

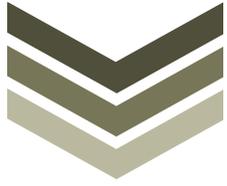
*Your Church:*

*Employer &  
Small Business*



By: David B. Avison, Esq.  
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United Church Insurance Association  
dba Insurance Board  
Cleveland, Ohio  
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## *Your Church: Employer & Small Business*

*This booklet was written by David B. Avison, Esq. and Carl J. Kotheimer, CPCU, ARM to assist churches in their understanding of their responsibilities as both small businesses and employers.*

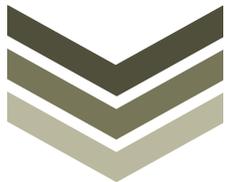
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*Amy is an independent insurance agent representing the Insurance Board in Oregon.*



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# *Your Church: Employer & Small Business*

## ***Introduction***

As a church leader you may wish to focus your attention on ministry and devotional activities. Yet every year, there are many "business" concerns that your church must consider. This resource provides an outline of those issues that you, as a church leader, must attend to. You may find the detail below exhausting, yet it is not exhaustive. Additional details will require your attention depending upon the extent of your ministry and other variables, including congregational polity.

While we generally think in terms of "separation of church and state," in fact, churches are subject to federal and state oversight regarding several areas, including labor law, taxation, judicial precedents and some insurance, not to mention building and zoning codes. To make matters more complicated, there is no uniformity among the states in the treatment of these matters. Therefore, throughout this document you will be reminded to check state laws and regulation. You may need legal counsel licensed in your state to resolve some matters unless you can find clear and concise answers using on line resources. A link is provided here to all state government websites: <http://www.riskvue.com/rbstates.htm> Click on your state.

This resource is not provided as legal advice. It is delivered with the understanding that the publisher and authors are not engaged in rendering legal, accounting, tax or other professional service. Legal counsel or other expert assistance will surely be required to resolve some matters presented below.

## ***Employment Process and Policies***

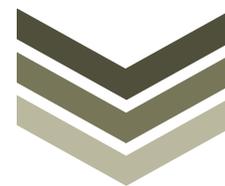
Whether you have one employee or five or ten, it is necessary to address employment in a formal way. While there are statutory obligations that apply, it is important both as a matter of justice and legal defense that other details regarding employment be documented. The process begins with hiring and does not end without considering how you will terminate an employee, including the pastor.

### **By-Laws**

To avoid turmoil in the future, it is worth considering who will have authority to hire the pastor and other employees as well as terminate them. In any event, it is recommended that at least two person's approval be required to terminate an employee. In the absence of specific authority provided in corporate documents, a congregational vote may be the required yet most undesirable process. Regardless, your by-laws and other documents will be governing. Failure to comply with the letter of governing documents because it is inconvenient or "messy" will result in law suits, either from the employee or disenfranchised members of your congregation.

### **Employment Interviews**

When one decides to hire new employees, Federal and State law restricts the criteria that may be used to hire these persons. For example, some states prohibit conducting credit checks of potential employees and employers are not allowed to discriminate on the basis of race. While churches have been held to be free to discriminate based on religious belief, churches may not discriminate for other reasons



not related to job qualification. This prohibition against discrimination applies generally to both lay and ordained positions.

Justice issues within the church may suggest that interviews for ministerial positions be free from discrimination. Yet, due to the special relationship between a church and its minister, the First Amendment's guarantee of freedom of religion sometimes acts to free a church from application of some employment laws. Courts have been reluctant to let employment laws interfere with this unique relationship. For example, while questions about an applicant's family status may be prohibited during secretarial interviews, a church would be free to make such an inquiry of a potential minister.

During job application interviews care must be exercised in asking questions. In 1994, the federal **Equal Employment Opportunity Commission (EEOC)** issued guidelines for such employment interviews. The EEOC suggested some general rules as to questions that may be asked during an employment interview. For example, you may ask:

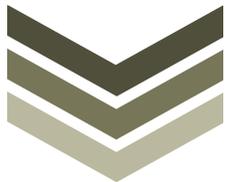
- Are you able to perform specific job-related functions?
- Can you meet the attendance requirements of the job?
- How many days of leave did you take last year?
- Do you use illegal drugs? Have you ever been convicted of illegal drug use, sale or possession?

According to the **EEOC**, you **may not ask** the following questions during a job interview:

- Do you have AIDS (or asthma, etc., or any other disability)?
- How many days were you sick last year?
- Have you ever filed a workers' compensation claim?
- Have you ever been injured on the job?
- How much alcohol do you drink? Have you been treated for alcohol problems?
- Do you have any mental health problems?
- Are you taking prescription drugs?
- Have you ever been addicted to drugs?
- How often did you use illegal drugs in the past?

In addition to the EEOC list, some questions have been found to be discriminatory by courts and other administrators. These questions, also, **may not be asked** in the interview or on the application:

- Age, year of graduation or dates of school attendance.
- Height or weight, color of eyes, hair, complexion.
- Non-job related handicaps.
- Marital status, questions about spouse, domestic partner, children or children's ages.
- Who to contact in emergency or for a credit reference.
- Does one own a car?
- Whether applicant owns a home, rents, lives with parents.
- Hobbies, activities and memberships in organizations not related to job performance.
- Military, litigation, or conviction records.



# *Your Church: Employer & Small Business*

## **Background Checking**

It is basic due diligence and quite normal for any employer to conduct a background check on a prospective employee. Certain positions at church, such as day care, will require it. Nevertheless, other employees who will have access to children, including church administrators and maintenance staff, should have a pre-employment background check.

Background checking services are available through the Insurance Board, whether or not your church participates in the Insurance Board program. Information can be found at [www.InsuranceBoard.org](http://www.InsuranceBoard.org) Go to Safety Solutions, then SafeConduct™ Workbench. Note that background checking services provided by many state agencies are inferior -- they check only the resident state records. It is important to understand what resources State agencies check as compared to other private companies.

The EEOC issued new rules in 2012 regarding the use of background checks as employee screening devices. Due to the disparate impact of criminal records on prospects for employment, the EEOC has determined that it is improper to disqualify a candidate solely on the basis of a conviction. The crime must be material to the employment to be disqualifying. Care must be taken in the use of a background check. Yet it is a necessary step in hiring.

