

Legal Resource Manual
for
Presbyterian Church (U.S.A.)
Councils and Churches



Fourth edition (2020)

Important Disclaimer

While this Manual is provided in the hope it will assist you generally in answering questions, the Office of Legal Services is not engaged in rendering legal, accounting, or other professional services to you. If legal advice or other expert assistance is required, the services of a competent professional advisor should be sought. Indeed, before relying on information contained in this Manual or any resource, including Web sites, please consult with an attorney or other professional advisor licensed in your state.

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Introduction

The Office of Legal Services performs work for the Presbyterian Mission Agency, the Office of the General Assembly, the Administrative Services Group, the ministry divisions, and other corporations and work areas at the General Assembly level. These are our clients.

Over the years we have also provided general guidance to councils and churches of the Presbyterian Church (U.S.A.). This fourth edition Manual is a compilation of some of the advice and resources we have shared over the years. Our first three editions were well received and well used. We trust the same will be true for this Manual.

The law is far-ranging in modern American society. This Manual does not cover every topic. Let us know if there are additional resources or changes you would like to see in future publications. Moreover, let us know if you have resources or articles to share. Some of our very best materials have been provided to us by churches, presbyteries, and synods.

The Office of Legal Services sincerely appreciates the contributions and work of many outside authors. Contributors to this Manual include colleagues from churches, councils, and other General Assembly-level offices and corporations. Legal counsel from other denominations also contributed to this Manual. We especially thank the Legal Department of the General Council of Finance and Administration of The United Methodist Church. This Manual is, in part, based on the very successful legal manual published by that office.

Finally, be certain to consult your local attorney for legal advice and expert assistance. While the information in this Legal Resource Manual should be a helpful guide, it cannot substitute for your local counsel familiar with the law and facts of your particular state and situation. The laws, of course, continue to change. Your local counsel will ensure the current law is applied to your needs.

Sincere regards,

Michael K. Kirk

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Section I – Basic Organization of the Presbyterian Church (U.S.A.)

The Presbyterian Church (U.S.A.) is a body of Reformed Christians who have agreed to conduct their worship and other religious activities in conformity with the then current version of the Presbyterian Church (U.S.A.) Constitution. The Constitution consists of the *Book of Confessions* (Part I) and the *Book of Order* (Part II). The *Book of Confessions* contains twelve theological statements developed over the church's history. The *Book of Order* includes The Foundations of Presbyterian Polity, the Form of Government, the Directory for Worship, and the Rules of Discipline.

The Form of Government sets forth the relationships among the various elements that comprise the church. Central to the organizational structure of the Presbyterian Church (U.S.A.) is the concept of councils of which there are four types:

- sessions of particular churches
- presbyteries
- synods
- General Assembly

The Presbyterian Church (U.S.A.) is governed by these representative bodies composed of presbyters, both ruling elders and teaching elders. G-3.0101. The session of a particular church consists of the pastor, associate pastors, and ruling elders in active service. G-3.0201. The presbytery consists of all the churches (represented by ruling elders) and teaching elders within a certain district. G-3.0301. A synod consists of at least three presbyteries within a specific geographic region and is composed of commissioners elected by the presbyteries. G-3.0401. The General Assembly is a council of the whole church and consists of equal numbers of ruling elder and teaching elder commissioners elected from each presbytery. G-3.0501.

Each council has particular responsibilities and powers. These are set out in the Form of Government: Sessions G-3.0201, Presbyteries G-3.0301, Synods G-3.0401, and the General Assembly G-3.0501. Our polity is presbyterial — as distinguished from hierarchal, episcopal, or congregational. As we explain our structure, we must not oversimplify the essential detail of our presbyterian polity.

A very important concept for this Legal Resource Manual and within the life of the Presbyterian Church (U.S.A.) is found at G-3.0102: “Councils of this church have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline.” The corollary to this principle is that civil governments and courts must not assert ecclesiastical jurisdiction. This principle is embodied in the First Amendment to the United States Constitution and the religion clauses found in the various state constitutions.

Thus, neither the Presbyterian Church (U.S.A.) nor its councils should be thought of as civil jural entities with legal capacities and attributes. Their fundamental ecclesiastical nature, relationships, duties, and responsibilities are established by the Presbyterian Church (U.S.A.) Constitution — not the civil law. The *Book of Order* does direct the particular churches (G-4.0101) and the higher councils (G-4.0101) to cause a corporation to be formed whenever permitted by civil law. This provision is not understood to incorporate the ecclesiastical council but, instead, to create a corporation to perform the limited civil law functions necessary within the life of the church (e.g., holding title to real estate, entering into contracts). Of course, all of these corporations operate within the applicable civil law and the strictures of the Presbyterian Church (U.S.A.) Constitution. These corporations are civil jural entities.

Section 4 – Copyright and Trademarks

I. Copyright

A. What is a Copyright?

A copyright is a property right under federal law protecting original works of authorship fixed in tangible medium of expression sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated. Works of authorship include: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Computer programs, lyrics, music, and videos are also included.

Federal copyright law does not protect an idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work.

B. Who is the Owner of a Copyright?

The owner of a copyright is the author who created a work in fixed form, unless the work is prepared by an employee or by an independent contractor as a work made for hire. Where a work is created by an employee, the employer is the copyright owner. Where the work is created by an independent contractor as a work made for hire, the person or company that hired the independent contractor is typically the copyright owner.

The owner of a copyright has the exclusive right to do the following:

- reproduce the work in copies or phonorecords;
- prepare derivative works based on the copyrighted work (a derivative work is one based upon one or more pre-existing works; for example, the update to an existing book would be a derivative work);
- distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental lease or lending;
- in the case of literary, musical, dramatic, choreographic, pantomime, motion picture, and other audiovisual works, to perform the copyrighted work publicly;
- in the case of literary, musical, dramatic, choreographic, pantomime, pictorial, graphic, or sculptural works (including images of a motion picture or other audiovisual work), to display the copyrighted work publicly; and
- in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

C. Religious Services Exemption

The religious services exemption contained in the U.S. copyright law (17 U.S. Code § 110(3)) exempts from copyright infringement “performance of non-dramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.” This exemption allows, for example, congregants to sing hymns during service and ministers to recite poems in their sermons without first getting permission from the copyright holder.

Churches often ask if they can copy music pages from hymnals, copy sheet music, or audiotape/videotape church services for members who cannot attend worship services. **The religious services exemption does not extend to the copying of music or to the audio or video recording of portions of church services that include copyrighted works.** Moreover, the exemption does not allow for portions of services that include copyrighted works to be transmitted (also known as “streaming”) over the internet in any manner. Churches will need to obtain permission from the copyright holder to record and transmit any performance of a copyrighted work during a service.

D. Copying Music

Under the Copyright Act of 1976 the copyright owner has the exclusive right to copy or reproduce a musical work. If a church purchases sheet music or hymnals, that purchase alone does not authorize the church to make copies or transparencies of the sheet music or songs from the hymnals. This applies to the lyrics as well as the music. The only exceptions are (1) music that is in public domain (no longer copyrighted) may be copied; and (2) music may be copied in an emergency situation to replace purchased copies that are not available for an imminent performance provided the church replaces the copies with purchased copies. *See The Essential Guide to Copyright Law for Churches.* This excellent resource is available for \$49.95 from Christianity Today (800-222-1840), or on the internet. Public domain music is that which has either lost its copyright protection or was never protected by copyright. Generally, music published in the United States before January 1, 1923, is in the public domain. This applies to both music notation and lyrics.

It is important to note that the absence of a copyright notice © does not mean a work is in the public domain.

In the *Presbyterian Hymnal*, copyright ownership can be determined by looking at the bottom of the first page of each hymn. If the bottom of the page contains no copyright/ownership information, one can assume this version of the hymn is in the public domain and can be freely used. If copyright ownership does appear at the bottom of the page, the work is not in the public domain and permission to copy or tape is necessary. **For further information about the copyright ownership of various hymns in the *Presbyterian Hymnal*, please contact the Robin Howell, Manager of Rights & Permissions for the Presbyterian Publishing Corporation at rhowell@presbypub.com.**

Furthermore, uploading or downloading music from the Internet without authorization from the copyright owner or authorized distributor is a violation of copyright because it results in an unauthorized copy. Consider posting notices to this effect near computers and include it in the Internet policy section of the employee handbook.

E. Audio and Videotapes of Religious Services

As noted above, under federal copyright law, a copyright owner has the exclusive right to: reproduce, prepare derivative works (make changes), distribute copies, publicly perform, and publicly display the copyrighted work.

The religious services exemption permits the **performance** by the congregation and choir of copyrighted hymns in the course of the worship services; however, the exemption **does not extend to the taping** of the performance. Taping or transmitting (including internet “streaming”) a live performance of copyrighted material without permission or a license is copyright infringement.

If the church wants to tape copyrighted music, the options set out in Richard R. Hammar's *The Essential Guide to Copyright Law for Churches* include: obtain permission from copyright owners; avoid the use of copyrighted music; turn off the recording device when copyrighted

music is being performed; "splice in" prerecorded public domain musical works that were previously sung by the church choir; obtain a compulsory license; or enter into a "blanket license agreement."

The compulsory license process is cumbersome and not recommended. For information about blanket licenses, you may contact:

- Christian Copyright Licensing International, of Portland, Oregon; (503) 257-2230; (800) 234-2446; website: <https://us.ccli.com/>.
- EMI Christian Music Publishing (formerly Sparrow Corporation) of Brentwood, Tennessee; (615) 371-4300.
- Christian Copyright Solutions; (855) 576-5837; website: <https://christiancopyrightsolutions.com>.
- Christian Video Licensing International; website: <https://us.cvli.com>.
- And others.

These companies can provide information about blanket licenses, fees and the list of songs in their repertoires. Please make sure to clearly communicate to the companies the purpose for which the license(s) would be obtained (for example: taping copyrighted music and making copies of these tapes, streaming performances of copyrighted material over the internet, etc.). Please make certain to carefully consider all the uses of the music you want to make and communicate that to the licensing corporation so that the license will cover all your intended uses.

If these licenses prove too expensive for the church, the only options, as noted above, are not to tape the copyrighted music performed, use only public domain music in the service to be taped, or stop or mute the recorder during the performance of copyrighted music and splice in public domain music. Again, the church does not have to obtain permission to tape or copy public domain music.

In some cases, churches may wish to project or broadcast hymns onto screens in the course of a service; the right to make copies for the purpose of preparing overhead transparencies is **not** given to the church when it buys the hymnals. The copyright owner retains the right to make these types of copies. If the church wants to make these kinds of copies, it must obtain written permission from the copyright owner or obtain a license that permits such use.

Copyright infringement is serious. It can result in significant civil damages, injunction, and/or criminal penalties. As an example, willful infringement can result in statutory damages of up to \$100,000. The infringer may also be liable for attorneys' fees and costs. There are companies that act as agents for the copyright owners. These companies have employees that spend their time traveling the country to discover unauthorized use and collect license fees, so proceeding without permission or license is both unwise and illegal.

F. Video Viewing

As noted earlier, a copyright owner is given the right by federal copyright law to regulate public performances or showings of copyrighted DVDs and videotapes.

Pre-recorded DVDs or videotapes are intended for personal, home use only. **Buying or renting a video for in-home viewing (from a store or online) generally does not grant the user a license for public showings (such as viewing the videos in Sunday worship services, youth groups, or small church group meetings or retreats).** Certain distributors of religious videos may include a license for public viewing. If the video is labeled "For In-Home Viewing," public viewing is not permitted.

Generally, churches and other ministry organizations can show videos and be in accordance with the U.S. Copyright Act by obtaining written permission from the copyright owner prior to using the video, showing videos which have "Public Performance Rights," or showing works that are in the public domain. In very limited circumstances, the Classroom Use Exemption (17 U.S.C. §110(1)) may apply to your situation; for more information please visit <https://www.lib.umn.edu/copyright/limitations#classroomuse>.

G. Displaying Photos or Graphics

Whether or not a copyright is indicated on a piece of visual art, it may be protected. Even photos on "public" social sites like Facebook, Twitter, and Flickr belong to the person who created the art. In order to utilize a copyrighted photo or graphic, a church must get permission from the copyright holder, or opt for images that are in the public domain. If a church purchases stock photos for use on websites or newsletters, it may only use the images that are within the terms of the license. It may be advisable to use original photos that church personnel take themselves that are sufficiently distinct from copyrighted photos.

