li> <li>- Absent a severance policy or severance agreement, an attempt at a merciful transition attempt can create more problems. Payments to a former insider after they leave employment begin to look like “private inurement” or “private benefit” transactions contrary to IRS rules.</li> </ul>                                                        |                         |
| <b><u>OTHER GENERAL LEGAL ISSUES</u></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
| 34                                       | <p>Discuss financial policies.</p> <ul style="list-style-type: none"> <li>- How money is handled, checks, cash, online, credit card expenditures (reconciliation/oversight); dual layer of personnel review, etc.</li> <li>- Discuss benevolence policies (diverse authority, criteria, no conflicts/inside deadline, no large amounts, payroll exposure, etc.).</li> <li>- Discuss designated gifts (honoring intent, choice, and possible tax/gift tax implications for personnel designations).</li> <li>- Discuss donor acceptance policies.</li> <li>- Does the church have an <b>investment policy</b>? General approach: (1) investment committee, (2) separate key functions, (3) adopt an investment policy. Discuss key elements of approach and policy: (a) standards for diversification/risk tolerance, (b) Board (and perhaps congregation) input, (c) fiduciary duties: care, loyalty, obedience, (d) donor confidence, (e) transparency &amp; accountability, (f) impact investing, (g) decision-making thresholds.</li> </ul> |                         |
| 35                                       | Discuss automobiles.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                         |
| 36                                       | Discuss clergy privilege (expectations of confidentiality).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                         |
| 37                                       | Discuss the church’s role in politics (may impact tax exempt status). May not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                         |
| 38                                       | Discuss lawsuits on behalf of the church (rare but sometimes necessary). Defend the church against claims by plaintiffs (personal injury, employment issues, negligence, sexual abuse, construction, real estate, contracts, etc.). Discuss the importance of dispute resolution provisions (not public record, religious principals, locale, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                         |
| 39                                       | Does the church enter into release agreements with plaintiffs related to claims for small potential liabilities (slip and fall, injuries, accusations, etc.)?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |

| No. | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Feedback/Recommendation |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 40  | Discuss responding to alleged abuse allegations and reporting requirements. Sexual abuse allegations are the number one topic where churches are sued (statistics show this, plus our anecdotal observation). Discuss importance of tight policies, training, operations, cameras, and insurance, etc. Claims are typically based on negligent clearance/selection, retention, supervision of the alleged perpetrator. Caring for the alleged accused, the alleged abused, reporting requirements, internal and external communications, etc.                                                                  |                         |
| 41  | Is there use of church discipline and where is that memorialized (Bylaws, member/volunteer terms, etc.)?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| 42  | <p>Discuss counseling paperwork (legal structure, terms for participants, terms for work-force, licensure, etc.). Terms with participants include:</p> <ul style="list-style-type: none"> <li>- “Counseling” means “Biblical counseling” or “Gospel-based counseling”</li> <li>- Disclaiming official licensure/medical standards</li> <li>- Expectations of participant</li> <li>- Assumption of risk/Waiver of claims</li> <li>- General waiver</li> <li>- Confidentiality and appropriate carve outs (abuse, violence, suicide, etc.)</li> <li>- Dispute resolution (Biblically based mediation)</li> </ul> |                         |
| 43  | <p>Discuss security as a high-level concept.</p> <ul style="list-style-type: none"> <li>- Teams (internal or external)</li> <li>- Uniformed or not, police presence</li> <li>- Training and policies/accountability/sign off?; outside or inside?</li> <li>- Background checks</li> <li>- Cameras</li> <li>- Active shooter policies</li> <li>- Position on concealed weapons</li> <li>- Insurance</li> <li>- Vendor recommendations</li> </ul>                                                                                                                                                                |                         |
| 44  | <p>Member/Attendee Issues:</p> <ul style="list-style-type: none"> <li>- Discuss medical or response teams/clinics, etc. Discuss CPR and AED (cardiopulmonary resuscitation <i>and</i> automated external defibrillator).</li> <li>- Discuss service animals. Have any members/attendees brought in pets that are not “real” service animals?</li> </ul>                                                                                                                                                                                                                                                        |                         |
| 45  | <p>Discuss insurance policies. Have the policies been evaluated in the near term? Legal, insurance, and operations are a three-legged stool.. Do elders and pastors have outside activities’ coverage (D&amp;O for those organizations?). Common issues include: coverage and exclusions, prompt notification, misrepresentations on the application, etc.</p> <ul style="list-style-type: none"> <li>- Director &amp; Officers Coverage</li> <li>- Abuse &amp; Molestation</li> <li>- Umbrella</li> </ul>                                                                                                     |                         |

