

Complying with Fair Credit Reporting Act & Managing a Legal Background Screening Program

Adopting a solid screening and selection process is your first line of defense in creating a safe environment. A thorough, consistent process may discourage offenders from targeting your church. Failure to discover a known offender can affect those in your care and the church's reputation, financial stability, and trust within the community. Background screening is highly regulated and filled with legal complexities, so how can you mitigate these risks so your church can benefit from the added safety that screening provides?

Complying with the Fair Credit Reporting Act (FCRA) and other laws is not always simple. However, by consistently following steps and partnering with a trusted professional background screening provider, you can adopt a process that minimizes your exposure to this type of litigation.

Always get consent prior to requesting a background check. This rule applies to both employ-

ees and volunteers, so don't be tempted to follow a more relaxed protocol just because it is not a paid position. Also, the content and presentation of your consent documents matter – very specific language regarding the scope of the background check must be included, and it must be provided in a clear and conspicuous manner.

Failure to complete this step correctly is one of the greatest mistakes churches make, and it can be costly even if nobody suffers any real damages or comes to any harm. Attorney's fees, actual and punitive

damages can drive up the cost of these "simple" errors.

Follow a two-step adverse action process when a candidate does not meet your criteria. The FCRA requires you to follow a very specific protocol when you decide not to offer a position, paid and unpaid, based in whole or in part, on the results of a background check. This process dictates notices be

given to the applicant and adequate time is given for the applicant to dispute the results of the background check should he or she believe it is inaccurate.

Your first step is providing a **pre-adverse action notice** where you provide the applicant with a copy of his or her report, a copy of his or her rights under the FCRA, and information on the screening firm that prepared the report so the applicant knows who to contact should he or she want to dispute an item. You must then wait a reasonable amount of time for the applicant to review the report and raise issues prior to making a final decision. The law is silent on how long you should wait, but a good rule of thumb is to wait at least seven calendar days. If the applicant disputes the report, delay making a final determination pending the result of your screening provider's re-investigation.

If the applicant does not dispute the report in a reasonable amount of time, or if the results of a disputed report are still problematic following a reinvestigation, you will

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Informing the Congregation about Embezzlement

Explaining the situation to your church without risking defamation.

By Richard R. Hammar

Church leaders often refuse to disclose to the congregation any information about an incident of em-

bezzlement for fear of being sued for defamation. This concern is understandable. However, serious problems can occur when the pastor or church board dismisses a long-term employee or volunteer for embezzlement and nothing is disclosed to the membership. Church leaders under these circumstances often are accused of acting arbitrarily, and there is a demand for an explanation. Refusal to respond to such demands may place the church leadership in an even worse light.



There is a possible answer to this dilemma. Many states recognize the concept of "qualified privilege." This means that statements made to others concerning a matter of common interest cannot be defamatory unless made with malice. Statements are made with malice if they are made with a knowledge that they are false, or with a reckless disregard as to their truth or falsity. In the church context, this privilege protects statements made by members to other members concerning matters of common interest. Such communications cannot be defamatory unless malice is proven. Church leaders who decide to disclose why an embezzler was dismissed can reduce

the legal risk to the church and themselves by following a few basic precautions:

- Only share information with active voting members of the church—at a membership meeting or by letter. The qualified privilege does not apply if the communication is made to non-members.
- Adopt procedures that will confirm that no non-member received the information.
- Limit your remarks to factual information and do not express opinions.
- Prepare in advance a written statement that is communicated with members, and that is approved in advance by an attorney.

Key point. In some cases, it is helpful to obtain a signed confession from an individual who has been found guilty or who has confessed. If the individual consents to the communication of the confession to church members, then you can quote from the confession in a letter that is sent to members of the congregation, or in a membership meeting. Be sure that this consent is in writing.

Key point. One court ruled that a church could be sued for defamation for sharing suspicions regarding a church treasurer's embezzle-

ment with members in a congregational meeting. The court concluded that the treasurer should have been investigated and dismissed by the board, without informing the congregation. While no other court has reached a similar conclusion, this case suggests that leaders should disclose cases of embezzlement to the membership only if (1) absolutely necessary (for example, to reduce congregational unrest), and (2) an attorney is involved in making this decision.