## **Other Screening**

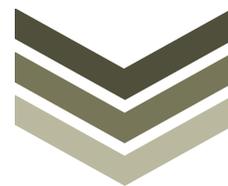
Certain employment or volunteer responsibilities require extra screening: handling money or other financial transactions for the church, working with or having access to children, and operating a motor vehicle on behalf of the church.

For those handling money, and where State law permits, a credit check may be appropriate in addition to a criminal records check. Past convictions for theft related crimes should be disqualifiers and will normally void your crime insurance coverage with respect to that person.

When hiring staff or recruiting volunteers in child-serving roles, **more sophisticated interviewing and reference checks are in order**. The Insurance Board's **SafeConduct™ Workbench** provides resources in this regard within its self-assessment tool and its **SafeConduct™ Policy Template**. You can find this information at [www.InsuranceBoard.org](http://www.InsuranceBoard.org). Go to **Safety Solutions**.

Especially if employees and volunteers are operating church vehicles, **Motor Vehicle Record (MVR)** checks are in order. These can be obtained through the IB's background checking resource. This standard should also apply to volunteers who regularly carpool using their own vehicles for church activities. The IB website also provides sample vehicle use policy documents under **Safety Solutions/Transportation**.

Churches commonly use the **“six months” rule** to screen volunteers, defined either as “membership” or “association” with the church. That is, individuals must be known to the church to qualify for volunteer service. When such a standard has been created, it must be enforced **without exception**. The practice of predators is to bounce from one organization to the next when they have been nearly caught or to establish themselves where they see procedural weaknesses. Having to wait six months is intolerable to potential predators.



## **Hiring**

Employment begins with an “offer letter” or “contract,” which specifies the terms of employment and any conditions. As a matter of justice, the prospective employee deserves to know the terms of employment to include such details as salary/wage, working hours, job description, reporting relationship and such details not otherwise contained in an employee manual, for example, vacation or time-away-from-work, and other conditions such as a background/reference checks. In the event of a later dispute about terms of employment, without written specifics as described above, a court would look at every past practice, all writings (including e-mail), minutes and similar records to determine the terms.

## **The Americans with Disabilities Act (ADA)**

In general, churches are not subject to the ADA since the federal law only applies to employers with 15 or more employees. States may have corresponding statutes with different thresholds for compliance. For example, the Oregon threshold is 6 or more employees. Despite the statutory exemptions available to small employers, churches will usually feel a moral responsibility to respond to the goals of the Act. The U.S. Dept of Labor sponsors the Job Accommodation Network (JAN), a free consulting service, to help employers reasonably accommodate persons with disabilities. Go to this link:

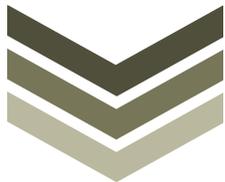
<https://askjan.org/>

The EEOC provides information regarding “reasonable accommodation” at this link: <http://www.eeoc.gov/policy/docs/accommodation.html>

## **Employee Policy Manual**

Ideally your church has a detailed Employee Policy Manual. This manual will normally cover the following subjects:

- Employer responsibilities
- Equal employment opportunity and non-discrimination policy and objectives
- Sexual harassment and other types of harassment
- Exempt and non-exempt employees, including temporary and part time
- Trial (probationary) period
- Employment at will
- Independent contractors
- Wage and salary administration
- Work week, pay periods and overtime
- Employee performance evaluation
- Termination of employment
- Time-away-from work, including vacations, personal leave, sick leave and Family and Medical Leave Policy (FMLA), military leave and jury duty
- Employee welfare and pension benefits including workers compensation
- Complaint and grievance procedures
- Disciplinary procedures
- Dress code, and more



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In general, each church should have written personnel policies that are followed. However, the best drafted policies may not answer every personnel issue to arise. Personnel policies may be written with some flexibility. For example, a general statement of principle such as the following example may give the flexibility needed:

*These Personnel Policies are adopted as a general guideline for the personnel administration of the church. When administering these guidelines, the church will make a reasonable attempt to follow the policies. However, should circumstances, solely in the opinion of the church, preclude strict application of a policy, the spirit and intent of the guideline will control over the specific text of the policy.*

While a church with few employees will have difficulty creating such a comprehensive manual, it is still deemed to have personnel policies. Unwritten, a church's policy becomes a combination of all the *ad hoc* personnel acts taken in the past. For example, did you give the secretary paid time off when a parent died? You must then give all employees such leave under the same conditions! In general, the more employees your church has, the more structure you require to both (1) provide justice and equity for your employees and (2) protect your church from the turmoil and expense of employment claims.

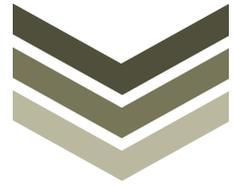
Of all the possible employment disputes, several stand out as most critical and contentious.

**Termination** – One of the most common causes of employment litigation is a botched termination whether initiated by the employer “with cause” or a “voluntary resignation” by the employee. While these may be difficult, highly emotional events, they must be handled dispassionately and strictly by the rules. There are two imperatives:

- Never permit one person authority to terminate an employee. Get legal or human resources professional advice before terminating an employee “for cause” (performance, attendance, insubordination).
- Know the laws of your state regarding entitlement to wages, accrued vacation or other benefits when employment is terminated.

**Family, Medical or Disability Leave** – Both federal and state laws (including workers compensation) apply to leave from work, along with non-occupational disability insurance terms. It is important to know when federal and state leave laws apply and how they integrate with your church's vacation and leave benefits. Leave denied improperly or used as a pretext for termination may result in employment practices litigation along with government agency discrimination claims.

**Vacation, Sick, Jury and Other Leave** -- There is no requirement that an employer pay salary for any of these forms of leave. Jury leave is required by law, but absent a policy, the time off may be without pay. There is no legal requirement that vacation (with or without pay) or sick leave (with pay) be provided absent an established policy to do so. The church's desire to be a just employer should dictate establishment of policies in these areas. Church leave policies must be coordinated with non-occupational short and long term disability benefits you may provide. Failure to do so may result in payment of duplicate benefits at your own expense.



## **Wages and Working Hours**

Federal law regarding wages and working hours does not apply to churches. Nevertheless, state laws continue to apply and they may be more strict or demanding than federal statutes. State minimum wages vary greatly. The U.S. Department of Labor provides a schedule of state laws at this link: <http://www.dol.gov/whd/minwage/america.htm>

Watch out for a “trap” when your church pays an employee a lump sum for a service. For example, suppose you pay a person \$15 per service for child care. If that person is at work more than two hours, and the effective wage falls below the state minimum wage, it is no defense that you told the person not to stay beyond two hours. Provide a time card to employees requiring that they complete it.