Regarding taking pictures of individuals. Taking pictures of individuals in places where they do not have a "reasonable expectation of privacy" (parks, street, concert, fair, public church gathering, or any public gathering) is legally permissible. On the other hand, taking photographs of people in private locations (a private room, hospital, potentially inside a private business) is not allowed. Likewise, it is not allowable, without permission, to use someone's likeness for commercial purposes, to publish a photo that defames someone or injures one's reputation, or to publish a photo that gives away private information about someone. Be mindful that some people may not want to appear in photos that will be shared. Consider asking for written permission or crafting a Photo Use Agreement to document when people grant permission to appear in photos.

H. Using Written Works

Printing or otherwise utilizing copyrighted written works (poems, book passages, etc.) without permission from the copyright holder is impermissible and may result in lawsuits and monetary fines. Before using such materials in church newspapers, newsletters, bulletins, etc., churches should conduct an internet search to learn more about the material and (if necessary) obtain written permission for use.

I. What is "Fair Use"?

Small parts of copyright works may be copied "for the purposes of research or private study." Educational institutions, archives, libraries, and museums also hold specific exemptions. Ordinary congregational worship activities, however, do not provide a context for "fair use" of copyright material.

J. Other Copyright Resources

In addition to *The Church Guide to Copyright Law*, other resources are available on the World Wide Web:

Church Music Publishers Association (<http://www.cmpamusic.org/html/main.isx>) (answers to common copyright questions)

United States Copyright Office (<http://www.copyright.gov/>)

Augsburg Fortress Copyrights & Permissions (<http://www.augsburgfortress.org/copyrights/>) (Guide to copyright law by the publishing house of the Evangelical Lutheran Church in America)

The Motion Picture Licensing Corporation (<http://www.mplc.com/>) (information about the use of videos. See, in particular, the very helpful questions and answers in the FAQ section.)

K. Internet and Other Electronic Media Copyright Issues

The Internet presents the unique opportunity to make materials almost immediately accessible to anyone in the world with Internet access. This communication medium continues to evolve as does the law related to it. In general, communication on the Internet is subject to the same rules as communication in print or broadcast.

1. Web Pages

Web page owners should place copyright notices on their copyrighted information posted on their Web page. If a Web page owner places copyrighted material on her Web page without prior permission or allows a third party to do so, the Web page owner will be liable to the copyright owner for copyright infringement. A Web page owner who permits third parties to upload information to the Web page should place a notice on the Web page stating the owner is not responsible for content or information uploaded by third parties and that third parties shall not upload copyrighted information to the Web site. Such a disclaimer may limit or eliminate liability by the Web page owner.

2. Computer Software

Computer software is generally copyrighted. A copyrighted software program cannot be copied without a license or permission from the copyright owner. Installation of software results in "copying." **Generally, purchase of software from a retailer gives permission to install on one computer only.** It may not give the purchaser the right to install the software on multiple computers. The license must be read carefully to ascertain whether the software can be installed on more than one computer and, if so, under what conditions. Unless the license permits, copyrighted computer software should not be loaned for two reasons: (1) lending is a form of distribution reserved to the copyright owner, and (2) installation by an unlicensed borrower will result in an infringing copy.

Generally, revising computer software will not result in a copyrightable program. Revision results in the creation of a derivative work and may constitute infringement if done without the copyright owner's permission. The copyright owner enjoys the exclusive right to create derivative works.

Transferring a copyrighted work from some other medium to CD-ROM without the copyright owner's consent is also prohibited. Any reproductions of such a CD-ROM would violate the copyright laws as well.

3. Uploading and Downloading from the Internet

Churches and other organizations need to be aware that software developers and publishers fund an organization known as the Business Software Alliance ("BSA"), located in Washington, D.C. The sole purpose of this organization is to locate and delete unlicensed software and capture pirates. According to an article in the National Law Journal, BSA had 35 hotlines around the world, sometimes working in cooperation with the Federal Bureau of Investigation and the U.S. Department of Justice, to receive reports of unlicensed software. BSA has been successful in obtaining many monetary settlements from unauthorized users. The settlements have also included agreements to delete the unauthorized software, purchase replacement copies, and develop a software policy. Many BSA investigations are the result of calls from disgruntled employees and calls from computer consultants. If contacted by BSA,

provide them an opportunity to voice their claim, but contact an attorney that specializes in computer law before responding.

It is recommended that churches and mid councils conduct periodic software audits to ensure they have a valid software license for every program on every computer. In addition, they should adopt a software policy that only specified personnel are permitted to load software into the employer's computers and then the program must be licensed unless it is public domain software.

Downloading copyrighted materials (including photographs) from or uploading to the Internet without permission of the copyright owner results in unauthorized copying. The same is true with regard to transferring copyrighted material to a third party via email. Do not assume drawings and games are not copyrighted and can be freely downloaded and used. Check the respective site's terms of use agreement and copyright policy.

L. Domain Names

One essential step in establishing a Web site is the selection and registration of a domain name that will function as the Internet address, for example, "First Presbyterian of Anytown.org." See InterNIC (<http://www.internic.net/>) and Internet Corporation For Assigned Names and Numbers (<http://www.icann.org/>) for more information. Churches and presbyteries should be aware that entrepreneurs, sometimes referred to as domain name "squatters," can easily register the church or presbytery's name as an Internet domain name for as little as \$100. Once they have done so, it is not unusual for these squatters to then contact you for business based on their ownership of a domain name attractive to you or for them to try to sell the domain name to you. While some businesses may see the domain name as important enough to justify paying a premium to receive ownership of it, others have challenged these squatters' registrations based on trademark and trade name infringement.

If the domain name registered by the squatter is a registered trademark, it is possible to successfully challenge the domain name registration through the dispute resolution process of a registrar or through a court action. For a list of approved dispute resolution service providers, see this website (<http://www.icann.org/en/dndr/udrp/approved-providers.htm>). Because an infringement action is costly, the recommended approach is to select a domain name and be the first to register it. The Anti-Cybersquatting Consumer Protection Act creates a cause of action for bad faith registration and profiteering in the registration of domain names that are identical to or confusingly similar to a distinctive or famous trademark. The remedies under the act include injunction and damages. The law in this area continues to evolve as do the domain name registrars and the dispute policies. For more information on these topics, see Internet Corporation For Assigned Names and Numbers (<http://www.icann.org/>).

II. Trademarks

A. What are trademarks?

Trademarks are distinctive words, symbols, or a combination of both that identify the source of goods to the public. These symbols are distinctive words (or phrases), designs or a combination of both, and may be registered on the state and/or federal levels or used, unregistered under the common law. An example of a famous federally registered trademark is "Coca-Cola®" for soft drinks.

To develop a trademark, the more arbitrary and fanciful the selected mark is the better. The idea is to select a distinctive mark, such as "Xerox®" for a photocopier, rather than one that is generic or descriptive. The purpose is to distinguish one company's goods or services from another's. Once the mark is selected, a trademark search should be designed with an attorney and conducted

by the attorney or a trademark search firm. The attorney will also work with you to determine whether the mark should be registered and, if so, whether it should be registered at the state level or with the U.S. Patent and Trademark Office at the federal level. After registration, the mark must be consistently used as a trademark or service mark, meaning that whenever possible the mark should be used with a generic term or with the word "brand," for example, "Coca Cola" soft drinks or "Coca Cola" brand soft drinks. This is an important precaution to avoid losing the mark by its becoming a generic term as was the case with the term "aspirin." A notice that the mark is registered should be included when the mark is used. One of the following notices should appear with a federally registered trademark:

- The letter R enclosed in a circle: ®
- Reg. U.S. Pat. & Tm. Off.
- Registered in the U.S. Patent and Trademark Office

To maintain a federal registration, an affidavit of use must be filed during the fifth year of registration or the mark will be canceled. In addition, an affidavit of incontestability should also be filed. The filing of this affidavit makes the mark incontestable, meaning the registration becomes conclusive evidence of the registrant's ownership and renders the mark immune from attack in certain instances. Federal registrations must be renewed every ten years after registration.

While maintenance of the registration is important, it is equally important to protect the mark from infringement and dilution. Failure to act to stop unauthorized use of a trademark may result in abandonment of the mark and loss of the exclusive right to use it.

From time to time, one may desire to use a trademark owned by someone else. Always obtain written permission to make any commercial use of another's mark. If you receive a cease-and-desist letter from a trademark owner for unauthorized use of their mark, contact your attorney before responding.

B. Application and Use of the Presbyterian Church (U.S.A.) Name

The words *Presbyterian Church (U.S.A.)* should not be used as, or as a part of, a trade name or trademark or as a part of the name of any business, firm, or organization, except by the particular churches, mid councils, corporations they control or other entities created for the administration of work undertaken directly by the Presbyterian Church (U.S.A.).

The term "property" includes many elements or ideas in addition to land and the rights incident to land. The law of unfair competition prohibits the misleading use of a name, even while unintentional, and is based on the idea that the right to use a name is a valuable property right entitled to protection from misappropriation and misuse. The right to exclusive use of a name may be established by a history of prior usage of the name, by compliance with statutory provisions about registration and notice, or by a combination of both.

The use of the name "Presbyterian Church (U.S.A.)" by unauthorized persons or organizations comes within the area of the law known as unfair competition. The use of the name of the church in such a manner that deception or confusion may result is considered unfair competition. The remedy at law is generally an injunction prohibiting the offending party or parties from continuing the unauthorized use of the name and/or monetary damages. The complaining party must show that the effect of the offending use is the likelihood of confusion or deception of third parties.

Sometimes other churches with confusingly similar names to a Presbyterian Church (U.S.A.) church are established in the same community. This situation could lead to confusion not only

among potential members but also with wills and bequests that are ambiguous in their reference to the recipient church. The term "Presbyterian Church" has been in use for hundreds of years and is one to which several denominations lay claim. Each of these denominations should incorporate some wording into their name to distinguish them from one another in order to avoid confusion. For example, the term "Presbyterian Church in America" is distinguishable from "Presbyterian Church (U.S.A.)." Such distinguishing denominational names on local church signs, letterhead, and the like often remedy any potential confusion.

The ultimate concern is that the term "Presbyterian Church (U.S.A.)" is used by parties that are not official organizations of the church. If you become aware of such misuse, contact Mike Kirk, Legal Services, (502) 569-5390. Legal Services can help determine the next steps. Generally, the first step will be a friendly call on the infringer by the local teaching elder or presbytery executive. If that contact is not productive, the next step will most likely be a letter to the infringer demanding they immediately cease and desist use. If an infringement legal action becomes necessary, the relief requested would most likely be a permanent injunction against the continued use of a misleading name by an unauthorized organization. Any actions necessary to enjoin misuse of the term "Presbyterian Church (U.S.A.)" would be brought by Presbyterian Church (U.S.A.), A Corporation. If the unauthorized user is allowed to continue the use with the knowledge of the denomination, the denomination's exclusive rights to the term "Presbyterian Church (U.S.A.)" could be compromised.

C. The Seal of the Presbyterian Church (U.S.A.)



The seal of the Presbyterian Church (U.S.A.) is a registered trademark, registered in the United States Patent and Trademark Office on the principal register. In addition, the seal is registered with the United States Copyright Office. The seal is comprised of the symbol, the basic components of which are cross, scripture, a descending dove at the upper part of the cross, and flames on either side of the lower part of the cross; and the name of the denomination, Presbyterian Church (U.S.A.), encircles the symbol.

The seal was approved by the 197th General Assembly (1985). **Each congregation and council may use the seal without receiving prior permission. Congregations and councils may not, however, license use of the seal to anyone else. All other organizations, groups, and members must receive prior written permission to use the seal from Legal Services (Administrative Services Group) (see contact information below).**

A congregation or council may, of course, authorize the seal to be used for core functions of the council. For example:

- Printing on church stationery and publications
- Church signs
- Shirts for church athletic teams

The church must, however, be sure the vendor that produces these items does not then use the seal for its own purposes. For example, if Acme Printing produces fifty T-shirts for First Presbyterian Church using the seal, that use is authorized by the 1985 General Assembly action.

If Acme Printing then uses the seal on other shirts and markets them, that is a copyright violation without a prior license from Legal Services (Administrative Services Group).

