Winter, 2022

The Steward

Trustworthy Insurance Insights for Churches and Ministries



"For nothing will be impossible with God."
Luke 1:37

- Independent Contractor or Employee?
- Employment Best Practices
- Failing to Act
- Insurance Board Introduces Legal Helpline
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- Human Resources Trends in 2022

Insurance Board
Partners in Protection

Independent Contractor or Employee?

That is the question!

The cost of providing benefits for health insurance, pensions, and workers' compensation insurance continue to be on the rise. In response, ministries may consider hiring an independent contractor instead of an employee, but it is critical they understand the differences between the two before making this decision.



According to the Internal Revenue Service (IRS), "The general rule is that an 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." If a worker performs services that are controlled by your ministry (what will be done and how it will be done), they would be considered an employee.

Independent contractors, such as a business used to repair a roof, generally work for many people, provide their own employees, their own tools, and direct their work in accordance with the terms of the contract agreement. Since they are independent in their work, a church generally should not have to withhold the employee's portion of taxes, pay any taxes on payments made, or provide workers' compensation coverage to independent contractors.

If a worker performs services that are controlled by your ministry, they should be considered an employee. An example could be someone who performs regular maintenance services at the church, especially if they are relying on tools and supplies owned by the church to perform the work and being directed in what will be done and how it will be done. Generally, ministries should withhold the employee's portion of taxes, pay any taxes, as well as provide workers' compensation coverage for workers who are classified as employees.

Workers' compensation is a no-fault coverage, and it is regulated by the state. Each state has its own requirements and penalties, and nearly every state requires employers to carry workers' compensation insurance. According to the IRS "Each state also has tests to determine a person's status under workers' compensation and unemployment insurance laws. The economic realities test used in most states makes it harder to classify a worker as an independent contractor because, in addition to the degree of control test, it considers the degree the worker is economically dependent upon the business."

It is important for churches to note there may also be consequences associated with treating an employee as an independent contractor. If a ministry classifies an employee as an independent contractor and there is no reasonable basis for doing so, they may be held liable for employment taxes for that worker. Additionally, if workers' compensation insurance is not purchased and the employee sustains an injury on the job, the employee's workers' compensation claim could be charged to the church for the cost of any insurance coverage and the actual cost of the worker's claim.

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Since most states require ministries to purchase workers' compensation insurance for their employees, Insurance Board offers churches workers' compensation coverage on a request-basis for employment-related injuries. Please contact your local Insurance Board agent for more information.

If your church is unsure whether an individual should be classified as an independent contractor or employee, guessing could end up causing a lot of headaches and more time away from serving your ministry. The Insurance Board encourages ministries to consult with legal counsel for guidance or clarification.

Source : https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee

- The Fair Labor Standard Act (FLSA) does not define independent contractor.
- Federal courts have held that independent contractors are not employees.
- The US Supreme Court has indicated that there is no single rule or test for determining whether an individual is an independent contractor or employee.
- The chart should help provide guidance, but seek legal counsel for certainty.
- Department of Labor https://www.dol.gov/
- Occupational Safety and Health Administration https://www.osha.gov/.
- Graphic from: https://www.dol.gov/agencies/whd/flsa/misclassification



EMPLOYEE	OR	INDEPENDENT CONTRACTOR
Working for someone else's business		Running their own business



Paid hourly, salary, or by piece rate		Paid upon completion of project



Uses employer's materials, tools and equipment		Provides own materials, tools and equipment
Typically works for one employer		Works with multiple clients



Continuing relationship with the employer		Temporary relationship until project completed
Employer decides when and how the work will be performed		Decides when and how they will perform the work
Employer assigns the work to be performed		Decides what work they will do

Employment Best Practices



Many types of claims fall under Employment Practices Liability (EPL) coverage. An employee can allege wrongful termination, sexual harassment, discrimination, invasion of privacy, breach of contract, emotional distress, and wage/hour law claims. Churches and ministries may avoid these claims by employing best practices in managing and terminating employees.

An example from our claim files outlines some of the issues associated with these claims. A ministry was recently party to a lawsuit filed by a terminated employee. Upon termination, the former employee filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) alleging discrimination as the basis of the termination. The EEOC's role is to investigate allegations of employment law violations, and the findings of its investigation often become the focal point in any claim.

An EEOC investigation can be like a trial before a trial. During an EEOC investigation, an organization is often asked to submit a position statement outlining all the facts which pertain to the allegations under investigation. The accusing party can also provide information relevant to the investigation. It is essential to keep an organization's response factual and straightforward during this phase.