While federal law does not cover churches, most states provide for payment of 150% of regular salary for all hours worked over 40 hours/week for "non-exempt" (from over time) employees. Hourly employees are almost always "non-exempt" and entitled to overtime pay. The calculation is done strictly on a weekly basis; the hours cannot be averaged over multiple weeks. For example, if an employee works 30 hours one week, then 50 hours the next, a total of 80 hours, the employee is still entitled to 10 hours of overtime for the second week.

Note that employment practices liability insurance excludes coverage for violation of labor laws of this kind, to include back pay and penalties owed.

## **Required Posters**

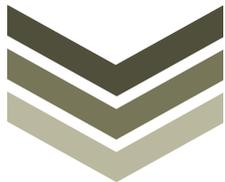
Employment regulations require the posting of certain notices, both federal and state. The U.S. Dept. of Labor provides help in identifying these requirements based on specific employer characteristics, on its **eLaws –FirstStep Poster Advisor** at this link: <http://www.dol.gov/elaws/posters.htm> Answer a series of questions to determine your requirements by state. Typically requirements cover:

- Wages and hours
- Equal employment opportunity
- Occupational safety and health
- Family medical leave
- Fair labor standards
- Whistleblower protection
- Uniformed services employment and re-employment
- ...and similar postings depending upon state.

## **Employment or Benevolence?**

One employment law trap that often catches churches occurs when an employee becomes unable to work. At that point, churches want to help the person, usually a loved, long-time employee, maybe a member. Often churches are tempted to continue the person’s wages, even though the person cannot work. There are a number of reasons this should not be done:

1. **Policy precedent** – Such an action can establish a disability policy precedent for your church. Other church employees with similar fact situations would be entitled to expect similar treatment.



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2. **Stewardship** – To address just concerns for employees and provide stewardship of church assets, the risk should be managed with disability insurance (including workers compensation), which provides a sum certain benefit to the employee and economy to the church.
3. **Benevolence intended?** – Is the church, in reality, intending a benevolent payment to this person? When such a payment is made to a **non-employee** it is not taxable and does not have the consequence of becoming a policy precedent. All such payments to an employee of the church are taxable and must be added to Form W-2 wages. You are obligated to withhold payroll taxes like the payment was wages, even if the payment is made indirectly, as to an employee's doctor. It gets even more complicated if such a payment is made to a "control person," such as a pastor or business manager. In order to get it right, consult your employment tax advisor. And be sure you understand what workers compensation medical and disability benefits an employee may already be receiving if the disability is work related.

Churches should properly distinguish between services rendered to the church and its desire to support a distressed employee. Employment needs to be kept separate from benevolence. In the worst case, churches end up with ineffective operations because they are unable to fill a needed position while an employee is on a paid leave. In the long run, underwriting this risk with a disability policy makes both excellent business sense while being properly compassionate to the needs of employees.

### **Employee or Independent Contractor?**

This is an area of the most misunderstanding and abuse: "Is the janitor our employee or an 'independent contractor'?" The answer is usually that the person is your employee, despite what you say or what your "contract" says. Recent publicity around this issue has made it a "hot button" for the labor and taxation agencies that regulate in this area.

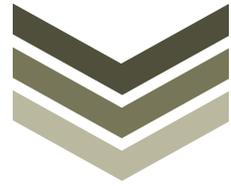
The Internal Revenue Service (IRS) provides the following general rules:

*(A)n individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.*

*You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.*

The IRS officially uses a 20-factor test to determine whether a worker is an independent contractor or an employee. In practice they focus on the following: The worker must --

- have a written agreement;
- both be able to suffer a loss or make a profit under the agreement;
- have a separate place of business—if not having a separate place of business, pay fair market rent for those facilities used on the employer's premises;
- have a significant investment in facilities and tools;
- have his/her services available to the general public or is paid exclusively on commission;



Additional criteria, as provided in Oregon, might include:

- Responsible for obtaining necessary licenses to provide the service;
- Provides contracted services to two or more persons in a 12 month period and solicits new contracts; and
- Has the authority to hire and fire persons to assist in the business.

**As should be apparent, only rarely will a non-clergy worker in and around a church meet the requirements to be treated as an independent contractor.**

An improperly classified worker poses financial risks for your church. If you have not provided workers compensation for a worker who is found to be an employee, and the employee is injured, your church will be found to be not complying with workers compensation statutes. Usually you will be denied common law defenses in defense of the injury claim and serious financial consequences may follow to include payment of higher benefits. General liability policies will exclude coverage for injuries arising in the course of employment by your church.

Hiring of an independent contractor will be addressed later.

For more information, consult one of these references:

- *Employer's Tax Guide, IRS Publication 15.*
- *Employment Taxes, IRS Publication 937.*
- *Tax Guide for Churches and Religious Organizations, IRS Publication 1828*
- *Tax Guide for Small Business, IRS Publication 334.*

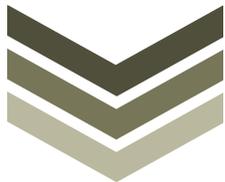
## ***Employment Taxes, Benefits and Insurance***

### **Taxes & Statutory Insurance**

While your church is not subject to some taxation, your employees certainly are subject to multiple levels and kinds of taxation, both federal and state. And you are obligated as an employer to withhold taxes and forward them to federal and state (and sometimes local) officials as they require.

**Social Security (FICA)** -- Churches are subject to the provisions of the Social Security Act. All lay employees of religious, nonprofit organizations are covered if paid \$100 or more in any tax year. Understand that IRS has the power under IRC Section 6672 to recover amounts not properly withheld from both the employer and "responsible persons" that would be required to collect or insure collection. This could mean **personal financial liability for members of the Board or similar church bodies who decide to not pay the required withholdings**. This statute also covers failure to properly withhold income tax (see below). See IRS Publications 15, 334, and 1828, referenced above.

**Other Tax Withholding – federal and state tax** – In addition to FICA contributions, church employers are also required to withhold federal and state income tax (and city income tax). The responsibility includes requiring employee preparation of Forms W-4 (Employee's Withholding Allowance Certificate), and employer preparation and distribution of Forms W-2 (Wage and Tax Statement).