Adapted from Church Law & Tax Report, Foxes in God's Storehouses: What Church Leaders Need to Know about Embezzlement

Understanding Your IB Policy: Sexual Misconduct Coverage

An Abel Harlow Child Molestation Prevention Study found that one pedophilia molester averages 12 child victims and 71 acts of molestation (victims under 13yo).

YOUR IB policy, has the broadest coverage for this type of violence because we define "occurrence" by each VICTIM'S CLAIM, even though they may have all been hurt by the same person or group of people. The IB's \$1M per victim limit (up to an annual limit) is more than most churches find with other programs.

Many programs use a "single perpetrator" form which means that, if a single person, or two or more people acting together over any period of time, hurt multiple victims, the coverage is limited to only one policy period's "occurrence" limit. These carriers define a single occurrence as "all acts" by a single perpetrator or single group of perpetrators. Whatever coverage exists is somehow split amongst all the victims and their families.

Armatus Training Updates!

When we initiated the Armatus training service seven years ago, the courses focused on prevention of child sexual abuse. Since then, Praesidium has added courses, expanding into areas such as bullying, bloodborne pathogens, sexual harassment, and mandatory reporting. Some courses are now available in Spanish or French (identified by *). These FREE online courses are available to all churches that are eligible for our program. Below is a complete list of training courses available.

Preventing Bullying: Learn what is bullying, why it's a problem, the different types of bullying, how it happens, and how to prevent it.

Hello I'm Sam*: Learn the types of molesters, and the methods they use to manipulate coworkers, parents, and children-all to meet their own needs. Also, how to spot potentially dangerous interactions between adults and children.

It Happened to Me*: Children and adults describe the devastating effects abuse had on their lives and the prevalence of abuse and specific characteristics that may put some children at higher risk.

Navigate Sexual Harassment: Learn to prevent, detect, and report sexual harassment.

Preventing Sexual Activity Between Young Children*(Spanish only): Learn about children and sexual curiosity, what is normal, how to prevent it, and how to respond if they occur.

Preventing Sexual Activity Between Adolescents: Learn about peer pressure and bullying and what it can do to influence sexual behavior in adolescents.

Keeping Your Camp Safe*: Shows you where and when abuse is most likely to happen in a camp setting and steps you can take to keep kids at camp safe.

Abuse Risk Management for Volunteers*: Shows how molesters operate, the devastating effects of abuse, and the specific steps volunteers can take to prevent abuse and false allegations of abuse.

Keeping Your Church Safe*: Learn 5 specific ways your actions can keep children safe, the importance of a watchful eye, what to do in the case of suspicious situations, and how to respond to inappropriate behavior.

Abuse Prevention Refresher*: Build on knowledge and learn new information about how sexual abuse occurs, use red flags, prevent false allegations, prevent sexual activity, and apply what you know.

Now You're a Supervisor: (Supervisors only) Learn what constitutes workplace discrimination, harassment, and retaliation and legal requirements and concepts.

Duty to Report Mandated Reporter*: Learn why reporting abuse and neglect is critical, legal responsibilities, what types of conduct must be reported, and how to report it. This course is state specific.

Preventing Elderly Abuse: Learn facts about abuse and neglect and steps to keep residents safe.

Preventing Abuse Against Adults with Disabilities: Learn facts about abuse of people with disabilities, characteristics of potential victims, and steps to keep clients safe.

Social Media Safety: Learn facts about increased opportunities for sexual abusers to communicate with their intended victims.

Blood-Borne Pathogens: Learn how to reduce the risk of contracting a blood-borne disease.

For more information about Armatus Training visit the "Safe Conduct Workbench" on our website at www.InsuranceBoard.org

Open Your Doors, But Not Your Risk

Churches frequently extend the use of their premises to third parties for one-time only events such as weddings or concerts, and for recurring events such as AA Meetings or New Church Starts. The use of church premises for these activities exposes the church to liability in the event someone is injured on church premises, or inadvertently causes damage to the church itself.