| No. | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Feedback/Recommendation |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
|     | <ul style="list-style-type: none"> <li>- Property/Facility Use</li> <li>- Cyber-Insurance</li> <li>- Employee Dishonesty (Crime and Fidelity)</li> <li>- Employment Claims (Employment Practices Liability)</li> <li>- Missionary and International Travel</li> <li>- Auto Liability (Hired and Non-Owned)</li> <li>- General Liability</li> <li>- Pastor Care/Personal Counseling/Care</li> <li>- Terrorist/Active Shooter Insurance</li> <li>- Pollution</li> <li>- Key Man (Person)</li> <li>- Flood/Earthquake</li> <li>- Workers' Compensation</li> </ul> |                         |
| 46  | Discuss international and state by state exposure (strategy, compliance, etc.). Discuss missionaries and immigration issues.                                                                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 47  | Discuss key vendors (i.e., bankers, insurance, commercial real estate brokers, accountants, public relations, human resources, strategic planning, digital marketing, etc.).                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 48  | <p>Discuss succession planning (i.e., continuity/day to day decisions, emergency management, who/committee/leadership development, day to day decisions, insurance solutions (for pastor and church), proactive planning (role and compensation), etc.).</p> <p>Discuss estate planning for executive leadership team, employees and members.</p> <p>Discuss sabbatical policies (how long, tenure, payment of expenses (tax impact), required objectives, cut off access, payback if leave, etc.).</p>                                                        |                         |
| 49  | Discuss Michael Best Strategies and Consulting (lobbying, religious freedom, PR/communications, fractional XP resources, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
| 50  | Discuss operating budget and statistics on legal spend/risk management. What is the church's fiscal year?                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |

[illegible]

# FLSA Classification Decision Tree For Churches and Other Religious Organizations



## Current Standard Salary Levels

\*\$684/week or \$35,568/year (minimum salary requirement)

\*\*\$107,432/year (highly compensated minimum salary requirement)

Disclaimer:

This chart does not cover every permutation or consideration for classifying employees under the FLSA. It is focuses only on the circumstances and decision points most commonly found at churches and religious organizations. This chart is legal information only, and cannot replace advice from your own qualified legal counsel.

## This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

# FIRST WEST | Licensing, Ordination, Commissioning

First West will license, ordain and commission individuals for ministry in accordance with the church's Constitution and Bylaws and Statement of Faith. Bylaw Article III states that licensing, ordination and commissioning: "...shall be under the authority of the church and the joint leadership of the Lead Pastor and the Deacon Fellowship." First West defines the purpose and procedure for these items as follows:

## Licensing

**Purpose.** To be granted to those who are responding to God's call on their life into full-time Pastoral ministry. This will be done as a precursor to ordination and would be viewed as a type of "Pastor in training." It may also be granted to one who requires certification to accomplish the work of ministry; i.e. prison chaplaincy, preaching opportunities when pursuing full-time ministry positions.

**Procedure.** Recommendation made to the Lead Pastor's office. The Lead Pastor and his assigned representative(s) will meet with the candidate to hear testimony and God's call into ministry. When licensing an individual, the church is giving their endorsement for the individual to preach. The Lead Pastor will then make a recommendation as to whether to bring the candidate's name before the Deacon Fellowship for a vote of affirmation. It will take Deacon Fellowship action to grant a license to preach.

## Pastoral Ordination

**Purpose.** To be granted to those who are in, or being called to, full-time Pastoral Ministry. Pastoral ordination may be granted to one who requires ordination to pursue an immediate full-time position. It may also be granted to one who is a Bi-vocational Pastor.