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## ***Summary Tax Reporting Tips***

1. Obtain an Employer Identification Number (EIN) -- It is the employer's equivalent of a Social Security Number (SSN).
2. Determine the employment status of each church worker, "employee" or "independent contract."
3. Obtain the SSN of each employee.
4. Have each employee complete a Form W-4 (both Federal and State equivalents).
5. Compute each employee's taxable wages.
6. Determine the amount of income tax to withhold from each employee's wages.
7. Withhold FICA from non-clergy employees.
8. Deposit taxes withheld, which include income tax on employee wages, and employer and employee shares of FICA wages. These are deposited on different schedules according to the number of employees.

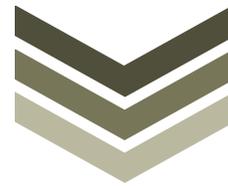
**Form I-9 – Employment Eligibility Verification** – For all persons hired since November 6, 1986, employers must have in the person's personnel file a Form I-9, showing that the person is eligible for employment in the United States. See *Handbook for Employers* – Document M2-74, U.S. Department of Justice, U.S. Citizenship and Immigration Services.

**Unemployment Insurance** – Unemployment benefits are provided under state programs, but mandated by federal legislation. Federal law specifically exempts "services performed in the employ of a church" from the definition of covered employment. Church employees are entitled to unemployment benefits in states where coverage has been expanded or where churches are permitted to voluntarily participate in the unemployment system. Be certain that you know what your state requires or permits. For example, in Oregon, the Supreme Court, rather than the legislature, has held that Oregon churches are not exempt from contributions to state unemployment insurance. The premium must be paid on both clergy and other employees. In other states, notably Missouri, the employer may be required to provide advance notice to employees that they are not covered by unemployment insurance.

**Workers' Compensation** – Every state has a compulsory workers' compensation law with widely varying exceptions for certain employment, such as churches, and small employers. Some states mandate benefits to volunteers, while others make it optional, or exclude volunteers. Therefore, it is important to investigate and understand what your state requires or permits. A link to state workers' compensation laws is provided here: <http://www.riskvue.com/rbstates.htm>

As a matter of justice, and considering there is considerable physical risk to some church employment, your church must consider whether to provide workers' compensation benefits where it is optional. In most states, workers' compensation is purchased from standard insurance companies, while in a few states, it is a state run program (OH, ND, WA, WY). Premium is based upon payroll, job classification and prior loss experience.

**Independent Audit** – It is recommended that all of the above payments be subject to an annual independent audit. First, failure to make payments or pay premium may result in fines or other financial



risk to your church. Likewise, an ongoing embezzlement may be concealed by failing to pay these obligations. Board members are personally exposed to liability of 100% of uncollected and unpaid taxes.

### **Welfare & Pension Plans**

As a matter of good stewardship and justice, churches are urged to consider providing life, disability and health care coverage for employees. Such programs benefit the employee and prevent the dilemma a church faces when a treasured employee becomes disabled or ill. Benefits provided to employees, including life insurance, health care, disability plans and similar benefits, are referred to as “welfare plans.” These are normally obtained by small employers through a variety of insurance products.

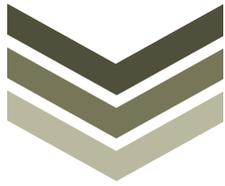
While commercial insurance resources are available, your church should consider those plans offered by your denomination (Pension Boards). Your denominational programs provide the benefit of group bargaining power which may result in better terms and lower costs compared to similar products purchased individually.

When these benefits are provided, employers are required to provide Summary Plan Descriptions and Discrimination Rules apply: **1. Summary Plan Description** – This document will be provided by insurers or your Pension Board and must be distributed to all employees. This normally occurs annually. **2. Discrimination Rules** – “Discrimination” rules are imposed by insurers to prevent “adverse selection”, that is, to prevent participation only by those who are already ill. Typically, for an employer to qualify, insurers will require that 80% of all eligible employees participate in a plan. Other non-discrimination rules are imposed by federal statutes as a means of preventing disparate treatment of similar employees or better treatment of executives. There will be tax implications when a benefit is purchased for only a few employees or not all.

### **Pension Plans**

Each denomination served by the Insurance Board provides pension plans for clergy and lay employees along with other welfare benefit plans. Links are provided below to each denominations Pension Board website. Summary Plan Descriptions are available from those resources. It is important to understand other discrimination rules that apply. For example, non-discrimination rules will require that all employees in the same class be provided the same benefits. **Pension Board Links:**

- **Pension Boards, United Church of Christ** – [www.pbucc.org](http://www.pbucc.org)
  - Annuity Pension Plan, Tax-Sheltered Annuity “403(b)(9)” plan; Medical, prescription drugs, vision, dental, flexible spending, life & disability.
- **Pension Board of the Christian Church (Disciples of Christ)** – [www.pensionfund.org](http://www.pensionfund.org)
  - Defined benefit pension and Tax-Deferred Retirement Account, a “403(b)(9)” plan and Roth IRA. Clergy and Lay eligibility. Roth IRA. Medical, prescription drugs, vision, dental, flexible spending, Medicare supplement plans.
- **Board of Pensions, Presbyterian Church (USA)(PCUSA)** – [www.pensions.org](http://www.pensions.org)
  - Defined benefit pension and Retirement Savings Plan (defined contribution), a “403(b)(9)” plan. Clergy and Lay eligibility. Medical, prescription drugs, dental, death & disability, long-term care, employee assistance.



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## ***Clergy Considerations***

### **Taxes & Compensation**

Perhaps the most unique element of clergy employment is the matter of tax treatment of various clergy compensation. The PCUSA Board of Pensions website, referenced on the previous page, provides a variety of tax information resources in its Brochures & Reports section including a tax reporting guide for ministers and federal reporting requirements for churches.

The best known authority on church law and taxes is Richard R. Hammar, J.D., LL.M., CPA, who publishes the ***Church Law and Tax Report*** bi-monthly. A subscription to this publication is strongly recommended as a regular reference and reminder.

Middle judicatory bodies (Conferences, Regions, Presbyteries, Synods) have also adopted guidelines for clergy compensation. These guidelines should be reviewed upon hiring and during an annual salary review of all clergy. Churches are urged to review these guidelines or consult independent tax advisors, especially when dealing with social security and housing allowance issues.