It is recommended that when outsiders use the church premises, the church obtain a signed Facility Use Agreement and obtain a Certificate of Liability Insurance from the party. The Agreement spells out who is responsible for what, and the Liability Insurance is there to pay for accidents that result in Bodily Injury or Property Damage.

But what if the third party does not have insurance?

Through a product called TULIP (Tenants and Users Liability Insurance Program), a third party can obtain liability insurance specifically for use of your church. TULIP allows the Tenant or User entity to purchase a low cost general liability product to cover their liability related to the utilization of the church premises, protecting the entity as well as protecting the church by providing an extra layer of insurance protection and including the church as an additional insured.

Upon approval of a short application, and premium payment from the third party user, the Insurance Board is able to provide TULIP coverage. If your church is a participant in the IB program, and has interest or a need, please contact your agent for more details.

Why Does a Church Need Insurance?

If you knew on September 10, 2017 your church would be struck by lightning and catch fire and incur expenses of \$185,000 for repairs, would you be putting money aside today so that you could make the repairs then? How much would you put away each month? What if the cost of repairs exceeded \$300,000? This is where insurance comes in.

When you purchase insurance you are making fixed payments ("premium") to protect against a larger expense ("loss/claim"). Making these payments to an insurance provider transfers the risk from you (the church) to the insurance provider.

Insurance is a necessary expense. We cannot know the future with certainty. And in the short term, most businesses are unable to pay for a large loss while continuing to meet other needs. For a business, that's inventory to sell (your ministry) and a place to sell it (your church). The concept of insurance is to provide financial security for the short term, by having people combine their risk in a mutual pact, a covenant. Each person (church) contributes a little money, so that the unfortunate one(s) will have the necessary larger resources in an emer-

gency. The insurance company chances that not everyone will experience a loss.

Insurance is essential to modern business practice, and that includes a church. When a church borrows money (a loan) to build a new sanctuary or wing, the lender (company loaning the money) expects a guarantee of payment. After a serious fire, a church may not be able to operate its ministries and receive offerings from its congregation, and may find it is unable to honor its commitment to the lender. Therefore, all lenders require that insurance be purchased. They will require that they be named as a "loss payee." After a loss, the lender will insist insurance money be used to rebuild the church, or to repay the loan.

But insurance doesn't just protect the property, it protects people as well. Insurance that covers people is called liability insurance. People who visit churches for worship or other activities, may be injured by accident. Most often they slip in a hallway or trip on uneven sidewalks. When the church is at fault, they will expect medical care and money for their pain. While such injuries can be very serious, few churches are



able to pay from their own cash reserves. Without insurance a church may face the real possibility of having to file bankruptcy to compensate the injured. This means, the end of the church's ministry.

Liability insurance protects the church's cash, endowments and ministry. It is the protection afforded to you by the insurance provider, saying that they'll pay the amount you become legally obligated to pay. Sometimes this could mean a court case, but often the issue is "settled" on your behalf by the insurance provider. Imagine that a volunteer falls off a ladder making a repair to the roof. Your insurance company responds by paying for his medical bills, lost wages and maybe pain and suffering because of the accident. The church then feels a sense of relief that the volunteer was taken care of, but not at the expense of bankrupting the church.

As we mentioned earlier, insurance is a covenant of people (churches) combining their resources. So, when insurance is used to pay for damages or injuries, each church who has bought insurance is, in essence, paying part of the loss. The best way any church can do its part to keep the cost of insurance down for everyone is for each to take actions that can prevent damage or injury. Resources are available through your denominational insurance program the Insurance Board. Visit IB's website for tools to use today! www.InsuranceBoard.org

Complying with FCRA, continued from page 1

need to ensure a **final adverse action notice** is provided to the applicant indicating that you have made a final determination and that he is no longer under consideration for the role.

While the adverse action process seems cumbersome, the added transparency will not only contribute a sense of integrity to the screening process, but it will help correct errors and get qualified employees and volunteers onboard and serving your organization.

You may have **additional state or local requirements**, particularly where employees are concerned, so it is important to work closely with your screening provider to determine what your specific process should entail. Your screening provider should be able to provide you with template or sample documents that comply with the consent and adverse action requirements listed above but also anything special you need to include to ensure you are screening safely.