Any authorized use of the Presbyterian Church (U.S.A.) symbol must comply with the following guidelines, as may be amended from time to time by the Office of the General Assembly:

1. The design and proportions of the symbol must not be altered in any way, except the size may be changed for use on stationery, signs, banners, and so forth. The colors may be changed in the manner set forth below.
2. The symbol may be used with or without the words "Presbyterian Church (U.S.A.)" encircling the symbol.
3. The use of color in the symbol is permitted as follows:
 - Traditional colors using royal blue or gold for the cross, scripture and dove portion, and gold for the words "Presbyterian Church (U.S.A.)" encircling the symbol.
 - Liturgical colors using one color for the entire symbol as follows: violet for Advent and Lent, red for Good Friday and Pentecost and green for the Sundays after Pentecost.
 - Other colors and color combinations with prior approval of OGA.
4. The symbol must never be depicted with any type of motion. For example, the symbol must not be depicted in a video or on an Internet web page as spinning.
5. While every use of the seal may not provide an opportunity to display the statutory notice (the circle "R", ®) and use of the statutory notice is not mandatory, it is good practice, when practicable, to give public notice of the trademark registration by using one of the following:
 - The letter R enclosed in a circle: ®
 - Reg. U.S. Pat. & Tm. Off.
 - Registered in U.S. Patent and Trademark Office

So, while it is not practical to display the statutory notice on a stained-glass window or church sign, it is possible to note it on the reverse of a piece of jewelry or in another inconspicuous place.

Trademark protection may be lost through improper use, abandonment, and dilution. To minimize this risk, the symbol must always be used in its entire and original form.

As is the case with the notice of trademark registration, copyright notice is not mandatory but, whenever possible, it is desirable to include some notice of the copyright on the inside cover of publications displaying the seal. The following language is suggested: **"The seal is the exclusive property of the Presbyterian Church (U.S.A.) and is registered in the U.S. Copyright Office. This seal may not be used or reproduced without the prior written permission of Legal Services (Administrative Services Group) of the Presbyterian Church (U.S.A.), A Corporation, 100 Witherspoon Street, Louisville, Kentucky 40202."**

In addition, any suspected unauthorized use should be promptly brought to the attention of Legal Services (Mike Kirk 502-569-5390) or by forwarding the name and address of the user to Legal Services (Administrative Services Group) as well as a sample of their use of the seal.

Anyone other than a congregation or council who plans to use the seal must receive the prior permission of Legal Services (Administrative Services Group) of the Presbyterian Church (U.S.A.), A Corporation. Any products marketed in wholesale or retail settings must be specifically licensed by Legal Services (Administrative Services Group). An application for use must be submitted and a fee must be paid for each design. A sample of the proposed product

should be sent to Legal Services (Administrative Services Group) so approval may be based on the finished product.

For more information or a license to use the seal, contact:

Legal Services
Administrative Services Group
Presbyterian Church (U.S.A.), A Corporation
100 Witherspoon Street
Louisville, KY 40202
Andrej Ajanovic
502-569-5043

D. Request for License to Use the Seal of the Presbyterian Church (U.S.A.)



1. Commercial Use

The Presbyterian Church (U.S.A.) Seal is a registered trademark of the Presbyterian Church (U.S.A.), A Corporation. Anyone making a commercial use of the seal must first have a license issued through Legal Services (Administrative Services Group).

2. Accuracy

Every usage of the trademark must maintain the accuracy of the seal in its design, proportion, and style and comply with our guidelines.

This completed request-for-permission form (see Appendix E), should be sent to Legal Services (Administrative Services Group). A sample of the product should be sent with this request. Send to:

Legal Services
Administrative Services Group
Presbyterian Church (U.S.A.), A Corporation
100 Witherspoon Street
Louisville, KY 40202
Attention: Andrej Ajanovic
502-569-5043

3. Instructions for Request for Permission to use Presbyterian Church (U.S.A.) Seal

The following are instructions for completing the request for permission. As stated, the completed request should be mailed to Legal Services (Administrative Services Group) of the Presbyterian Church (U.S.A.), A Corporation, 100 Witherspoon Street, Louisville, KY 40202, Attn: Andrej Ajanovic. If this is a request for a renewal, please send a copy of the original request form that you completed or, if it is not available, complete another request and tell us in Question #7 when permission was first granted.

4. Explanation of the Questions:

- a. Provide your name, the company name, if any, and address.
- b. Please set forth in detail the proposed use of the seal. (For example, for a jewelry pin, on clothing, etc.) Please supply us with as much information as possible. Also, please explain how the product is to be marketed or sold. (For example, to a local Presbyterian church, produced for a conference, etc.)
- c. If you have a sample of the product, please enclose it and indicate in #3 that you have enclosed it. In order to maintain the integrity and proportions of the seal, you should obtain design proofs from the Legal Services (Administrative Services Group) if you do not have any available.

If you do not have the actual product, describe how it will appear. For example, if it is used for a jewelry pin, give the materials and dimensions (if no sample is available, enclose a sketch). For clothing, describe the specific article of clothing and explain how the design will appear (if no sample is available, enclose a sketch).

- d. State the number of products you intend to produce.
- e. State the sale price per individual item.
- f. Provide the name of the council or entity in the Presbyterian Church (U.S.A.) that requested that you produce this product. For example, a local church, presbytery, agency, etc. Please supply us with the name of the individual from which you obtained this request. If such authorization is not direct, please explain how you plan to market this product.
- g. For renewals, you may enclose the original application and a note that you are requesting a renewal. If you do not have the original request, please complete this form again and include the date the original license was granted. If you have changed your name from the time of the original request, please let us know.

As part of the license, it is understood that if you have not included a sample product, you will supply us with the actual product within a reasonable time after production. If a license is granted it will be with the understanding that the product you produce conforms substantially with the information set forth on the request. If the actual product you produce differs substantially from the sample or description you have given in the request, you need to supply us with a new request or sample. If you have any questions, please call Andrej Ajanovic at 502-569-5043.

5. Guidelines for use of the Seal of the Presbyterian Church (U.S.A.)

Any authorized use of the Presbyterian Church (U.S.A.) symbol must comply with the following guidelines, as may be amended from time to time by the Office of the General Assembly:

- a. The design and proportions of the symbol must not be altered in any way, except the size may be changed for use on stationery, signs, banners, and so forth. The colors may be changed in the manner set forth below.
- b. The symbol may be used with or without the words "Presbyterian Church (U.S.A.)" encircling the symbol.
- c. The use of color in the symbol is permitted as follows:
 - Traditional colors using royal blue or gold for the cross, scripture and dove portion, and gold for the words "Presbyterian Church (U.S.A.)" encircling the symbol.

- Liturgical colors using one color for the entire symbol as follows: violet for Advent and Lent, red for Good Friday and Pentecost and green for the Sundays after Pentecost.
 - Other colors and color combinations with prior approval of OGA.
- d. The symbol must never be depicted with any type of motion. For example, the symbol must not be depicted in a video or on an Internet Web page as spinning.
 - e. While every use of the seal may not provide an opportunity to display the statutory notice (the circle "R", ®) and use of the statutory notice is not mandatory, it is good practice, when practicable, to give public notice of the trademark registration by using one of the following:

The letter R enclosed in a circle: ®

Reg. U.S. Pat. & Tm. Off.

Registered in U.S. Patent and Trademark Office

So, while it is not practical to display the statutory notice on a stained-glass window or church sign, it is possible to note it on the reverse of a piece of jewelry or in another inconspicuous place.

Trademark protection may be lost through improper use, abandonment, and dilution. To minimize this risk, the symbol must always be used in its entire and original form.

APPENDIX E

**Request for License to Use the Seal of the Presbyterian Church (U.S.A.)
Commercial Use**

1. Name of Applicant and Company/Organization

Address: _____

2. How will the seal be used and to whom will the product or service be marketed? (Please describe in detail):

3. Description of product to be manufactured or developed

4. How many will be manufactured?

5. What is the anticipated selling price?

6. Will the seal be used under the authorization and direction of some governing body or related entity of the Presbyterian Church (U.S.A.)?

If so, name of the governing body or related entity and the chief executive

8. If this is a renewal request, give the date that permission was first given

Signed _____

Title _____

Date _____

Section 6 – Personnel and Employment Matters

I. Introduction

The area of employment law has become increasingly important in recent years. New laws governing the employment relationship have increased and existing laws have expanded while charges of discrimination filed with the Equal Employment Opportunity Commission and filings of employment-related lawsuits remain at a high level. Employers need to exercise caution when making decisions about hiring, compensation, benefits, supervision, discipline and termination. Churches are not totally immune from this flurry of activity in the employment arena. While some laws and regulations exempt religious organizations or particular types of claims against religious organizations, there are other laws that do not exempt religious organizations. For example, many state worker's compensation laws do not exempt churches; some state disabilities and discrimination laws do not exempt churches.

Increasingly, disgruntled employees and former employees of religious organizations — as well as disgruntled clergy — are filing lawsuits in an effort to have the courts address their bitter feelings toward their employer, church or denomination. As a general rule, many courts find they have no jurisdiction over discrimination and other employment claims filed by clergy. Courts try to avoid dealing with disputes between clergy and churches because it is often impossible to address these lawsuits without becoming entangled in the church or denomination's polity and ecclesiastical jurisdiction, which the Supreme Court has repeatedly held is not permissible. Part of the protection of the First Amendment of the Constitution of the United States and many state constitutions is to prevent courts from meddling in a church's internal polity and the selection of its ministers. The courts are generally very respectful of that important protection.

Many churches, councils, and other church entities have become increasingly interested in developing personnel policies that describe the employment relationship with staff and give guidance on how to handle particular types of common personnel issues. The Presbyterian Church (U.S.A.) *Book of Order* contains some information on employment and its provisions are, of course, mandatory. The Human Resources Department of the Presbyterian Church (U.S.A.), A Corporation also has information available at (800) 728-7228 ext. 5237. In addition, churches and councils have developed and continue to refine their own policies for addressing employment and personnel matters, including sexual misconduct, sexual abuse, and sexual harassment. To address sexual misconduct, abuse, and sexual harassment, the 207th General Assembly (1993) adopted the Presbyterian Church (U.S.A.) Sexual Misconduct Policy and Its Procedures, which was updated by the Assembly in 2010. The General Assembly has included a provision in the *Book of Order* that requires each council to implement a sexual misconduct policy. The Policy and Its Procedures sets out useful guidelines and samples, although it is only mandatory for the national agencies of the church. It is available through the Office of the General Assembly and can be found on the Creating Safe Ministries webpage <https://www.presbyterianmission.org/legal-resources/creating-safe-ministries/>.

Finally, employment law varies from state-to-state, which is why it is important to consult with a local attorney in your state regarding employment-related matters. Resources may often also be found on the internet, typically through state departments of labor websites.

II. The Laws

A. Federal Laws Coverage

A variety of federal laws regulate an employer's relationship with its employees. The theory of federal government ability to legislate over that relationship is typically under the U.S. Constitution's Interstate Commerce Clause in which the federal government may assert jurisdiction into states and over organizations involved in interstate commerce. Typically, most

organizations, having a certain number of employees, can be assumed to be in interstate commerce, and therefore many federal laws set a certain number of employees as the threshold on which coverage by the federal law applies. Of course, whether or not your church or council is subject to a local, state or federal employment law should not be construed as permission to engage in discriminatory employment practices. Talk to your local attorney about whether the business of your church or council may be considered involved in interstate commerce.