**Housing Allowance**—In respect to the housing allowance, churches must annually adopt resolutions authorizing the housing allowance in advance of the tax year their clergy take such an allowance. Ministers should be sure that the designation of a housing or manse allowance for the NEXT year is on the agenda of the church board for one of its final meetings during the current year. A housing allowance cannot be designated retroactively.

**Social Security & Income Tax** – Two major taxation exceptions applying to churches and clergy must be understood:

*Clergy are always treated as self-employed with respect to social security withholding, even if they are officially employees of the church. Clergy pay Self-Employment Tax (SECA), leaving the church no matching tax obligation as required for FICA.*

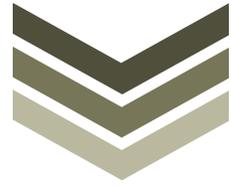
*Clergy wages are exempt from income tax withholding even if they are officially employees. Clergy pay estimated taxes unless they have entered into a voluntary withholding agreement with their employer.*

### **Standing or Authorization**

Each of the denominations served by Insurance Board has established its own principles, standards and process for authorized ministry. The Insurance Board requires as an underwriting standard when considering new church applicants that clergy employed by the church are authorized to engage in ministry by the standards of their respective denomination.

Because each church is in covenant with churches regionally and nationally, it makes sense that churches provide for this in their constitution and/or by-laws. The following language is suggested:

*This church is a member of the [name Region(CC-DOC), Presbytery(PCUSA), Conference (UCC)]. All persons serving in authorized ministries within this church shall hold standing in the [Region, Presbytery, Conference].*



In addition, the employment contract of your pastor(s) should contain the following language:

*Your call is contingent on your maintaining your authorization in the [Region, Presbytery, Conference] of the [your denomination]. In the event that you do not have authorization at the time of your call, it is expected that you seek it promptly. Your call is also contingent on fulfilling requirements for background checking as may be required by the [national setting of the CCDOC or UCC][Presbytery of xxx].*

### **Letter of Call**

As for any other employment, terms of employment must be specified in writing, especially so since there is significant variation in the character of compensation and terms of service among clergy. These terms must include references to salary, housing or vehicle allowance, vacations, sabbatical, welfare and pension benefits and other such unique matters that are not already defined in an Employee Manual.

For example, when a manse is provided to a pastor, it should be clear that the pastor is responsible to insure his/her non-professional personal property, rental value, and personal liability through a homeowners (renters form) policy at his/her own expense.

Signed copies of the call agreement should be maintained by the church in employment records. It is recommended that an additional copy be provided to the middle judicatory body.

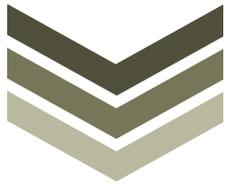
### **Other Professional Activities**

Many pastors have other professional training such as in various types of counseling. While generally, your church should not be engaged in non-religious counseling, in some instances such counseling may be within the bounds of your church's ministry. Clergy should not assume that professional liability insurance coverage is available to them through church insurance policies.

The Insurance Board program provides a "Religious Institution Pastoral and Counseling Professional Liability Coverage Endorsement." It applies only to counseling services within the scope of their duties or employment by your church. That is, other private counseling services are excluded and require separate coverage. Employment contracts or job descriptions must be explicit about the scope of work intended. Read your "professional liability" policy endorsements carefully.

### **Clergy Salary Review & Denominational Guidelines**

Middle judicatory bodies of each denomination have created compensation guidelines for clergy that typically address (1) gross salary, (2) basic welfare benefits, and (3) time away from work. In addition there are "expenses of ministry" normally reimbursed by the church. Because these guidelines represent a valuable precedent, creating and maintaining a compensation package within these parameters is recommended. That is, the package should be actively reviewed at some agreed interval to assure that it continues to be equitable and just for both clergy and the congregation. Unusual provisions in a compensation package must be carefully documented so there can be no dispute. Disputes most often erupt at the time of termination and become points of employment litigation.



# *Your Church: Employer & Small Business*

## **Loans to Clergy**

Some churches wish to make loans to clergy (or other staff), usually to facilitate purchase of a home. No church should make such a loan without consultation with legal and tax counsel. Such loans have several serious implications: (1) Loans may create taxable income to the borrower the extent, timing and reporting of which must be understood. (2) State non-profit laws may prohibit such loans (an inurement to a private individual) and result in jeopardizing the church's non-profit status. (3) Provisions must be made for a loan not being repaid (or forgiven), which circumstance has further tax implications.

## ***Tax Exempt Status***

### **Tax Exempt Status**

Under the IRS's interpretation of the First Amendment of the U.S. Constitution, churches do not have to make an application to be recognized as tax exempt. However, each denomination served by the Insurance Board has specifically applied to be recognized as a group which includes all of the churches and agencies that appear in their respective yearbook (or equivalent). The IRS lists organizations that are qualified to receive tax-deductible contributions in IRS Publication 78. Each congregation is declared exempt from income tax as a 501(c)(3) organization.

**General Assembly of the Christian Church (Disciples of Christ)**, Indianapolis, IN, FEIN 35-086-8116

**Presbyterian Church (USA)** – Louisville, KY, FEIN 23-6393377

**United Church of Christ** – Cleveland, OH FEIN 13-1957221

Your church may contact your denomination's national offices to obtain an individual certificate stating that your individual church is listed in the yearbook.

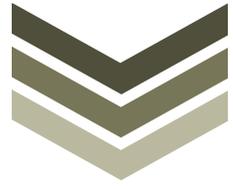
Nevertheless, you may wish to apply for an individual congregation determination letter from the IRS. While there is a cost to submit a separate application, if you operate a business in support of religious activities (day care) or a separate foundation for donations, such a ruling might be prudent. In such cases, or if there is any doubt, your church should contact a tax advisor.

You should also determine whether your state and local jurisdictions defer to the IRS ruling with respect to tax exempt status.

## **Political Activity**

Many churches feel the call to be politically active. As a tax exempt organization, there are certain limits to such activity. Failure to comply with these limits will lead to loss of tax exempt status. As a guideline, the UCC Justice & Peace Network offers the following:

- Never endorse a specific candidate, or give a single candidate special privileges or support in an election.
- Focus social justice activities around a variety of concerns rather than a single issue.



- Feel free to take positions on issues, and communicate those positions to elected officials. In the total scope of the church's activity and budget, this cannot be called "substantial," especially since issues are often not connected to any pending legislation.
- Church members may circulate petitions to fellow members if the church is not taking an official position.
- If a church or religious organization desires to spend substantial time and energy on specific legislation, it can create a 501(c)(4) organization within the larger body. A 501(c)(4) is allowed to do as much lobbying as it wishes; however any financial gifts it receives are not tax deductible.