Once the EPL claim is established, a claims professional will assist with preparing this statement to ensure that it is crafted appropriately. It is crucial that the statement only refers to, but does not identify, information that the respondent asserts as being sensitive medical information, confidential, commercial, or financial information. This early stage of the claim can be the first opportunity for an organization to raise all defenses, legal or factual, in response to the allegation.

In this case, the church laid an excellent foundation for their defense by documenting the employee's infractions of the organization's policies, building a solid case for termination and defense against the allegations. During the actual termination, the church cited numerous issues with attendance and lack of preparation that led to the termination for just cause. The ministry also documented this information in the employee's termination letter.

Due to the quality of the documentation in the response, the EEOC upheld the ministry's position and found no wrongdoing and that no discrimination had occurred.

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Additionally, the trial court eventually dismissed the suit filed by the former employee based upon the strength of the defenses and results in the EEOC findings.

Churches and ministries need to employ the best practice of documenting employee behavior and disciplinary issues. Complaints made to the EEOC that do not have proper documentation of a sound and legal termination are complicated to defend with the EEOC or in a lawsuit filed against the church.

Ministries should report EPL coverage-based claims as soon as receiving notice of an EEOC investigation or written notice from a former or current employee's attorney.

Additional employment-related insights and resources can be found within AIG's EPL Pak® Premier; this resource includes instant, free access to an online Human Resource Center located at www.eplriskmanager.com. Included are risk management products and resources designed to help ministries manage their workforce and mitigate their exposure to employment-related claims. All that is needed to access the site is an email address and your Insurance Board policy number.



What is Progressive Discipline?

Over the years, we have received phone calls from church leaders relating to matters of termination. Church leaders who do not have experience in the corporate setting, who have never hired a person according to specific rules and who have never managed a termination, are at a particular disadvantage.

In most of the situations, our first advice is to review church by-laws and to get a thorough understanding of them, though by-laws are not always clear on terminations.

Corporate rules on termination, where the issues are "job performance" most often require a process of progressive discipline. That is, a gradual "stepped" process of potentially counseling, verbal and written warnings and perhaps a "plan" for improvement. The process provides a means for dealing with issues related to an employee's conduct or performance that fall short of a defined standard and/or policy. The objective is to help employees correct problems and resolve issues. When these steps are not successful, a person can only be terminated with the participation of legal counsel or a well-trained human resources department. The ultimate goals of a progressive discipline plan are to provide a consistent, objective and fair process and then provide important documentation should a termination become necessary.

A termination of any kind is a heavy burden for everyone involved. Therefore, advice of legal counsel is always recommended to assure the process is technically correct, dispassionate, and defensible.

Failing to Act

Many pastors have given sermons about sins of commission versus sins of omission. In the simplest of terms, the sin could be telling a lie or failing to speak out with the truth (bear false witness).

Insured's often ask, "How can I be liable if I didn't do anything?," The answer may be found in the question.

There are two types of acts (or inaction) that can create liability: Acts of Commission and Acts of Omission. Commission refers to an act you did or committed, and Omission refers to an act(s) that you failed to do.

A "Real-Life" example: On a Sunday morning a ministry's maintenance employee notices that the front entry steps are broken. Instead of posting a warning notice (cone, sign, caution tape) or closing access to the entry, they decide they will fix it the next day. A member arrives for services and is injured on the steps while entering the sanctuary. The church would likely be held liable for the injury due to the failure to act upon the condition of the stairs.

Acts of commission liability appear clear cut or black and white. You either rear-ended the car in front of you, or you did not.

The allegations and defenses for a claim of omission can gray the lines of liability. The saying "if not for" sounds gray enough; proving the absence of something like due care is like proving that something exists because something else does not. Just imagine how a jury in a trial court could get confused!

It is extremely difficult for any civil defense attorney to defend against this type of argument, especially if there is no documented evidence that the church acknowledged any duty to consider preventing damage to another.

Organizations, over individuals, have a greater exposure to liability from this argument due to the public perception (and sometimes the actual common law or codified legal duty) that they need to make greater efforts to prevent damage to others.

An empty-handed defense with no proof against a liability claim is not a comparable defense to arriving at court with documents and records showing ongoing efforts to make a property or your actions safe from being a hazard to others.

The omission/commission conundrum can also apply to issues of human resources and employee training. Omitting the background screening or training of employees (or completing it poorly) can create issues of liability over what was not done or partially done. Please see the link below for the Insurance Board's website for further information on church management.

Training of both volunteers and employees can vary based upon their skillset, and the type of duties they are asked to perform. An 18 year-old may need extensive training in the use of hand tools where a 50 year-old skilled tradesman may not.