The following is a short summary of federal and some state laws affecting employers who have the required number of employees:

1. **Civil Rights Act of 1964 (Title VII) as amended:** Applies to employers with 15 or more employees. It bans discrimination based upon race, color, religion, sex, or national origin in employment. Note that sexual harassment is a form of sex discrimination. Discrimination based upon sex also includes discrimination based upon pregnancy. This law is enforced by the Equal Employment Opportunity Commission (EEOC) and the Department of Labor. There is a limited exception for religious organizations to enable them to restrict job positions to those of their own religious faith. In the leading case on the matter, the Supreme Court gave religious organizations very broad powers to require religious qualifications for their employees. However, that does not give license to discriminate as to other protected categories (ex. race, age) if it is subject to local, state or federal discrimination laws. So, for example, while a church may be permitted to not select applicants because their religious beliefs are not those of that church, the church cannot discriminate against applicants because of their race or age. Most states and cities have similar civil rights laws that govern employers with fewer than 15 employees. In addition, some states and cities have included other protected categories in their laws, such as sexual orientation and veteran status. See <http://www.eeoc.gov/facts/qanda.html>.
2. **Pregnancy Discrimination Act:** This Act amended Title VII and prohibits discrimination against pregnant employees. If a woman is able to work, she must be permitted to work under the same conditions as other employees. If she becomes unable to work for medical reasons, she is entitled to the same rights to benefits and leave as other workers who become unable to work for medical reasons not related to pregnancy.
3. **Age Discrimination in Employment Act of 1967 (ADEA):** Applies to employers with 20 or more employees. The ADEA generally prohibits discrimination against employees age 40 or older. It prohibits employers from failing or refusing to hire someone age 40 or older or from discriminating in terms or conditions of employment or firing employees on the basis of age. This law is enforced by the EEOC. Most states and some cities have parallel laws prohibiting age discrimination and those laws govern employers with fewer than 20 employees. See <http://www.eeoc.gov/laws/types/age.cfm>.
4. **Older Workers Benefit Protection Act of 1990:** amended the Age Discrimination in Employment Act to prohibit age discrimination with regard to employee benefits. This law is also enforced by the EEOC. See <https://www.eeoc.gov/laws/types/age.cfm>.
5. **Genetic Information Non-Discrimination Act of 2008:** Applies to employers with 15 or more employees. This law prohibits discrimination by employers on the basis of genetic information. Genetic information is broad and includes not just results of genetic tests, but also tests of family members and information from a medical history of an employee. Remedies for violation of this Act are the same as those provided under Title VII. This law is enforced by the EEOC. See <https://www.eeoc.gov/laws/types/genetic.cfm>.
6. **Occupational Safety and Health Act of 1970 (OSHA):** A regulatory system designed to protect worker safety; the current threshold for required reporting is one or morw employees engaged in secular activities. Employees performing or participating in religious services are not covered by OSHA. This law is enforced by Occupational Safety and Health

Administration. The Act covers organizations to the extent they are engaged in commerce (see discussion of Fair Labor Standards Act). See <http://www.osha.gov/>.

7. **Immigration Reform and Control Act of 1986:** Bans hiring non-U.S. citizens who do not possess the authorization to work in this country and provides fines up to \$10,000 for each illegal immigrant hired and in some cases imprisonment; all employers (even of one person) must fulfill the document verification provisions of the Act. Failure to do so can result in penalties. The discrimination provisions apply to four or more employees. This Act makes it an offense to refuse employment to anyone whom the employer believes may be an illegal immigrant but turns out not to be; the Act applies to companies with four employees or more. Employers are required to verify employment eligibility within three days of hire of a new employee by completing the I-9 form. It is important to keep copies of the evidence of employability: green card, passport, driver's license, Social Security card, birth certificate, or citizenship papers as set forth on the I-9 form. I-9 forms must be kept by the employer for the longer of the following: three (3) years after the date of hire or one (1) year after termination of employment. In the 1980s this law was unsuccessfully challenged on religious grounds. Churches must comply with the law. This law is enforced by the U.S. Citizenship and Immigration Service (USCIS). See additional immigration information in Section 7: Immigration.
8. **Worker Adjustment and Retraining Notification Act of 1988 (WARN):** this notice of plant-closing legislation requires 60 days written notice of large-scale layoffs and plant closings; the law applies to companies with 100 or more employees. WARN is enforced through a civil lawsuit which can be filed in U.S. district court. Some states, such as New York, have their own WARN Acts which apply to employers with less than 100 employees. See <https://www.dol.gov/agencies/eta/layoffs/warn>.
9. **Americans with Disabilities Act of 1990 (ADA),** as amended in 2009: Applies to employers with 15 or more employees. The Act covers both treatment of employees with disabilities and architectural requirements for buildings. The law requires employers to make reasonable accommodation for qualified employees with disabilities that substantially limit one or more major life activities (examples - caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working) absent a showing of "undue hardship" and expense on the employer. If significant risks to health and safety of others cannot be eliminated by providing reasonable accommodations to an employee with disabilities, the ADA does not require hiring of that individual. Qualified individuals with a disability are those who can perform the essential job functions with or without accommodations. This law is enforced by the EEOC. The ADA contains provisions permitting churches to discriminate in hiring based on religion. There is also an exemption for churches relieving them of the requirement to comply with provisions related to building accessibility to public accommodations by the disabled, but this does not relieve a church of the responsibility to make a reasonable accommodation for a disabled employee. Congress amended this law in 2009 to restore much of its original intent. Consult with your attorney to ensure compliance. Many states and cities have parallel laws that may cover employers with fewer employees. For information on the amendments implemented in 2009, see <https://www.eeoc.gov/disability-discrimination>.
10. **Fair Labor Standards Act of 1938 (as amended by the Equal Pay Act of 1963):** contains standards for minimum wage (\$7.25 effective 7/24/09), and overtime pay of time and one-half to non-exempt (non-managerial) employees working over 40 hours a week; also regulates child labor providing that anyone age 18 or older may work, but employees who are younger are subject to restrictions related to hazardous work and work hours, and provides for a minimum wage. There is a limited exception for religious camps operating no more than seven months a year. While churches that are not engaged in "interstate commerce" are not subject to the act, many activities fall into this gray area. Consult with your local employment attorney. The Department of Labor may view any entity with

employees as covered by the Act, including churches. The operation of a day care facility, preschool, or school will subject a church to coverage by the Act. Further, the requirements of the Act cannot be avoided by classifying a worker as an independent contractor to avoid paying the employee overtime. Ministers are professional employees and are exempt from the overtime pay requirement. This law is enforced by the Department of Labor's Wage and Hour Division. New overtime rules were enacted in September 2019

<https://www.dol.gov/agencies/whd/overtime/2019/index>. Consult the U.S. Department of Labor web site (<http://www.dol.gov/>), for further information and training. Many states also have wage and hour laws and their minimum wage laws set a higher amount than \$7.25. See <https://www.dol.gov/general/topic/wages>

11. **Equal Pay Act of 1963:** The Fair Labor Standards Act was amended by the Equal Pay Act to require equal pay for equal work, regardless of the employee's sex. This law applies to all employers. See <https://www.eeoc.gov/laws/statutes/epa.cfm>.
12. **Family and Medical Leave Act of 1993, as amended in 2009:** Applies to private sector employers who employ 50 or more employees in 20 or more workweeks in the year leave is sought. Eligible employees may take up to twelve weeks of unpaid, job-protected leave with continued benefits during a twelve-month period for the birth of a child, care of a newborn, placement for adoption, or foster care, to care for a spouse, son, daughter, or parent with a serious health condition, or the employee's own serious health condition or due to a qualifying exigency when a spouse, son, daughter or parent is on active duty or is called to active duty in the military. In addition, an employee who is a spouse, son, daughter, parent or next of kin of a service member can take up to 26 weeks of job-protected leave to care for member of the armed forces who suffers a serious injury or illness. To be eligible the employee must have worked for the employer at least twelve months and at least 1,250 hours during the immediately preceding twelve months, at a work site where 50 or more employees are employed within 75 miles of the work site. There is no specific exception for churches, but if a church employs fewer than 50 employees it is not covered by the federal law (some states have their own family and medical leave laws that govern employers with fewer than 50 employees). The employer's obligation is triggered by the employee's notice to employer of need to take leave under the Act or upon employer's learning that an eligible employee needs leave for purposes covered by the Act. The employer must provide eligibility notice within 5 business days and then should require medical certification from the affected person's physician. "Serious health condition" covers inpatient care and continuing treatment by a health care provider. This law is enforced by the U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division <https://www.dol.gov/agencies/whd/fmla> . Due to the complexity of this law, it is a good idea to work with an attorney who specializes in employment law to ensure compliance. For information on the amendments in 2009 see <http://www.dol.gov/whd/fmla/finalrule/factsheet.pdf>.
13. **Personal Responsibility and Work Opportunity Reconciliation Act of 1996:** generally referred to as federal welfare reform, contains a requirement that all employers report new hires to the employer's respective state agency. The appropriate state agency varies from state to state. One purpose of this law is to locate parents who avoid child support payment obligations by moving and changing jobs. There is no exclusion for small employers or religious organizations. The designated state agency may be a child support enforcement agency or state labor department.
14. **Unemployment:** by virtue of inclusion in the Presbyterian Church (U.S.A.)'s Federal Group Tax Exemption Ruling, churches and councils are exempt from federal unemployment tax. However, individual states (ex. New York) may impose an unemployment tax on certain nonprofit organizations even though they are exempt from the federal tax. Organizations should consult their tax advisers concerning liability for the state unemployment tax.

15. **Worker's Compensation:** This is a matter of state, not federal, law. There is no per se exemption for churches, and coverage depends upon the specific state law. It is important to determine who is considered a covered employee for state law purposes. This is also a very important area for insurance coverage. Consult your insurance agent about worker's compensation coverage for your church's employees.
16. **National Child Care Protection Act of 1993:** This Act allows (does not require) states to require that certain childcare providers make mandatory background checks on child-care workers (both employees and volunteers). States will have the right to designate certain organizations, such as day care centers, nurseries, schools, and possibly Sunday schools, as child-care providers. Churches and presbyteries should become aware of their state's requirements regarding the designation of child-care providers. The National Child Care Protection Act was amended in 1999 by the Volunteers for Children Act to enable (not require) child care providers designated by state law as qualified entities to contact an authorized agency of the state to request nationwide criminal fingerprint background checks. To find out if churches are designated as qualified entities in your state, contact a local attorney. There are advantages and disadvantages to any screening process; select a screening process that best suits the needs of your church.

NOTE: in 2016 the General Assembly approved the Child/Youth/Vulnerable Adult Protection Policy and its Procedures. In addition, the *Book of Order* now requires all councils of the church to implement a child/youth protection policy. While the Assembly's policy only applies to its national agencies, it can be used as a model for other councils. The Policy can be found on the Creating Safe Ministries webpage. See <https://www.presbyterianmission.org/legal-resources/creating-safe-ministries/> under Resources.
17. **Employee Polygraph Protection Act:** This Act may apply to churches engaged in interstate commerce and prohibits requiring or suggesting employees or job applicants submit to polygraph tests. Consult with your attorney to determine whether your church is engaged in interstate commerce and covered by the Act.
18. **Bankruptcy Discrimination: Section 525 of the Bankruptcy Code** prohibits private employers from discriminating against a person who is or has been a debtor in bankruptcy, with some exceptions. This is a complicated area of the law and employers should consult with their local attorney when they plan to take an employment-related action against an employee known to the employer to be involved in a bankruptcy, past or present.
19. **Uniformed Services Employment and Re-employment Rights Act of 1994:** In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). This federal law secures a variety of rights to employees called to military service. This law provides that an employee who leaves to train or serve in the uniformed services must be re-employed upon return and has a right to certain benefits during absence and upon return, provided the employee's service does not exceed five years and the employee did not receive a dishonorable discharge. There is no exemption for churches or small employers. The employer is not required to re-employ under specified limited circumstances set forth in the Act. This law is enforced by the U.S. Secretary of Labor and may be referred to the U.S. Attorney General for further action. See <https://www.dol.gov/vets/programs/userra/>

In cooperation with other General Assembly offices, the Board of Pensions wrote USERRA Questions and Answers: (https://www.pensions.org/file/what-we-offer/benefits-guidance/forms-documents/Documents/userra_qa.pdf/).

B. Posting Requirements

The following is a list of the federal laws that require covered employers to post notices for employees. First, determine whether you are a covered employer. Many of these laws may be inapplicable because the church or council does not meet the minimum number of employees or does not engage in interstate commerce. Second, the Free Exercise clause of the First Amendment exempts ministers and, in some cases, other core religious employees from some of these laws. These notices need not be posted if you are not a covered employer:

- The Fair Labor Standards Act (minimum wage and overtime)
(<https://www.dol.gov/general/topics/posters>)
- Equal Employment Opportunity (<https://www1.eeoc.gov/employers/poster.cfm>)
- Occupational Safety and Health Act (OSHA)
(<https://www.osha.gov/Publications/poster.html>)
- Employee Polygraph Protection Act
(<https://www.dol.gov/whd/regs/compliance/posters/eppac.pdf>)
- Family and Medical Leave Act (FMLA)
(<https://www.dol.gov/whd/regs/compliance/posters/fmla.htm>)

Posters for all of the above, except Equal Employment Opportunity, may be obtained from your local office of the U.S. Department of Labor. For a poster covering Equal Employment Opportunity, contact your local office of the Equal Employment Opportunity Commission.