**Procedure.** Request made to the Lead Pastor's office. Once the Lead Pastor determines pastoral ordination is appropriate, he will ask for an ordination council to be convened for the purpose of hearing testimony, God's call into ministry and knowledge of Bible doctrine and practices. The council will then make recommendation as to whether to bring the candidate before the Deacon Fellowship for a vote of affirmation. It will take Deacon Fellowship action to grant ordination.

## Commissioning

**Purpose.** To be granted to those who are in full-time ministry and/or positions other than Pastoral Ministry; i.e. missionaries, women or men in leadership ministry roles. The commission will allow the individual to perform sacerdotal (ministerial) duties in certain situations.

**Procedure.** Recommendation made to the Lead Pastor's office. The Lead Pastor and his assigned representative(s) will meet with the candidate to hear testimony and God's call into ministry. The Lead Pastor will then make a recommendation as to whether to bring the candidate's name before the Deacon Fellowship for a vote of affirmation. It will take Deacon Fellowship action to grant a commission.

## Recognizing Other Church Certificates

First West will consider licenses, ordination certificates and commissions given by other churches who share common theology, beliefs and faith traditions to our own. The Lead Pastor and Senior Lead Team will make a final determination to accept or reject certifications provided by other churches.



[illegible]

# FIRST WEST | Ministerial Recognitions Q&A

## **Why Have a Policy?**

The purpose of the church's Licensing, Ordination and Commissioning document is to provide written clarity on the circumstances under which each calling will be confirmed. We also believe it's important to outline the general process we will follow to confer each recognition.

## **What Is Licensing?**

We believe that licensing is specifically attached to those called to gospel ministry and preaching. This will usually happen soon after a person is called to preach or pastor as a precursor to ordination. While this is usually a call to full-time ministry, a person will often be licensed before they have actually stepped in to a full-time vocational role at a church or ministry. Some who are licensed and ordained remain in part-time roles for their entire ministry (E.g. Bi-vocational Pastors).

## **What is Pastoral Ordination?**

Pastoral ordination (to be differentiated from deacon ordination) will most often be granted to a licensed minister who requires ordination to pursue an immediate full-time pastoring or preaching position. It may also be granted to one who is a Bi-vocational (part-time) Pastor.

Pastoral ordination is the only ministerial recognition requiring a council. Once the Lead Pastor determines pastoral ordination is appropriate, he will ask for an ordination council to be convened for the purpose of hearing testimony, God's call into ministry and knowledge of Bible doctrine and practices.

## **What Is Commissioning?**

We believe that commissioning is akin to licensing, and that it is conferred in situations where the person called to ministry will not preach or pastor. Since the role of pastor in Scripture is that of an elder, we believe that this role is limited to males who exhibit a clear calling to that specific ministry role.

## **Which Recognition is More Significant?**

Every recognition is important because an individual's call to vocational ministry is affirmed and recognized. We believe that each recognition—licensing, ordination and commissioning—is different and will be applied in different circumstances to recognize God's specific call to ministry among his people.

## **How Are Individuals Recognized?**

First West will license, ordain and commission individuals for ministry in accordance with the church's Constitution and Bylaws and Statement of Faith. Bylaw Article III states that licensing, ordination and commissioning: "...shall be under the authority of the church and the joint leadership of the Lead Pastor and the Deacon Fellowship" (Bylaws, First Baptist Church of West Monroe, LA).

The Deacon Fellowship, acting on behalf of the church, will vote to license, ordain or commission an individual.

### **What About Ministerial Recognitions from Other Churches?**

We don't automatically accept licensing, ordination or commissioning recognitions from other churches. This position is a safeguard for the church and its theological position. We will consider licenses, ordination certificates and commissions given by other churches who share common theology, beliefs and faith traditions to our own. The Lead Pastor and Senior Lead Team will make a final determination to accept or reject certifications provided by other churches.

### **What Is a Minister?**

Every member and leader of the church is a minister. Some of us have experienced a vocational calling to serve Jesus and His church. This group includes Pastors and Ministers who serve on our Staff Team.

The IRS defines ministers this way: "Ministers are individuals who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination. Ministers have the authority to conduct religious worship, perform sacerdotal functions, and administer ordinances or sacraments according to the prescribed tenets and practices of that church or denomination" (IRS Publication 517, p. 4).