Committing to conducting criminal background checks for most of the staff/volunteers who have access to youth (act of commission), but not committing to conducting the checks for ALL staff/volunteers who have access to youth (act of omission) could prove indefensible in a court of law if a sexual misconduct claim is made against a church that allowed someone with a criminal background history to have access to youth. Regardless of the court judgment, now the ministry will have to contend with reputational damage.

The mindset required to address these issues is for ministries to not only think about what they are doing, but also reflect upon what they are failing to do.

Insurance Board-Safety Central-Employee/Volunteer/Board Management https://www.insuranceboard.org/safety-central/employee-volunteer-board-management/



Insurance Board Introduces Legal Helpline

As a church leader you may wish to solely focus your attention on ministry and devotional activities; yet every day, there are many "business" aspects that your church must consider: employment issues, taxes, governance concerns, church finances, contracts and matters of the law. While we generally think in terms of "separation of church and state," in fact, churches are subject to Federal and State oversight in several areas, including labor law, taxation, judicial precedents. Insurance Board announces the addition of a Legal Helpline through our partnership with the Association of Conference Attorneys (ACA) of the United Church of Christ. All Insurance Board participants can access legal counsel that will provide a free consultation and referral service. Ministries will benefit from connecting with attorneys who have an intimate understanding of polity and how issues are processed in observance of free church traditions.



Contact the Legal Helpline at
800.437.8830, ext 7
Or email your inquiry to:
legalhelpline@InsuranceBoard.org

HR Resources

Insurance Board participants have access to AIG's EPL Pak® Premier; this resource includes instant, free access to an online Human Resource Center located at www.eplriskmanager.com. Included are risk management products and resources designed to help ministries manage their workforce and mitigate their exposure to employment-related claims. All that is needed to access the site is an email address and your Insurance Board policy number.

www.eplriskmanager.com



Claims Lessons Learned: Cyber Claims

Crimes related to breaches in cyber security have grown exponentially over the past two years. According to an article by ASIS Security Management, losses from cybercrimes amounted to more than $4.2 billion in 2020 due to increasing reliance on technology and mobile devices due to the pandemic. The trends in 2021 appear to be just as alarming: *Forbes* reports that data breaches in 2021 surpassed totals in the previous year and that the hackers have become more targeted in their approach. The tactics they now use are designed to either trick victims into disclosing sensitive information such as bank account PINs and passwords or breach computer systems to directly obtain this information without the owner's knowledge or consent. *Forbes* also indicted that four-fifths of all data breaches in 2020 were financially motivated, meaning the goal of most attacks was to steal money directly or obtain information that could be used to steal from financial accounts easily.

Participants in the Insurance Board program are not immune from this phenomenon. As churches and religious organizations place more reliance on technology, they become increasingly vulnerable to cybercrime.

For example, one participant received a series of email instructions—presumably from one of its ministry partners – requesting a transfer of large sums of money to third-party bank accounts. The emails appeared to come from the ministry partner's finance department and contained the official ministry letterhead as well as all the necessary instructions and signatures. Unfortunately, the transactions were fraudulent as none of the emails and accompanying documents were sent or authorized by the ministry.

The originator of the emails was somehow able to access internal documents containing ministry letterhead and signatures from ministry executives. The organization is in the process of recovering the stolen funds, but the financial impact was significant.

In another claim, a church finance manager received an email from someone claiming to be the pastor requesting a change in bank account information for direct deposits. After making small deposits to the account, the church became suspicious when they received an email from the bank telling them that the account was closed. After investigating the transactions, the church discovered that an email scam had victimized them. Fortunately, the church was able to prevent the transactions before incurring a significant financial loss. These claim scenarios are examples of what cyber industry experts call *Phishing*.

Phishing (Oxford Dictionary): *The fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.*

According to *Security Magazine*, the financial services and insurance industry has faced a dramatic increase in phishing attacks since the pandemic began in 2020, with almost half of these attempts trying to steal corporate login credentials. There was an average quarterly increase in phishing attacks on mobile devices of 125% during 2020.

It is also an excellent practice to maintain the physical security of your devices, especially when working

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remotely. In another claim, a Pastor had his laptop compromised and the perpetrator obtained private information belonging to church members. The church is in the process of finding out how the breach occurred.

According to a report by Travelers Insurance, the transition to a remote work environment due to COVID-19 has contributed to increased cyber-attacks, particularly for small-to-medium-sized businesses. According to Travelers, one of the main reasons is employees who work from home may have less secure routers. Compromised employee devices may put the organization at risk for cybercriminals. Unfortunately, the scenario involving the pastor has been repeated in many businesses since the pandemic began.