Check with your denomination's organizations and networks which address justice issues.

## ***Governance***

### **Incorporation and By-Laws**

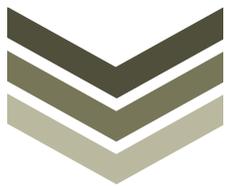
Churches are urged to maintain their status as nonprofit corporations under respective state laws. This means properly filing of Articles of Incorporation with the equivalent Corporation Division of the Secretary of State's office and making annual reports. Otherwise, the church is an "unincorporated association." In an unincorporated association, all members can be found to be personally liable for the actions of the association.

Churches should be governed by By-Laws (or a Constitution). By-Laws should be reviewed every five (5) years to assure they are being followed. Sometimes following by-laws strictly can prove impractical, perhaps for logistical reasons. The solution is to either change the by-laws by the designated voting process to reflect actual practice or to find the means to fulfill by-law requirements. Not following by-laws strictly can result in litigation over contested matters, some of which are not covered by insurance. It is never proper to circumvent or ignore by-laws because it is inconvenient or "messy".

If your church has both a Constitution and By-Laws, it is important to understand which takes precedence over the other and to assure that, when changes are made to one, that the changes are reconciled in both documents.

### **Subsidiary Organizations**

Your church may have subsidiary organizations which operate more or less autonomously; for example, day care or pre-school, cemetery association, food pantry, Boy Scouts, etc. Especially when these are separately incorporated, it is important to establish the clear connection to the parent organization (your church) in the by-laws of the subsidiary. This is important to insurance contracts to provide comprehensive coverage at the least cost. It is important from a management perspective to prevent subsidiaries acting independently contrary to the desires or interests of your church. It is recommended that (1) the parent organization be specifically represented in the managing body of the subsidiary; (2) that the parent retain control of the appointment of the subsidiary's governing body; and (3) the parent retain approval authority for changes to the subsidiary constitution/by-laws.



# *Your Church: Employer & Small Business*

## **Clergy Standing or Authorization**

See “Clergy Considerations” from earlier in this booklet.

## **Membership Rolls**

Given “congregational” governance of Disciples, PCUSA and UCC churches, the membership roll is a very important document to be maintained. If by-laws provide a vote to all members, that vote will control all issues in dispute within your church. On more than one occasion, churches have come to grief because the “official” membership roll of the church was not carefully maintained. This can occur when a vote of the entire membership is required, but resigned or deceased members have not been stricken from the rolls or new members properly added.

Churches may want to establish procedures for attaining membership and terminating membership as a provision of by-laws. Remember: A procedure formally adopted must be followed. Alternatively, an audit of membership rolls might be included as a part of annual audit procedures.

## **Member Inspection Rights**

A demand from a member to inspect all of the details of church financial transactions may be used as a weapon in a church management dispute, especially when it comes with a court order. There are few State statutes or defining case law that prescribe how a church may define or limit the records a member may inspect. Therefore, it is advisable to include a by-law which describes and limits which church records are open to inspection by a member.

As an example, Oregon Revised Chapter 65 allows a church to define and limit inspection of records. Research of non-profit statutes in your state in this regard is encouraged.

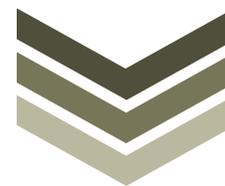
## **Annual Audit**

An independent annual audit, one done by an accounting firm or by **persons not having a part in daily financial transactions**, is the hallmark of financial transparency, and accountability of church leadership to its members. Such an audit is made available to church members and will largely preclude demands for inspection of records.

When by-laws require an annual audit, and it is not done, church officers are open to claims for breach of fiduciary duty, especially so if it is found that financial losses have accrued as a result of failure to manage finances. Church embezzlements of very large sums are more common than one might think, especially so because many churches lack financial controls and permit a single person to have exclusive access to financial transactions with little oversight.

It is recommended that your Board include an Audit Committee. It must be clear that your Treasurer reports to, and is not a member of, the Audit Committee.

An Audit Committee Handbook has been published by the Massachusetts Conference of the UCC. A link to it is provided on the Insurance Board website: [http://www.insuranceboard.org/safety\\_solutions/church\\_management.aspx](http://www.insuranceboard.org/safety_solutions/church_management.aspx). Treasurer handbooks for Disciples, PCUSA and UCC are also available.



## ***Church Insurance & Risk Management***

### **General Insurance**

Annually, Trustees should review the church's insurance program. Likewise, part of an annual audit should be verification that the insurance bills have been paid and the coverage is in force. After a loss occurs and it is found that premium has not been paid and a policy cancelled, insurance companies will not reinstate coverage to cover the loss.

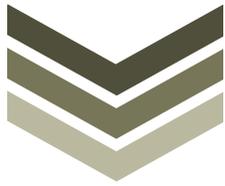
Insurance is not one-size-fits all. Churches have a risk profile that may be similar to a movie theater in some respects, but what goes on inside creates a completely different and greater risk profile. Two broad categories of coverage apply:

#### **1. Property:**

- **Real and Personal Property, Business Income** -- Most importantly, the replacement value of buildings and equipment must be considered. It is always your responsibility to determine value, not your agent's or the insurance company's. Church property, especially that built prior to 1950, is frequently under-insured. Factors in valuation include stained glass, pipe organs and other "fine arts." Other factors to consider are the need for flood or earthquake insurance; these are not covered by standard insurance policies.
- **Crime (Employee Dishonesty)** – While there are several coverages within crime insurance, including forgery and credit card theft, the most important coverage is employee dishonesty. Many churches have very low limits for crime insurance, while church claims of high five and six figures are not uncommon.

**2. Casualty:** These include various kinds of insurance that are not standard or carried by all businesses but are appropriate to churches:

- **General Liability** – Basic coverage for bodily injury and property damage carried by most businesses and homeowners.
- **Automobile Liability** – Required coverage for vehicle owners. Churches have need of a special endorsement for "non-owned and hired vehicles," to cover vehicles rented or borrowed or as excess coverage over that carried by volunteer owners. This endorsement may be added to the General Liability policy.
- **Directors & Officers Liability** – Providing coverage to church leaders regarding their activity as decision makers. Includes coverage for libel and slander.
- **Employment Practices Liability** – included within some D&O policies, covering wrongful acts such as gender discrimination or wrongful termination.
- **Sexual Misconduct Liability** – This coverage is most important where there are child serving ministries such as day care, pre-school, and nursery services.
- **Other liability** – Special coverages include "Cemetery Professional," "Nurse Professional" and "Educators Professional."