NOTE: Many states have posting requirements in addition to those required by federal laws. Consult with your attorney on posting requirements.

C. HIPAA: Health Insurance Portability and Accountability Act Privacy Rules

The Health Insurance Portability and Accountability Act (HIPAA) privacy rules prohibit unauthorized disclosure by covered entities of individually identifiable health information (protected health information). **In general**, local churches and councils are **not** "covered entities" under the HIPAA privacy rules. Covered entities are health plans, health care providers and health care clearinghouses. If, for example, a local church or council directly operates a health clinic, then it would be a health care provider and, consequently, a covered entity.

There are two categories of disclosures where local churches, as non-covered entities, may be affected by the HIPAA privacy rules. One instance is disclosure of protected health information of a church member and the second is disclosure of protected health information of an employee.

1. **Church Member's Protected Health Information.** Again, a church with respect to its members is not a covered entity. The HIPAA privacy rules permit a hospital to provide the name, general condition, room number and religious affiliation in a directory accessible by clergy and permits this information to be given to those who ask for the patient by name, unless the patient has objected. It is not a violation of the HIPAA privacy rules for a minister to access the information in the hospital directory and then subsequently disclose the information to the congregation. If a member has notified the church that the member does not consent to such disclosure, any subsequent disclosure may amount to an invasion of the member's privacy. The best approach is to obtain a written consent from the member to make disclosures. However, if this is not practicable, then notice of the church's practice should be posted or placed in the church bulletin from time to time with an opportunity for members to notify the church if they object to disclosure of their information. A notice in the church bulletin might include the following:

When a congregation member is ill or injured, we inform fellow members and pray for you by name—seeking the comfort and healing of the Risen Christ. If you do not want members informed of your name and illness stated in these congregation prayers, please notify the pastor in a brief written note.

A related issue is how much to disclose. This is a good discussion to have with your session. For example, you may decide it is enough to say, our member John Smith is hospitalized, and he has asked for your prayers **as opposed to** our member John Smith is hospitalized with X disease or condition which is serious and may be fatal, etc., etc. Tact and sensitivity may be called for rather than oversharing details and embarrassing someone.

2. **Church Employee's Protected Health Information.** The church, as an employer, may need to request disclosure of an employee's protected health information from a health care provider, for example, in connection with an employee's return to work after a medical leave. The church employer requesting the protected health information will be required to submit to the health care provider an authorization signed by the employee that in the provider's opinion complies with HIPAA. If the church employer does receive an employee's health information, this information should be used solely for the narrow purposes it was gathered. Otherwise, it should be held in a secured confidential file separate from the employee's personnel file.

For further information see "Are Prayer Lists Illegal?" Church Law & Tax Report, Vol. XVIII, No. 2, March/April, 2003. Church Law & Tax Report is a publication of Christian Ministries Resources. You can subscribe by calling (800)222-1840.

III. Hiring Issues

A. Interviewing

1. Lay Persons

In formulating questions for interviewing lay persons, the two most important guidelines are to ensure that each question be related to the job for which the applicant is applying and that the questions be asked of all applicants for the position. Questions should not be posed to applicants in order to determine their race, marital status, age, sex (including pregnancy), national origin, citizenship, genetic information or disability. Because a religious organization may discriminate based on religion, the church or presbytery may require the employee be Presbyterian or may indicate applicants who are Presbyterian will be given preference but should be prepared to explain why.

a. Examples of Prohibited Questions

- What year did you graduate from high school? (Can learn of age)
- Could you enclose a photograph with your resume? (Can learn of race, national origin, sex, or age)
- Are you married? (Illegal inquiry about marital status)
- Have you ever been arrested? (Some racial-ethnic groups are arrested at a higher rate than others and this question could lead to race discrimination.)
- What is your native language? (National origin discrimination)
- Are you handicapped? (Disability discrimination)
- What medications do you currently take? (Disability discrimination)
- How old are you? (Age discrimination)
- Do you plan to have children? (Sex discrimination)

- Are you pregnant? (Pregnancy discrimination)
- Do you have a drug or alcohol problem? (Disability discrimination)

b. Examples of Permitted Inquiries (Job Related)

- Have you ever been fired or otherwise had your employment involuntarily terminated?
- There is a gap in the time frames shown on your resume. Tell me about that.
- If hired, can you prove you are at least 18 years of age?
- Can you show proof of eligibility to work in the United States?
- Are you able to perform essential functions of this job with or without accommodation?
- Would you be willing to travel?

If you need to compile applicant tracking information for affirmative action purposes, for example, do not ask for this information on the employment application unless it is on a perforated portion at the bottom that will be separated from the application and not available to the decision maker.

2. Ministers

In the civil law arena, the protections of the First Amendment to the Constitution of the United States give the nominating committee and the committee on ministry much greater flexibility in posing questions to a minister. The *Book of Order* indicates that a nominating committee take care to consider candidates without regard to race, ethnicity, sex, marital status, age, or disabilities (F-1.0403). Any interview questions must comply with the Presbyterian Church (U.S.A.)'s Constitution. If a search committee has questions related to this topic, the committee should contact its committee on ministry, the presbytery office, or OGA Constitutional Services.

Of course, the *Book of Order* sets out many provisions applying to the employment and call of a minister. See, for example G-2.08.

B. Background Checks

Employers can find themselves sued over hiring and firing practices. Failing to properly investigate a prospective employee's background could result in legal liability for negligent hiring or negligent retention if that employee later injures someone. Conducting background checks before hiring and before allowing employees to start work is always a good idea, as is having applicants sign a release to obtain such background checks. A background check is especially important for employees who will be working with children (ex. child abuse convictions should bar the candidate), counseling members, handling funds (ex. embezzlement can be a bar for the candidate), or operating church vehicles (ex. DUIs may be disqualifying as would be a high number of traffic infractions). Investigation of the applicant's background should involve contacting personal and employment references as well as conducting a criminal records investigation. Some background checks may amount to consumer investigative reports under the federal Fair Credit Reporting Act. A few guidelines to follow in conducting these types of background checks are: (a) Keep the investigation work-related; (b) obtain written authorization from the potential employee; (c) disclose negative information to the potential employee before adverse action is taken; (d) give the potential employee an opportunity to dispute the accuracy of the information; (e) do not ask references legally impermissible question (see examples above in section C(1)(a)); and, (f) consult with a local attorney to create a consistent process for conducting background checks. Employers should create a simple release form for reference checks. Sample language:

"I hereby authorize any investigator of [Name of Church Employer] bearing this release to verify and obtain any information from schools, residential management agents, former and current employers, religious bodies, criminal justice agencies and individuals relating to my activities. This information may include, but it is not limited to, academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal conviction records, and any judicial or ecclesiastical proceedings involving me as a defendant. I hereby direct and authorize you to release such information upon request to the bearer. I hereby release [Name of Church Employer], and any individual or group, including record custodians, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance or any attempts to comply, with this authorization. A copy of this signed form is to be considered as valid as the actual signed form."

If the information obtained in a reference check is inappropriately used or disclosed, the employer could later be found to be liable to the employee or prospective employee for defamation or violation of privacy. Local churches and presbyteries should develop reference checking procedures in conjunction with their local employment attorney. All information obtained from background checks should be locked in a secure location.

See the discussion of the National Child Care Protection Act of 1993 set out earlier in this Section.

C. Background Checks for Ministers

Pursuant to *Book of Order* G-2.0504 a: **the installed pastoral relationships are pastor, co-pastor, and associate pastor. A minister of the Word and Sacrament may be installed in a pastoral relationship for an indefinite period or for a designated term determined by the presbytery in consultation with the congregation and specified in the call.**

Under the *Book of Order*, the congregation elects a nominating committee that works with the committee on ministry of the presbytery (G-2.0802). Once the nominating committee identifies a candidate, that candidate is presented to the presbytery to receive and consider the presbytery's counsel on the merits, suitability, and availability of those considered for the call through the committee on ministry (G-2.0803). The nominating committee should take care to consider a candidate without regard to race, ethnic origin, sex, marital status, age, or disabilities (F-1.0403).

The nominating committee of the church and/or the committee on ministry of the presbytery should exercise reasonable care in checking the minister's background. **Reference checkers should consult with the committee on ministry and/or the presbytery executive.** If the reference and background checks reveal previous incidents of misconduct, including sexual misconduct, Richard Hammar's *Pastor, Church and Law* recommends the following factors be considered before hiring the minister:

"(a) the nature and severity of the previous misconduct; (b) the frequency of the previous misconduct; (c) how long ago the misconduct occurred; (d) whether the minister received counseling; (e) the competency and effectiveness of any counseling received; (f) the likelihood that the minister will repeat the same type of misconduct now; (g) the possibility of legal liability if a jury concludes, on the basis of all evidence, that the church or denomination was negligent in hiring the minister."

In situations where a candidate has a history of sexual misconduct, employer councils would be wise to be very cautious about hiring such a candidate. Knowingly hiring someone with a background of sexual misconduct could create significant liability if that candidate engages in sexual misconduct after hire. Always consult with local counsel before making such a decision for two reasons. First and most importantly, you may be putting employees, members, children, and guests at risk by hiring someone with a history of sexual misconduct. Second, if a minister

with a history of sexual misconduct engages in misconduct after hire, your insurer may be unwilling to defend you in litigation and may refuse to pay any judgment as a result of litigation. The same logic applies to hiring non-ministerial staff with a background that includes a past history of sexual misconduct.

IV. Job Descriptions and Performance Management

Job descriptions define the essential and nonessential functions of a position. Job descriptions can be shown to interviewees who may be asked if they can perform the essential functions of the position. If the applicant says no, this provides a basis not to extend an offer of employment. If the applicant says yes, but later plainly demonstrates he cannot perform the essential functions, this may provide a basis to sever employment. Job descriptions are useful in providing job information to the employee and supervisor, information for performance appraisals, information in situations calling for review under the Americans with Disabilities Act (can the employee perform the essential duties, with or without reasonable accommodations), and information for the employee discipline process.

Having detailed and accurate job descriptions are also essential for religious employers to use if they are sued by those who provide ministerial services, including ministers of Word and Sacrament, lay pastors, and music directors. The job description should accurately describe their leadership of worship, planning of worship, providing pastoral aid and counseling to parishioners, leading marriage ceremonies and presiding at funerals, and other ministerial functions. In that way, if a ministerial employee makes claims against their religious employer, the employer can assert: (1) the ecclesiastical abstention doctrine or church autonomy doctrine by which the employer argues a court should not intervene in disputes with church employers and employees because it may require the court to interpret church doctrine and decide religious questions; or (2) the ministerial exception which provides that religious organizations have an the right to select their own ministers free from government, and court, interference

A performance appraisal should be conducted at least annually. Supervisors should manage employee performance throughout the year, documenting conversations with the employee regarding good work and unacceptable performance. Any documentation should contain only facts, not generalizations or assumptions. For example, if a church staff person is tardy in arriving to work 3 out of 5 days each week, week after week, and the church has warned the staff person several times that repeated tardiness will not be tolerated, the tardiness — and the warnings to the staff person — should be documented in the personnel file. If the situation becomes intolerable and the church decides to terminate the person's employment, then the documentation in the file will serve as an important record of **what** transpired, **when** it transpired, and **how** it was handled. If the discharged staff person tries to challenge the decision, the detailed records will provide an important defense for the church in support of its decision. Having the employee sign disciplinary write-ups and evaluations will make it difficult for the employee to claim surprise in further discipline or termination. When performance management is an ongoing process, comments in the annual performance review will not surprise the employee. Performance appraisals should be truthful appraisals. It is unhelpful to both the employee and the church employer to gloss over or fail to document performance problems. Truthful appraisals are important as a tool to inform employees of deficiencies in an effort to improve their work performance and in the defense of adverse personnel actions.

Employees should be given an opportunity to review and comment on their performance evaluations. The evaluation should be signed by the reviewing manager and the employee to indicate that the review occurred, not that the employee necessarily agrees with the review. If the employee refuses to sign indicating that the review has occurred, the manager may note that fact on the appraisal form.

V. Compensation

As a federal tax-exempt organization, all Presbyterian Church governing bodies are prohibited from paying unreasonable compensation to their staff. Unreasonable compensation is compensation above what would ordinarily be paid for like services by like organizations under like circumstances.