According to the *Insurance Journal*, a survey by Travelers Insurance found that in 2020 one in four businesses had been victimized by a cyber event. Many of those businesses didn't have prevention programs like cyber security training, multi-factor authentication, and enhanced cybersecurity monitoring. These prevention measures are essential in protecting churches and religious organizations from cybercriminals, especially as employees in these organizations continue to work remotely.

As trends have indicated over the past two years, cybercrime is a growing threat due to our increased reliance on technology and mobile devices. Businesses including churches and religious organizations need to be continually aware of tactics used by cybercriminals. They will need to make sure they are up to date on protecting their ministries from a cyber event.

Sources: https://www.forbes.com/sites/chuckbrooks/2021/10/24/more-alarming-cybersecurity-stats-for-2021-/?sh=23c066fb4a36
https://www.asisonline.org/security-management-magazine/latest-news/today-in-security/2021/march/
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https://www.securitymagazine.com/articles/95145-financial-services-experienced-125-surge-in-exposure-to-mobile-phishing-attacks-in-2020
https://www.kaspersky.com/resource-center/preemptive-safety/7-ways-to-cyberattack-vulnerability

The following are the most common employee mistakes that could leave organizations vulnerable to a cyber attack:

- Opening emails from unknown sources
- Weak login credentials
- Leaving passwords on sticky notes or other visible locations
- Lack of effective employee training to identify cybercriminal tactics
- Not updating antivirus software
- Using unsecured mobile devices



Kaspersky Cyber Security offers the following solutions to reduce and/or prevent cyber attacks:

- Never open emails from people you don't know and avoid opening an unknown attachment or link.
- Employees should use unique passwords and include numbers and symbols for increased security.
- Change passwords regularly, especially if you suspect they may have been compromised.
- Use password managing software for multiple apps, websites and devices.
- Never leave passwords in visible locations.
- Limit accessibility/administrative privileges to company files.
- Require multi-level sign-offs for payments and other financial transactions to combat CEO fraud.
- Provide annual security awareness training.
- Set up automatic system updates and make this a requirement for employees.
- Never conduct confidential transactions using public WiFi.
- Make sure devices are password protected.



2022 Human Resources Trends

As ministries enter a new year, there are several HR topics in which they should focus their attention if they want to remain compliant and up to date on HR policies.

Cybersecurity

Employees are working remotely more than ever before, and many are doing so without the safety of the employer's network protections; as a result, cybersecurity has become a top area of concern in 2022. Since 2020, employers in nearly every state have been inundated with fake unemployment claims submitted through their state program. Over 45 states have proposed more than 250 bills and resolutions around this topic. This could result in new regulatory requirements for employers, such as mandated training, reporting of security breaches, and more.

Paid Leave

Many states and localities passed legislation on paid leave in 2021 that covered sick time, family and medical leave, and vaccination leave. More of the same is expected in 2022, including the trend toward "paid leave for any reason" and potentially even a new paid family and medical leave at the federal level. While federal laws only dictate unpaid leave rather than a national paid leave rule, many states have their own paid leave programs in place. In 2022, 4 states (Colorado, Connecticut, California, and Oregon - as well as Washington DC) are either adding paid leave, modifying existing leave laws, or making changes to unpaid leave legislation.

Payroll

Since state unemployment tax rates are impacted by different rules and funding, as well as how states have dealt with vaccine mandates and benefit claims, this will remain an issue for employers. Additionally, work-from-home and hybrid arrangements have added additional layers of complexity to the state (and local) tax structure. Because every state and locality has different laws, a remote or hybrid workforce can become more challenging to manage from a compliance standpoint. Ensure that your timekeeping systems and payroll practices are regularly reviewed and audited.

There are eleven states with confirmed minimum wage increases for 1/1/2022: Arizona, California, Florida, Illinois, Maine, Maryland, Massachusetts, Nevada, New Jersey, Ohio and Virginia. Make sure payroll and taxes are updated, and research if wage increases impact benefits. Keep in mind, there are seventeen states with pending minimum wage legislation, so it is critical for ministries to stay current on any pending legislation and requirements in their state.

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Pay equity

Employers will need to stay on top of federal and state initiatives aimed at addressing pay inequity, including salary history bans, requirements to include salary ranges in job postings, and a focus on reporting requirements intended to mitigate gender discrimination in pay. Many states have passed or strengthened compensation and pay equity laws in the last year. For example, Colorado now requires the posting of salary ranges on most job descriptions. Other states no longer allow market differences to justify wage gaps.