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- **Workers' Compensation** – Every state has a mandatory workers compensation statute. Some may exempt churches and small employers. However, for the reasons given under Benevolence (above), maintaining workers compensation coverage for employees is strongly encourage, both as a matter of justice and because of the financial risks posed.

Regular consultation with an insurance agent who is specialized in church insurance is highly recommended. All of the above coverage is provided by the Insurance Board program in a single attractive package. Agents representing the Insurance Board are carefully selected and highly supported with information and training. You may find an Insurance Board agent through the website at [www.InsuranceBoard.org](http://www.InsuranceBoard.org). Click on Find an Agent in the right column.

### **Risk Management**

**Church Tenants & Other Rental**—While offering church facilities to the community is a part of ministry, some tenants, especially those which are formally corporations need to be treated at arm's length. While their respective missions may be compatible with those of your church, their clients and employees may view your church as any other landlord.

For permanent tenants (whether or not rent is paid) with employees, a formal lease is recommended, one which (1) provides a release and indemnification to your church for accidents that result from their operations, (2) outlines insurance requirements for the tenant and (3) requires "additional insured" status on the tenants policies. Certificates of insurance are documentation of fulfilling your requirements and demonstrate financial means to defend a claim under the lease. A somewhat less formal use agreement is appropriate for informal groups, such as non-member weddings, and other one-time events.

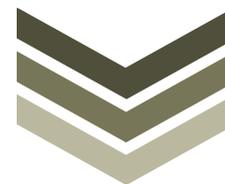
When renting your church facilities, consult with a tax advisor to avoid "unrelated business income tax" (UBIT). See IRS Publication 1828, *Tax Guide for Church and Religious Organizations*, which discusses criteria to avoid UBIT.

Also consult with your insurance agent to be certain that insurance requirements are consistent with your church coverage and can be fulfilled in practice.

**Independent Contractors**—As discussed under "Employee or Independent Contractor?" above, the bar is pretty high for a person to be considered an independent contractor. Agencies which regulate employment related matters are usually able to find "employee" status with persons such as secretaries, janitors, grass mowers, etc. The risk and expense of litigating whether a person is an independent contractor is not worth the reward of avoiding hiring expense, employment taxes and benefits.

If you church's legitimate intent is to hire an independent contractor, then you must take the initiative to make it so by taking several documented steps. Therefore, place the burden on an independent contractor to act as such by requiring the following:

- **Business license** -- Require documentation of a business license as may be required by the state or a local jurisdiction.
- **FEIN or SSN** -- If there are other employees, require a FEIN (Federal Employer Identification Number) as demonstration the contractor will be paying employment taxes. Otherwise, require a SSN for a sole proprietor.



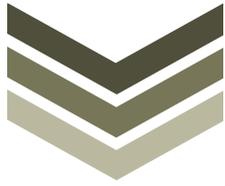
- **Trade license** -- For construction or trades, require an appropriate license. States vary greatly on requirements for licensing of construction and building trades. For example, the State of Oregon licenses contractors through the Construction Contractors Board. The State of Ohio licenses only certain trades (electric, HVAC and a few others), while residential and general contractors are licensed at the local level.
- **Workers' compensation** -- Require proof of carrying workers compensation insurance. In states where very small employers are exempt from the statute, either require the coverage or consult an attorney regarding necessary contract terms to protect your church from a contractor employee's injury claim.
- **IRS Form 1099** -- Make it clear that you will be preparing an IRS Form 1099 for services exceeding \$600 during the calendar year. A FEIN or SSN will be required to complete a Form 1099. See "Information Returns" in IRS Publication 334 – *Tax Guide for Small Business*.
- **Contract with indemnity agreement** – Engage contractors or other service providers only with a written contract which contains a "hold harmless and indemnity agreement" and which requires that your church be provided "additional insured" status on insurance policies. It is recommended that your church have a purchase order form that includes payment terms and the hold harmless and indemnity agreement. Consultation with an attorney in your state is encouraged to get the terms right.
- **Proof of insurance** – Vendors and contractors should provide proof of insurance for "General Liability" and "Products & Completed Operations Liability" and "Workers' Compensation." Coverage for "Automobile Liability" should be required for vendors using vehicles on your property, such as snow removal companies. While proof of insurance for vendors is good to have, a Certificate of Insurance does not benefit your church directly unless it includes "additional insured" status in connection with a contract. Proof of insurance is of greatest value when it is tied to your contract or purchase order indemnity agreement. General Liability and Automobile Liability limits of at least \$1,000,000 are recommended.

**Insurance Board Loss Control Services** – Independent contractors and church tenants are only two of many risk management challenges your church may face. A unique service provided by the IB is on-call risk management service, provided by experienced risk managers on the staff, to address the variety of daily challenges you may face. To access services go to the website: [www.InsuranceBoard.org](http://www.InsuranceBoard.org). Click on Safety Solutions, then click on "Have a Question?" in the left column. Or click on this link: [http://www.insuranceboard.org/safety\\_solutions/have\\_a\\_question.aspx](http://www.insuranceboard.org/safety_solutions/have_a_question.aspx)

## ***Miscellaneous Matters***

### **The New Regulatory and Judicial Paradigm**

In times past, government officials, judges and tax collectors steered clear of the operations of churches. NO MORE! To the extent that any operations or actions of a church are not purely ecclesial, courts and other government officials feel free to inquire, regulate and assess a church as if it were any other



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business or employer. While steering clear of most clergy employment matters, courts will intervene in employment matters in which the litigated matter falls neatly within the bounds of laws covering labor practice or various forms of discrimination. Therefore, church leaders must be prepared and willing to view church affairs as business and not a hobby.

## **Child Abuse Reporting**

State laws vary widely in defining who is a “mandatory reporter” of “suspected child abuse.” While some states provide that virtually everyone is a “mandatory reporter,” others narrow the responsibility to persons having professional responsibilities related to children. Some states provide some exceptions for clergy while some make no exception at all. Understand also that “abuse” is broadly defined to include all physical or sexual abuse or neglect of a child.