Regular employees must be paid at least the Federal minimum wage of \$7.25 per hour. State or localities often have minimum wage laws that require a higher rate of hourly pay. If those regular employees work over 40 hours per workweek they must be paid overtime at time and one-half his/her regular rate of pay.

There has been some confusion with churches and councils about whether they can make persons who would normally be classified as employees in the category of independent contractors, paid under a contract. If a person is performing regular work for your church or council, as opposed to discrete projects, it is most likely that they will be considered employees. For example, a presbytery executive or stated clerk is an employee; they perform regular work duties for their council. A computer consultant or website webmaster may well be an independent contractor, especially if they have multiple clients, including your church or council. You can find more information in these resources:

Department of Labor Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA): <https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship>

Misclassification: <https://www.dol.gov/agencies/whd/flsa/misclassification>

VI. Termination

Most states recognize the doctrine of employment at-will, meaning the employment relationship between the employer and the employee may be terminated by either the employer or employee at any time with or without cause. If employment is at-will and if the church or council has an employee handbook, this at-will relationship should be stated in the handbook, along with disclaimers that the handbook is not a contract of employment nor a guarantee of future employment, and so forth. If a contract of employment with the employee exists, that eliminates the "at-will" relationship and the employee's rights upon termination will be governed by the employment contract. Some states recognize oral and implied employment contracts. In those states, the employment contract may not have to be in writing to be enforceable. A termination in violation of a state or federal law will be subject to legal challenge. For example, a typical employee cannot be discharged on the basis of age, sex, race, or for any other unlawful reason.

While an employee can be terminated at-will, if there is a legitimate reason for termination and if it is well-documented (ex. theft, violence, poor performance), the employer may be wise to tell the employee the reason for termination. It is equally wise to make sure there is plenty of documentation to back up the reason for termination.

In addition, an employer that discharges an employee in retaliation for exercising the employee's rights or obligations under state or federal law may be found liable for wrongful discharge. For example, if an employee files an EEOC complaint for race discrimination, the employee cannot lawfully be terminated for filing the complaint.

Termination of a minister's employment must be consistent with the written call and any applicable provisions of the *Book of Order*. As noted above, because of constitutional protections, most civil courts will not hear a lawsuit filed by a minister against the church or presbytery. Such relationships are not ordinary civil employment. They are ecclesiastical relationships defined by Presbyterian Church (U.S.A.) polity and governing bodies. Churches should communicate with their presbytery leaders when they have issues or concerns with ministers whom they employ.

VII. Personnel Policies

A. Pros and Cons

There are several important advantages to personnel policies on certain key issues:

1. **Uniform statement of information:** Creating policies and handbooks or manuals is a uniform method to inform employees about the terms and conditions of their employment. It informs employees of compensation policy and benefits policies. It provides information on what is expected of employees and their duties with regard to certain aspects of their employment. Having such written, formal policies helps avoid confusion and misinformation about how matters will be handled at work, such as the employer’s intolerance for harassment and discrimination and how such matters should be reported and what holidays are recognized by the employer.
2. **Consistency:** Policies can help ensure that certain situations are handled in a consistent manner (Examples: holidays; work schedule; reimbursement of business expenses) — and that all staff are treated equally.
3. **Strong statement of acceptable and unacceptable conduct:** Policies inform staff and others about conduct that is acceptable and unacceptable in a work setting and the consequences of engaging in unacceptable conduct. The existence of a policy makes it more difficult for a staff person to say s/he did not understand this type of behavior would not be condoned (Examples: policy on the use of alcohol during work hours or while traveling on church business; policy on sexual abuse and harassment). U.S. Supreme Court cases (See G. Anti-Harassment Policy for a discussion of these cases.) make the existence and communication of a sexual harassment policy and complaint procedure very important. Without such a policy and complaint procedure, the employer may be open to vicarious liability for sexual harassment unknown to the employer. .
4. **Protection from liability exposure:** Policies can help protect a church from liability exposure. For example, if an employer has a policy prohibiting employees from using the employer’s computer system to illegally engage in file-sharing, that may provide a defense if someone in the music industry sues and claims that the employer aided and abetted an employee’s illegal conduct by not having a policy that notifies employees that they are prohibited from using the employer’s computer system to engage in illegal file-sharing.

There is one major disadvantage to personnel policies:

If an organization adopts a policy and then does not follow it — or follows it only with respect to certain staff — there is an increased risk of liability exposure to the organization for claims of discrimination. Some states will apply personnel policies as legally binding; some states will not. Having clear disclaimers in a handbook is important (“this handbook is not a contract of employment or an agreement for continued employment or for specific compensation or benefits”). Of equal importance is training of supervisors and executives who must be trained on the employer’s handbook and policies and informed how they should be implemented. Encouraging supervisors and executives to consult with the human resources official of the organization also helps to foster consistent application of policies across the organization. Consult with an employment attorney in your state as you consider personnel policies. Also, check with other churches and governing bodies in your area to determine if they have personnel policies. These policies may be a helpful model.

B. Common Personnel Policies

Each church and governing body needs to decide for itself whether to adopt personnel policies, who should be covered by each policy (lay/clergy; full/part-time staff); and which types of policies should be included in a set of policies.

Personnel policies and handbooks should be updated annually, if possible. Laws are amended, new laws are passed, technology develops, and you discover new issues in employee relations each year that are not addressed in your policies or handbook. It is recommended that employers maintain a file in which they keep notes about new laws that should be included in their

handbook, situations not covered by handbook policies, and ideas for human resources and personnel committees to discuss which might be included in a handbook.

Subjects that are commonly included in personnel policies are the following:

- **Hiring policies** (recruitment; job posting; immigration; references; hiring of relatives; promotions; statement of "at-will" employment; etc.)
- **Salary administration** (pay periods; overtime; time card procedures; wage assignments; performance reviews; etc.)
- **Operations** (work schedule; etc.)
- **Benefits** (health insurance; disability; life insurance; pension; bereavement leave; worker's compensation; social security; unemployment compensation, if applicable; vacation; holidays; maternity and paternity leave; sick leave; jury duty; personal days; policy on HIV/AIDS; attendance records; leave of absence; family and medical leave; continuing education; etc.)
- Policy on reimbursement of work-related expenses
- **Annual performance review and corrective action** (evaluations; work rules; disciplinary action)
- Retirement issues
- Termination and resignation issues
- **Conduct issues and compliance with employment laws** (race and gender issues; sexual abuse and harassment; violence; code of ethics; conflicts of interest; confidentiality; etc.)
- Complaint process
- **Neutral reference policy for lay employees** giving only title and length of service (written release from employee allows for full disclosure)
- **Personal use of employer's equipment and software** (computers, cell phones, social networking, Internet, and email)

C. Anti-Harassment Policy

Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act and is illegal under federal and state law. The EEOC defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if rejecting the conduct results in an adverse employment action, or submitting to the conduct is explicitly or implicitly made a condition of the target's employment, or the conduct unreasonably interferes with the target's work performance or creates an intimidating or hostile work environment. While sexual harassment is traditionally thought to occur between male supervisors and female subordinates, it may occur between a female supervisor and a male subordinate, between supervisor and subordinate of the same gender, between co-workers of different genders or between co-workers of the same gender.

There are two types of sexual harassment: *quid pro quo* and hostile environment. In a *quid pro quo* (if you do this for me I will do that for you) case, if the employee suffers a tangible job action (termination, demotion, loss of pay), the employer will be strictly liable to the harassed employee as will the individual harasser, regardless of whether the employer had notice of the harassment.

In a hostile environment case where there is no tangible job action, but the employee proves she was subjected to unwelcome, severe, and pervasive conduct of sexual nature, the employer will

be vicariously liable unless the employer can prove an affirmative defense establishing the exercise of reasonable care to prevent or promptly correct a sexual harassment and that the plaintiff failed to use these preventive or corrective measures.

Two U.S. Supreme Court decisions, *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, make it clear that to have a chance to defend themselves on claims of sexual misconduct by victims, employees must:

- have a strong anti-harassment policy;
- make all employees aware of the policy, preferably by including it in an employee handbook and by discussing it in annual training; and
- make all employees aware of how to file a complaint with the employer and the employer's complaint process, again, preferably in a detailed policy in a handbook; the reporting policy should have multiple avenues (ex. Head of Staff, personnel committee) so a victim is not forced to report harassment to the person who harassed her/him;
- not ignore reports of sexual harassment from victims, supervisors or anyone in their organization; such reports should be promptly investigated in a reasonable and dispassionate manner and victims should be protected in the process.

Churches should check their state laws on harassment. Some states, such as New York, have detailed legal requirements for employees that require policies and annual training.

In 1999, the EEOC issued enforcement guidance on employer vicarious liability for unlawful harassment by supervisors, extending liability to harassment based on an individual's race, color, sex (whether or not the harassment is of a sexual nature), religion, and national origin. For more information on this issue and on sexual harassment prevention, please see the Equal Employment Opportunity Commission's Enforcement Guidance: (<http://www.eeoc.gov/policy/docs/harassment.html>).

In addition, some state and federal courts have broadened the scope of *Ellerth* and *Faragher* to include harassment based on an individual's race, age, national origin, veteran status, and disability. It would be advisable to implement similar policies and preventive measures for these forms of harassment.

VIII. Personnel Records

Churches and councils should work with their attorneys to have a clear understanding about the importance of keeping good personnel records — what to keep in those records and what not to keep in those records. It is advisable to put any and all records related to employment in a personnel file with a separate, locked file for medical records.

A. Access to Personnel Records and Confidentiality

There are state and federal laws that provide access to or protect confidentiality of certain personnel records. Councils and churches should review these legal requirements with their attorney. Medical information is particularly sensitive. It should be gathered only when there is a legitimate business reason to do so and then retained in a locked cabinet. Medical information should only be disclosed in strict compliance with applicable state and federal laws. A written consent to release medical information, signed and dated by the employee specifying the information to be released, should be obtained by the employer before any release of medical information. To comply with the Americans with Disabilities Act, any medical information should be kept in a separate, locked file, **not** in the employee's personnel file and access should be strictly limited only to those with a clear need to know.

The following is the policy used by the Presbyterian Church (U.S.A.), A Corporation (which includes the Presbyterian Mission Agency and the Office of the General Assembly); it is provided as a sample policy:

1. Personnel Records

The Employer maintains a personnel file on each employee, which is the property of the Employer. The personnel file includes such information as the employee's job application, resume, records of training, documentation of performance reviews and salary increases, and other employment records. Any medical or health information shall be maintained separately. Employees may review their personnel file by contacting HR. Employees may review their personnel file only in the presence of a member of HR, but employees cannot remove documents from personnel files. Former employees are not allowed access to their personnel file. Information in personnel files is confidential. Generally, only those with supervisory responsibility for the employee have access to the employee's personnel file. Supervisors with open positions may review the personnel files of employees who are candidates for those open positions.

B. Record Retention

The types of personnel records that must be retained by federal law include but are not limited to:

Record	Retention Period
Payroll records	3 years
Personnel records used in hiring, termination, and promotion	1 year from action
Records relevant to legal action or discrimination complaint	until matter is concluded
Time sheets	2 years
FMLA records	3 years
Immigration records	3 years from date of hire or 1 year after termination whichever is later
OSHA records	5 years log and summary of Injuries duration of employment + 30 years for medical exams

The safest course is to retain any and **all** records on employees for the length of their employment + the number of years within which an employee can file an action for discrimination or other employment related actions, in the employer's state. Employers should check with their attorneys for that information.

An employer should consider maintaining three types of files on an employee in its Human Resources office: (1) personnel file; (2) confidential file (hiring and interview records, reference checks, EEO/affirmative action data, credit checks, and information regarding legal actions or complaints); and (3) medical information.

C. Subpoena of Personnel Records

An employer can no longer simply produce documents in response to a subpoena, especially if the subpoena is issued by a court in another state. Upon receipt of a subpoena, the employer should consult with an employment attorney to determine how to respond to a subpoena. If there is no law on point, the employee should still be notified. If the employee objects, the employee may instruct the employee's own attorney to act to quash or modify the subpoena. At the same time, the employer should let the attorney who issued the subpoena know of the employee's objection. In any event, the employer should contact the issuing attorney to determine the issues

in the matter that require the subpoenaed documents and obtain a release from the employee that mirrors the request contained in the subpoena.