### **Are Ministerial Recognitions Limited to Full-Time Employees?**

Both full and part-time employees qualify to be licensed, ordained or commissioned. With regard to the housing allowance, it cannot exceed the reasonable compensation for the minister's services, but can be 100% of the minister's compensation, especially if the minister is part-time, has a very small congregation, or has another source of income (Warren vs. Commissioner, No. 00-71217, Decided: August 26, 2002).

### **How Are Housing Allowances Processed?**

To qualify as an excludable housing allowance, the amount must be officially designated in advance of payment. This amount must be specified in the minister's employment contract, the church minutes, the church budget, or any other officially-written document, indicating an official action had been taken. The housing allowance must be paid every year. Unless the designation is set as a permanent amount, the church must repeat this process and establish this allowance each and every year for all qualified ministers ("Housing Allowance" by Summit Accounting Group, p. 1).

## Housing Allowance Computation

For Calendar Year 2025

| Minister's Name _____                                                                                                                                                                                                                                                                  |                      | Date Prepared _____ |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------|--|
| Explanation & Descriptions                                                                                                                                                                                                                                                             | Fair<br>Rental Value | Actual<br>Expenses  |  |
| <b>A. Rent or Home Purchase Payments</b><br>INCLUDES: down payments, mortgage principal and interest payments, property taxes and home insurance<br>EXCLUDES: home equity/personal loan payments, secured by a mortgage where loan proceeds were used for non-housing related purposes |                      |                     |  |
| <b>B. Utilities</b> (gas, electricity, water, heat, garbage, etc.)                                                                                                                                                                                                                     |                      |                     |  |
| <b>C. Telephone</b> (exclude long distance calls)                                                                                                                                                                                                                                      |                      |                     |  |
| <b>D. Repairs and Maintenance</b> (to house, lawn, pool, etc.)                                                                                                                                                                                                                         |                      |                     |  |
| <b>E. Furnishings</b> (and home improvements)                                                                                                                                                                                                                                          |                      |                     |  |
| <b>F. Garage</b>                                                                                                                                                                                                                                                                       |                      |                     |  |
| <b>G. Small Household Purchases</b> (cleaning supplies, light bulbs, AC filters, etc.)                                                                                                                                                                                                 |                      |                     |  |
| <b>H. Other Allowable Housing Expenses</b> (pest control, gardening services, homeowner association dues, etc.) ~ Specify Others:<br>_____                                                                                                                                             |                      |                     |  |
| <b>I. Column Totals</b>                                                                                                                                                                                                                                                                | \$0.00               | \$0.00              |  |
| <b>J. Amount Requested for Officially Designated Housing Allowance</b><br>(lesser of columns L or M)                                                                                                                                                                                   |                      |                     |  |

### IRS Publication 517

**IRS Publication 517 (2015) describes how a minister's housing allowance should be determined (pp. 9-10):**

**"Home ownership.** If you own your home and you receive as part of your salary a housing or rental allowance, you may exclude from gross income the smallest of:

- The amount actually used to provide a home,
- The amount officially designated as a rental allowance, or
- The fair rental value of the home, including furnishings, utilities, garage, etc.

**Excess rental allowance.** You must include in gross income the amount of any rental allowance that is more than the smallest of:

- Your reasonable salary,
- The fair rental value of the home plus utilities, or
- The amount actually used to provide a home."

### Church Business Office Information

Date Residence Purchased by Minister \_\_\_\_\_ (if applicable)  
 Present Fair Market Value of Residence \_\_\_\_\_ (if applicable)

Minister's Signature \_\_\_\_\_

Date \_\_\_\_\_

Personnel Committee Signature \_\_\_\_\_

Date \_\_\_\_\_

[illegible]



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

**Updated January 2018**

This fact sheet provides general information to help determine whether interns and students working for “for-profit” employers are entitled to minimum wages and overtime pay under the Fair Labor Standards Act (FLSA).<sup>1</sup>

## Background

The FLSA requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation for their work.

## The Test for Unpaid Interns and Students

Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.<sup>2</sup> In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts have identified the following seven factors as part of the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

## Footnotes

1 - The FLSA exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. WHD also recognizes an exception for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid

internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.

2 - *E.g., Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at \*4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); see also *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

### Where to Obtain Additional Information

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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