Each church with significant child-serving ministry must have a well-articulated abuse prevention program which includes clear guidance on reporting that assures that “mandatory reporters” get the information they must have. Regardless of the specifics of state law, the Insurance Board position is that every adult, especially those serving children, must assume responsibility for directly reporting suspected child abuse to law enforcement or child welfare authorities.

Comprehensive resources related to abuse prevention are located on the Insurance Board website: [www.insuranceboard.org](http://www.insuranceboard.org) Go to Safety Solutions, then SafeConduct™ Workbench, or go to this link: [http://www.insuranceboard.org/safety\\_solutions/safe\\_conduct\\_workbench.aspx](http://www.insuranceboard.org/safety_solutions/safe_conduct_workbench.aspx)

## **Volunteer Protection Act & Good Samaritan Laws**

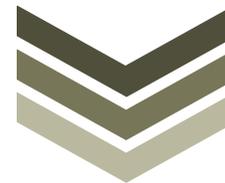
In 1997, the U.S. Congress passed the Volunteer Protection Act. In short, a volunteer acting for a non-profit organization will not be personally liable for his or her simple negligence while acting on behalf of the organization. Each State has also passed corresponding Good Samaritan legislation that may include special conditions. This link will direct you to your state’s related Good Samaritan Laws: [http://www.heartsafeam.com/pages/faq\\_good\\_samaritan](http://www.heartsafeam.com/pages/faq_good_samaritan)

This matter comes up most often when a church is considering whether to purchase an automated electronic defibrillator (AED). Generally, the Insurance Board encourages such a purchase with the condition that there be a cadre of ushers who have received regular CPR/AED training as provided by the American Red Cross or American Heart Association.

Even though Good Samaritan laws and the Volunteer Protection Act protect individuals from injury and negligence claims, law suits will be filed and the costs to defend them will be high. If insured by the Insurance Board program, your church’s general liability insurance will provide a defense to your church, its employees, your leaders and your volunteers in regard to bodily injury claims resulting from your church’s activities. Directors & Officers coverage will defend leaders for wrongful acts while engaged in the business of your church. Prompt claim reporting is essential.

## **Donation Acknowledgement**

Churches should issue receipts for donations received, especially cash. IRS regulations now require that the donor have documentation of all cash donations, regardless of the amount. Most charities issue



receipts for all contributions, no matter the size.

A church, or any charity, can only acknowledge an amount of cash contributed. As for goods, the receipt can describe the goods received, but cannot set any value. It is up to the donor to assign a value and defend it with IRS. Personal services donated to a church or other charity cannot be deducted, so generally are not described in a receipt and, if reference is made, should never be given a value.

For further information in regard to donation receipts, consult IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*. For the rule regarding services donated, consult IRS Publication 526, *Charitable Contributions*. All IRS publications can be downloaded at the IRS website: [www.irs.gov](http://www.irs.gov).

Also, providing receipts and acknowledgements of cash donations from parishioners is an important element of financial transparency and they create an audit trail. The receipt process should be included and verified in a periodic independent audit.

### **Land Use Issues, Property Tax, Etc.**

Churches, even though property tax exempt, are subject to all local land use and property tax regulations. Churches should be careful to meet state and local regulations. Special care should be taken when filing property tax (real & personal property) reports so as not to jeopardize tax exempt status.

Before making significant improvements to your property, understand how such changes may affect your tax exempt status. For example, in Oregon a new application for exemption for improvements is required. Failure to do so can result in loss of property tax exemption for all of church's property.

Major improvements may also trigger requirements to retro-fit and bring buildings to current code, which may include electrical upgrades, life safety improvements (alarms and exits), ADA compliance or other environmental improvements. Such costs are commonly a significant recovery cost component after a major casualty loss, such as a fire or wind loss.

### ***Final Note***

Aspiring to a position of leadership in your church is a worthy calling. Being a member of your church's governing body, especially, entails great responsibility even though you are unpaid. The issues cited above represent a fiduciary responsibility and must be taken seriously. As a leader you have an obligation to inquire about these matters and have answers from church staff (or other volunteers) that will assure you these things have been done.

Likewise, while principally the spiritual leader, and perhaps not having explicit management authority, clergy have a role in encouraging good management and good decisions.

Some churches benefit from having significant business expertise as membership – accountants, attorneys, insurance agents, human resource professionals, financial advisors and such. Whether or not you have these resources, you are encouraged to reach out to the denominational legal and other employment related resources available to you, your insurance agent and the Insurance Board.

## ***Resources***

### **Publications**

- The Church Guide to Employment Law, Julie L. Bloss, JD, CEBS, Christian Ministry Resources, P.O. Box 1089, Matthews, NC 28106, tel.(704) 841-8066.
- Loss Control Manual – Vol 5 – Management, Insurance Board, 2010 (Downloadable from website under Safety Solutions, Church Management)
- Department of Justice, U.S. Citizenship and Immigration Services
  - M-274 – *Handbook for Employers*
- IRS Publications
  - 15 – *Employer’s Tax Guide*
  - 334 – *Tax Guide for Small Business*
  - 526 – *Charitable Contributions*
  - 937 – *Employment Taxes*
  - 1828 – *Tax Guide for Churches and Religious Organizations*

### **Links**

- Department of Labor
  - Minimum Wage Laws -- <http://www.dol.gov/whd/minwage/america.htm>
  - Required Posters -- <http://www.dol.gov/elaws/posters.htm>
- EEOC, Reasonable Accommodation -- <http://www.eeoc.gov/policy/docs/accommodation.html>
- Good Samaritan Laws -- [http://www.heartsafeam.com/pages/faq\\_good\\_samaritan](http://www.heartsafeam.com/pages/faq_good_samaritan)
- Insurance Board – [www.InsuranceBoard.org](http://www.InsuranceBoard.org)
- Internal Revenue Service – [www.irs.gov](http://www.irs.gov)
- Job Accomodation Network -- <http://askjan.org/>
- Pension Boards
  - Pension Boards, United Church of Christ – [www.pbucc.org](http://www.pbucc.org)
  - Pension Board of the Christian Church (Disciples of Christ) – [www.pensionfund.org](http://www.pensionfund.org)
  - Board of Pensions, Presbyterian Church (USA)(PCUSA) – [www.pensions.org](http://www.pensions.org)
- RiskVue – State Laws, Workers Compensation Division -- <http://www.riskvue.com/rbstates.htm>



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