IX. Employee Privacy

The Fourth Amendment to the Constitution of the United States does not protect the privacy of employees of nongovernmental entities unless their respective state law indicates otherwise. Some states have laws addressing confidentiality of certain personnel records. Confidentiality of records is discussed under the **VIII. Personnel Records** subsection of this Manual.

Employees have privacy rights in what they bring to work inside their clothing, inside bags and purses, in their offices and desks, and other work-related areas. The reasonableness of the expectation of privacy varies and the ability of the employer to search also varies and may depend upon state law. Consult with your local attorney before engaging in a search of any employee or his/her work area.

A. Privacy Issues Concerning HIV/AIDS

The Americans with Disabilities Act and state medical confidentiality laws protect the confidential nature of an employee's medical information, particularly whether he/she has AIDS or is HIV-positive. HIV is not transmitted by casual contact and, therefore, the employee's need for confidentiality typically outweighs any concern the employer may have about transmission.

X. Benefits Plan of the Presbyterian Church (U.S.A.)

By administering the Benefits Plan and the Assistance Program, The Board of Pensions of the Presbyterian Church (U.S.A.) serves ministers of the Word and Sacrament and lay workers of the Presbyterian Church (U.S.A.) throughout the United States and abroad.

A. Community Nature

The Benefits Plan has several unique features that collectively are referred to as “the community nature of the Plan.” These features relate primarily to the Plan’s funding, pension benefits, and family medical coverage. The Benefits Plan is a self-insured church plan that is funded by dues from Presbyterian churches and church-affiliated employing organizations, as well as the income and capital appreciation on the Plan assets. The dues contributed by the local church or an employing organization are based on a percentage of its employees’ effective salaries and represent that employing organization’s share of the cost of protecting the entire community.

B. The Benefits Plan

The Benefits Plan serves as a cornerstone for the ministry of the Presbyterian Church (U.S.A.). The pension, death, disability, and medical benefits, as well as the optional benefits, provide a comprehensive package of protection and financial assistance for participating church workers and their families.

The Benefits Plan provides two programs: the Traditional Program and the Affiliated Benefits Program. The Book of Order requires all churches to provide participation in the benefits plan of the Board of Pensions, including both pension and medical coverage. Dues are based on a percentage of each employee’s compensation.

C. The Assistance Program

The Assistance Program of the Board of Pensions helps church workers whose personal financial needs exceed the bounds of the Benefits Plan, personal resources, and other means. It also provides grant opportunities and programs to build the practical skills needed to minister in today’s world. The Assistance Program comprises a range of discretionary grant programs that

complement the Benefits Plan. These grants are funded by gifts, legacies, endowment income, and half of the Christmas Joy Offering, not dues.

D. For More Information

For more information about the Benefits Plan and the Assistance Program, please reference the Benefits Plan document and other publications and forms available on Pensions.org.

The Board of Pensions of the Presbyterian Church (U.S.A.)
2000 Market Street
Philadelphia, PA 19103-3298
Phone: 800-773-7752 (800-PRESPLAN)

E. Board of Pensions Publications

These excellent resources are available by calling the Board of Pensions at (800) 773-7752 (800) PRESPLAN or on the Board of Pensions Web site: <http://www.pensions.org/portal/server.pt>

- Benefits Plan Overview
- Benefits Plan of the Presbyterian Church (U.S.A.)
- Community Nature of the Benefits Plan
- Product Sheets
- Healthcare Summary Plan Description
- Retirement Pension, Death and Disability
- Medicare Supplement
- Retirement Savings Plan Summary Plan Description
- Benefits Administrative Handbook (For Churches & Employing Organizations)
- Benefits Administrative Handbook (For Presbyteries, Synods, & General Assembly Entities)
- Understanding Effective Salary
- Benefits Plan and Divorce
- A Shopper's Guide to Long-Term Care Insurance
- Tax Guide for Ministers & Churches
- Federal Reporting Requirements for Churches
- Information for Members Planning to Retire
- Benefits for Lay Employees
- Social Security Basics for Ministers and Churches
- Major Medical Continuation Program
- Stewardship of Life: Preparing an Advance Directive
- The Living Needs Benefit

F. Flexible Spending Accounts and Other Benefits

Federal tax laws now provide for Section 125 Flexible Spending Accounts which enable an employee to set aside portions of their salary on a pre-tax basis to pay for medical, dental, and vision expenses not covered under group insurance plans, as well as certain child care expenses.

Section 132 of the *Internal Revenue Code* also provides certain tax benefits related to commuting and parking for employees.

XI. Resources

There are a number of websites on which employers can find information concerning employment issues:

- U.S. Department of Labor (<http://www.dol.gov/>)
- U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov/>)
- U.S. Citizenship and Immigration Services (<http://www.uscis.gov>)
- U.S. Occupational Safety and Health Administration (<http://www.osha.gov/>)

Section 7 - Immigration

I. Overview

The following information is intended to provide Presbyterian Church (U.S.A.) mid-councils, congregations, and entities with general information about immigration law. This is not intended to be legal advice, nor is it an exhaustive source of information on U.S. immigration options. For more information, please contact the Office of Immigrations Issues which is housed in the Office of the General Assembly: Teresa Waggener at Teresa.Waggener@pcusa.org (web site:

<http://oga.pcusa.org/section/departments/immigration>)

Mid-councils, congregations and offices of PC(U.S.A.) often engage persons from other countries in the work of the church. In order to enter the U.S. to work or attend a conference as a lecturer, observer or participant, nonresidents must have proper authorization from United States Citizenship and Immigration Services (USCIS). In addition to reviewing the information below, it is important to consult with a lawyer to see which option best fits the needs of the church, mid-council or entity and of the nonresident.

II. Non-Immigrants

Non-immigrants enter the U.S. temporarily for a specific purpose and intend to leave the U.S. after completion of their approved visit. The State Department issues non-immigrant visas specific to the purpose of the nonresident's visit. Students, tourists, some athletes, exchange visitors, temporary workers, and many others enter the U.S. every day on non-immigrant visas. Each visa has its own limitations and rules about how long a person can stay or whether, and under what conditions, they can work. Non-immigrants must not violate the conditions of their stay. If a non-immigrant violates their stay they can lose their current non-immigrant status in the U.S. and cause the State Department to look at any future applications with more scrutiny. Such a violation of stay can also make the process for permanent resident status more difficult or impossible for a non-immigrant should they decide to apply adjust status to immigrant. For a full list of non-immigrant visa types and their descriptions please visit the State Department at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html>.

Some non-immigrant visas are more commonly used in the church setting. The following is a general overview of those types of visas. The process for applying for a visa depends upon the type of visa required. For some visas a nonresident approaches the Embassy and applies on their own; other visas require a U.S. entity, such as a church, to petition the USCIS for a visa.

1. Religious Workers (R visa)

A religious worker visa is a non-immigrant visa that allows mid-councils and churches to call religious workers, who are not residents of the U.S., to work for the church. To qualify the religious worker must: 1) have been a member of a religious denomination having a bona-fide non-profit religious organization in the U.S. for the two (2) years preceding the petition; 2) be coming to the U.S. to work as a religious worker for at least twenty (20) hours a week; 3) be coming solely to work as a minister or in a religious vocation; 4) be coming solely to work as a religious worker for the petitioner; and 5) may not work in the U.S. in any other capacity. A religious worker visa status may be extended once for a total of up to five (5) years. The spouse and dependent children (unmarried and under the age of 21) of a religious worker can enter the U.S. in R-2 status, but in that status they may not work. For more information about religious worker visas and the religious worker visa application process, please contact Teresa Waggener at Teresa.Waggener@pcusa.org and visit the State Department website at:

<https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/temporary-religious-worker.html>.

2. Other Non-Immigrant Visas Commonly Used in the Work of the Church

An H-1B Visa can be used to bring a professional to the U.S. to work for up to six (6) years. A mid-council or congregation can use an H-1B when hiring a nonresident employee who does not have a religious vocation or for a religious worker who is ineligible for a religious worker visa. This process can be lengthy and more expensive than obtaining a religious worker visa, in addition the government has capped the number of H1-B visas issued each year and typically, those caps are reached early in the annual H1-B period. However, some employers like educational institutions (i.e. seminaries and colleges) are exempt from the cap. Under the H1-B program the spouse and dependent children of an H1-B worker can come to the U.S. in H-4 status, but they cannot work. For more information about the H1-B temporary worker visa program please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html>.

The F-1 Student visa program is available to persons who wish to study in the U.S. at a Student Exchange Visitor Program (SEVP) certified college, university or seminary. To qualify for a student visa, an applicant must be accepted at a SEVP school, possess sufficient funds to pursue the course of study, have the proper preparation for the course of study and intend to leave the U.S. upon completion of the course of study. For more information about the F-1 student visa program please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>. Typically students do not have permission to work off-campus, even in a congregational setting, but there are some exceptions for required and approved internships. For details, the student should speak to the Designated School Official at their institution.

The B-1 Business Visitor visa program permits visitors to come to the U.S. for business purposes, such as for attending a conference or workshop. It is important to note that the B-1 Visitor program does not allow for the visitor to receive a salary or income from a U.S. based entity. However, certain expenses may be reimbursed and, in **some limited** cases, a business visitor may receive an honorarium for some lecturing engagements.

To learn more about the B-1 Business Visitor visa program please visit <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>.

III. Immigrants

Immigrants to the U.S. are commonly referred to as green card holders or permanent residents. They have been legally admitted to the U.S. to permanently live and work. Immigrants can, after they have met certain requirements, become citizens of the U.S. The following is an overview of the four ways to become a resident in the U.S.

A. Diversity Lottery

The Diversity Visa Program makes available 55,000 visas annually to persons coming from countries with historically low rates of U.S. immigration. It is an opportunity for legally admissible persons who cannot qualify for immigrant visas under other available programs to apply and qualify for residency in the U.S. Each year the State Department opens the program for applications around October and closes the program around November of that same year. Names are randomly drawn from the pool of applicants and reviewed for admissibility in the U.S. When applying for the diversity visa program, applicants should only access the program from the State Department website and never respond to phone calls or emails from unknown entities since lottery scams and fraud are common. To learn more about the next diversity program,

please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/entry/diversity-visa-submit-entry.html>.

3. Family Based Immigration

A person wishing to immigrate to the U.S. under family based category must have a qualifying relationship with either a U.S. Citizen or Legal Permanent Resident (LPR) and that relative must file the proper petition. LPRs in the U.S. can apply for: 1) their spouse, 2) dependent children, and 3) unmarried sons and daughters. U.S. citizens can apply for an even greater list of family members: 1) spouse, 2) dependent children, 3) unmarried sons and daughters, 4) married sons and daughters, 5) parents, if the petitioning citizen is over 21, and 6) siblings. The spouses, dependent children and parents of U.S. Citizens are considered immediate relatives under the law and are not subject to a visa waiting list. All other family members, for LPRs and Citizens however, are subject to visa availability and must often wait to enter the U.S.

The State Department issues a monthly visa bulletin to notify the public and would-be immigrants of visa availability. To view the current visa bulletin and backlogs in family-based immigration please visit the State Department website at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>. To learn more about the application process please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html>.

4. Employment Based Immigration

1. Special Immigrant Status for Religious Workers

Religious Workers who are in the U.S. under non-immigrant status may qualify for Special Immigrant Status if they: 1) have been a member of a religious denomination having a bona fide, non-profit religious organization in the U.S. for the two (2) years preceding the application; 2) are coming to the U.S. to work **full time** as a minister or in a religious vocation for that religious denomination; 3) are coming to work for a bona fide non-profit religious organization in the U.S.; and 4) were working as a religious worker continuously for the two (2) years preceding the petition.