Anticipated increases in the starting wage in many sectors will likely create pay equity issues if new employees are being paid more than existing employees in the same positions. The EEOC continues to prioritize pay equity as a major legal priority. The best defense to a pay equity lawsuit is to take steps now to understand if there are pay gaps in your compensation structure and the reasons for the gaps.

Privacy

With the prevalence of COVID-19 screening and vaccination status tracking measures adopted in 2021, ministries should update any policies that emphasize transparency around the collection, use, and storage of employees' personal information in accordance with the laws in their state. Additionally, monitoring of remote workers' productivity without breaching privacy is a hot topic of discussion. Insurance Board advises ministries to consult with legal counsel before implementing this type of monitoring software.

The topics highlighted above are just a few examples of HR considerations facing ministries in 2022. Insurance Board participants have access to AIG's EPL Pak® Premier; this resource includes instant, free access to an online Human Resource Center located at www.eplriskmanager.com. Included are risk management products and resources designed to help ministries manage their workforce and mitigate their exposure to employment-related claims. All that is needed to access the site is an email address and your Insurance Board policy number.

Sitting is the New Smoking







In 2020 many employers shifted to having employees work remotely. This has had a far greater impact in the past 2 years than many could have imagined. Some people responded by increasing physical activity and losing weight; however, more became increasingly sedentary and gained weight, likely due to the lost physical movement. The discrepancy in physical movement has increased health risks faced by some remote workers. The Mayo Clinic recommends the following options to increase physical activity during the work day:

- You might start by simply standing rather than sitting when you have the chance or finding ways to walk while you work.
- Take a break from sitting every 30 minutes.
- Stand while talking on the phone or watching television.
- If you work at a desk, try a standing desk — or improvise with a high table or counter.
- Walk with your colleagues for meetings rather than sitting in a conference room.
- Position your work surface above a treadmill with a computer screen and keyboard on a stand or a specialized treadmill-ready vertical desk so that you can be in motion throughout the day.

Resource: https://www.mayoclinic.org/healthy-lifestyle/adult-health/expert-answers/sitting/faq-20058005



CEO Corner

Timothy S. Harris, CPCU
President and CEO

At organizations, the term HR generally refers to the area of the company that handles employment and personnel related matters. As the articles in this issue highlight, HR departments often deal with employee benefit plans, hiring, recruiting, training, etc. The HR department is designed to get the most out of a company's people (its human resources). After all, humans are the most important asset that companies have.

While humans comprise the engine that makes companies go, humans are also a considerable reason why insurance is necessary. While weather and other natural occurrences do quite certainly cause property insurance claims, many other claims result from the action (or inaction) of people.

This ***The Steward*** issue discusses how people make errors of commission and omission, including causing auto accidents, falling and injuring themselves, inadvertently (and, sometimes, intentionally) injuring others, accidentally starting fires, improperly hiring or firing employees, making decisions that lead to cybersecurity vulnerabilities, as well as failing to take certain actions which are necessary to eliminate or mitigate damage/ injury. At Insurance Board, we invest in a considerable number of tools to help shape the acts and decisions of the people at our insured ministries to eliminate, mitigate, and reduce the incidence of scenarios which would otherwise lead to insurance claims. However, in order for these tools to be effective, our churches and ministries need to actually use them. Almost all of these resources offered by us are free or subsidized to churches and their affiliated ministries.

Two of the largest claims we have experienced in our history involved the actions of people. One, a property claim, involved the failure of the church to secure a contractor with adequate insurance coverage or appropriate contractual indemnification language, for the services being provided to the church. The contractor caused a substantial fire that destroyed a considerable portion of the church. Another, a liability claim, involved the failure of a ministry to establish a contract with a third party who was using and performing certain tasks on the ministry's premises. The contractor's actions led to a chain of events causing millions of dollars in damage. While these two significant events were not directly caused by the church, the church's failure to institute best practices resulted in each ministry being financially responsible for the ensuing damage.

Increasingly, failure of churches to correct deferred maintenance issues is a driving factor in the cost of property insurance claims. There has been a trend of churches seeking insurance as a vehicle to fix, repair, or replace damage related to long-term wear and tear, long-term water intrusion, lack of maintenance, etc. Churches which decide to worship in buildings must consider their buildings as vital parts of their ministries; places from which mission activities emanate. Failure to do so only temporarily shifts the costs to insurers as these increased costs of claims, exacerbated by deferred maintenance, ultimately come back in the form of higher insurance premiums for everyone. Those having the most control of the cost of insurance are the churches themselves through the active mitigation of the incidence of claims which are controllable through appropriate human resources practices. The human resources tools we provide are there to help.

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