



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.