The mid-council or congregation offering the full-time religious work, must petition for a religious worker to gain this status. Upon approval, a religious worker may then apply for permanent resident status in the U.S. A religious worker's spouse and minor unmarried children also qualify for permanent resident status through this process. For more information about this process, please contact Teresa Waggener in the Office of Immigration Issues at Teresa.Waggener@pcusa.org. You may also visit the State Department website at http://travel.state.gov/visa/immigrants/types/types_1324.html

2. Other Workers

An employer may petition for an employee to immigrate to the U.S. to work. There are different categories based on the credentials of the employee and requirements of the position. An employer must comply with strict guidelines regarding the advertising of the position and the inability fill the position with a U.S. Citizen or legal permanent resident worker. As with family-based immigration, the beneficiary employees of employment-based petitions may be subject to a visa waiting list. Please see the most recent State Department visa bulletin at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

5. Humanitarian Based Immigration

The U.S. government allows for special categories of persons to immigrate to the U.S. for humanitarian reasons. Refugees, asylees, victims of domestic violence, victims of human

trafficking and other crimes and Iraqi and Afghan translators all have special programs that can lead to permanent resident status in the U.S. Each of these special categories carries with it different criteria. To learn more about gaining a green card through humanitarian based immigration, please visit the USCIS website at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=194b901bf9873210VgnVCM100000082ca60aRCRD&vgnnextchannel=194b901bf9873210VgnVCM100000082ca60aRCRD>

IV. The Church as a Responsible Employer

Protecting Prospective Employee's Immigration Status

For a person born outside of the U.S., who may have, or develop, plans to make the U.S. their permanent home, unauthorized work can hinder those plans, making their immigration process longer, more expensive or impossible. By asking for documentation early in the process, an employer may prevent future immigration problems for prospective employees.

Moreover, we are a church who believes that “[t]he unity of believers in Christ is reflected in the rich diversity of the Church’s membership.”¹ Central to a search for any candidate for employment should be a desire to be faithful to the guidance of the Holy Spirit, who has a history of sending people on the move. How does one ask for immigration documentation without singling out a candidate, treating them differently than the others and, possibly, engaging in the offense of employment discrimination?

One way to do this is to ask early, at the application phase and, most importantly, *ask everyone*. Here is an example from the application form used to hire employees at the Presbyterian Center:

As a condition of employment, I understand that I will be required to furnish proof of my identity and authority to work in the U.S. as required by law. Do you have the legal right to work in the United States?	YES	NO
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1. I-9 Requirements

All employers must ask every employee, regardless of the employee’s nationality or immigration status, for proof of their authorization to work in the U.S., thereby complying with federal I-9 requirements. There are no exceptions for religious employers, no matter how small the congregation. Mid-councils and churches must complete, and keep on file, the I-9 form and supporting documentation for every member of staff. Employers who do not comply with I-9 requirements are subject to sanctions.

For the I-9 form and instructions please visit the USCIS website at: <https://www.uscis.gov/i-9-central/about-form-i-9/about-form-i-9>

2. Document Discrimination

The law sets forth documents acceptable as evidence of authorization to work. Page five of the I-9 form lists acceptable documents and/or combinations of documents. An employee may present any one or combination of those listed. An employer requiring specific documents and refusing other satisfactory documents has committed document discrimination and is at risk of sanctions from the Department of Justice or the Equal Employment Opportunity Commission.

¹ F-1.0403, Book of Order: The Constitution of the Presbyterian Church (U.S.A.), Part II

For more information, please visit the Department of Justice webpage at: <https://www.justice.gov/crt/immigrant-and-employee-rights-section> or the Equal Employment Opportunity Commission webpage at: <https://www.eeoc.gov/laws/types/nationalorigin.cfm>

3. Taxes

In addition to the requirement that employers verify each employee's eligibility to work in the U.S., employers must withhold certain taxes from employee's paychecks and employees must file the appropriate tax forms at the end of the year. Please visit the [IRS](#) webpage and consult with a tax attorney to make sure you comply with the law.

Section 9 – Risk Management and Insurance

This Section includes a discussion of the types of insurance churches and middle governing bodies should secure; leading companies that offer insurance; and, recommended minimum standards. Various helpful checklists appear at the end of the Section.

I. Insurance

The *Book of Order* directs all churches, synods, and presbyteries to obtain adequate property and liability insurance coverage to protect the facilities, programs, and officers:

G-3.0112 Insurance

Each council shall obtain property and liability insurance coverage to protect its facilities, programs, staff, and elected and appointed officers.

While there are many risks that must be considered and a wide array of insurance types, securing insurance is not an impossible task. Working with agents and other resources, a board of trustees, session, or middle governing body can ensure it has adequate coverage in place.

Insurance policies should be reviewed annually for adequacy and completeness. Coverages should be adjusted upward as property values increase. As costs increase, churches often find themselves underinsured because coverages have been held steady while inflation has increased property values. Periodic appraisals of the property can help to update the coverage to reflect current values. Coverage that increases automatically by a set inflation factor is also available. Casualty (liability) coverage should be reviewed periodically as well. Should a change in use be implemented, such as opening a day care center, school, or other new program, be sure to review potential liability insurance needs with the church's insurance agent and to adjust coverages accordingly. **Give the agent at least 30 days notice before an event or starting a new program.** This will give the insurance company time to review the new risk, give a response, and provide a quote on any additional charges. It is important that a binder or endorsement be obtained before the event or program begins. You may wish to contact your agent within ten days of the original notification to ask for an update.

The reasons why insurance coverage should receive high priority and review include the following:

- the recognition of the varied risks faced by the church, with special attention to fund-raising events, acquisition of new property, leased property, counseling services, and fiduciary responsibilities
- increase in building costs and the purchase of new property
- the need for specialized coverage for day care and counseling
- fluctuating annual premium costs
- expanding ministry of many churches

The following should be used as a guideline for establishing insurance practices:

- an annual review of the church's insurance program
- an annual safety inspection of the buildings with fire officials to identify hazards that may cause personal injury, fire, or other loss of property. Check with your local fire department. Typically, they are happy to assist you with a voluntary inspection and ideas to prevent fires

- a detailed inventory of all furniture and equipment, kept current with additions and deletions of items. A photographic inventory of all furniture, equipment, and rooms of the church is an excellent inventory record. Videotapes have been used effectively by some churches. All inventory reports should be kept off the church property in a bank safe-deposit box or similar secure location
- a periodic building appraisal to update the value of all property, at least every three years
- at least two quotations when purchasing or renewing insurance coverage. Contact your agent at least ninety days prior to the expiration of your policy to provide quotes.
- a determination of actual annual premium costs for budget development.

A. Types of Insurance

1. Property Insurance

Property insurance is designed to cover buildings and personal property for loss or damage. The property policy may be amended to include the following coverages: newly acquired property, property in transit, stained glass windows, valuable papers, loss of business income, extra expense, computer equipment and boiler and machinery. This is just a partial list of coverages that may be available, check with your insurance agent for a complete list of coverages.

Property insurance limits on your policy should be adjusted upward as property values increase. Churches often find themselves underinsured because coverages have been held steady while inflation has increased property values. To prevent underinsured losses, periodic appraisals of the property can enable the church to update the coverage to reflect current values. Property insurance limits can also be automatically set by an inflation factor. Check with your insurance agent about this option.

2. General Liability

Casualty (general liability) coverage is designed to protect the insured from losses in which they are legally liable arising out of the ownership of property or activities from your premises. General liability policies should be reviewed periodically and should include coverage for slips and falls and other bodily injuries, property damage of others, products liability, completed operations, libel and slander, false arrest, employee benefits liability, contractual liability, and other types of claims usually covered by this policy. It is important to verify that employees, directors, trustees, officers, and volunteers are covered under this insurance policy. Most general liability policies restrict coverage to the United States, its territories, and Canada. For any travel outside of these areas, contact your insurance agent prior to the start of the trip.

The general liability policy is usually provided on an occurrence basis as opposed to a claims made basis. This is preferred because the occurrence is covered under the policy in force at the time of the accident, regardless of when the claim is reported or the suit is filed. Some coverages, however, are traditionally provided on a claims made basis, such as directors and officers coverage and employee benefit liability. Under claims made coverage, the claim must be reported during that policy period or any extended reporting period specified by the policy. The extended reporting period, commonly referred to as a "tail," frequently is for one year following the policy term. When claims made and coverage is provided, it is important to have a "retroactive date" that covers previous time periods in addition to the current policy term. Review the claims made coverage option with your insurance agent.

As changes occur in use of church property, such as opening a day care center, school, or other new program, the church's insurance agent should be notified of the changes in exposure. The new uses of property may result in new liability risks that will need to be addressed. Contact the insurance agent at least thirty days in advance of the event or new program. This will give the insurance company time to review the new risk, give a response, and provide a quote on any additional charges. **It is important that a binder or endorsement be obtained before the event or program begins.**

3. Sexual Misconduct Liability

Most general liability policies exclude sexual abuse or molestation and pastoral professional liability. Both coverages can be purchased by endorsement or on a separate policy. Check with your insurance agent for availability of these coverages. It is wise to secure these coverages. It is a good practice to review your general liability policy's exclusions and limitations with your insurance agent to avoid uninsured claims.

4. Pastoral Professional Liability

Pastoral Professional Liability is designed to cover liability for pastoral counseling services. The church should be included in the definition of the named insured as well as the pastoral professional and any other professional staff. There are many definitions of coverage under this form. Review with your insurance agent definitions as well as the exclusions in the contract carefully.

5. Workers' Compensation

The purpose of workers' compensation insurance is to give greater protection and security to the worker in case of injury, illness, or death occurring in the course of employment. Worker's compensation provides, as a matter of right, for the payment of benefits to employees injured on the job. The amounts paid are set by state law for covered occupational injuries or disease. The compensation award is, in nearly all situations, the covered employee's exclusive remedy against the employer. The laws in most states provide for fixed awards to employees or their dependents upon a showing of employment-related injury. Payment for injuries or illness is not based on determination of fault or negligence, with a few exceptions, on the part of the employer. Some states go beyond simple establishment of the right to worker's compensation and provide insurance systems, either under state supervision or otherwise. Under these laws, methods are usually prescribed that allow employers and workers to accept or reject the compensation system. Several states have provided workers' compensation funds that coincide with the coverage required by law. In most states, employers who refuse to come within the provisions of the workers' compensation law are denied the customary defenses to actions for injury by the injured employee.

It is not the purpose of this Manual to compare the workers' compensation laws of the various states, other than to point out that these laws differ not only in detail but in major features as well. In evaluating considering workers' compensation coverage, the following considerations are particularly important:

- Persons covered and type of employment
- Injuries and diseases covered
- Benefits provided
- Civil law and administrative requirements and options — including limitations on the ability of injured parties to sue the employer for damages

- Method of securing benefits

The workers' compensation laws of every state require the employer to secure payment of compensation benefits. Jurisdictions may require either the purchase of insurance with a state fund, a private insurance company, or a qualified self-insurance program. Workers' compensation insurance is provided through a Workers' Compensation and Employer's Liability Policy. Two types of basic coverages are afforded by this type of policy: one provides actual worker's compensation benefits, and the other insures the employer for liability when employees or dependents are able to sue for such problems as employer negligence and unsafe working conditions. The combination of these two coverages is intended to provide the employer with protection against liability that may arise out of the employee-employer relationship due to occupational injury and disease. Supplementary coverages are available to cover the needs of employers that are not satisfied by the basic coverage. Ask your insurance agent about the supplemental coverages available and to identify the supplemental coverages required by your state.

6. Umbrella Liability

Consider purchasing an umbrella (excess) liability policy, which provides excess limits over the primary general liability, auto liability, and the employer's liability section of workers' compensation policies. An umbrella policy will be activated when the underlying primary limits are exhausted or exceeded by a single loss. Umbrella policies are issued with an aggregate limit, which is the most the policy will pay during a one-year policy term, regardless of the number of claims. Umbrella policies are purchased in coverage multiples of \$1 million increments. All churches are encouraged to purchase umbrella policies especially those with owned vehicles, day nurseries, or schools.

7. Minister's Personal Liability

Many ministers live in manses furnished by and insured by the local church. If a homeowner's policy is provided with the church named as additional insured, the policy should be written to protect the minister and her or his family for both personal liability and damage to their personal property. Even when the manse and personal property is insured under the church policy, there is still a need for a tenant's homeowner policy for the minister and her or his family. For example, family events/activities would not be covered under the church policy unless the activity was considered part of the minister's responsibilities. Ministers who own or rent homes should consult an insurance agent regarding the coverages needed.

8. Employee or Volunteer Dishonesty

Employee dishonesty coverage provides protection against employee theft. Employee dishonesty coverage provides for losses of money, securities, and other property caused by theft or forgery of an employee of the insured, acting alone or in collusion with others. Make sure to check with your insurance agent to ensure that volunteers are covered under your employee dishonesty policy. It is recommended to include volunteers.

The *Book of Order* provides a minimum standard of financial procedures (G-3.0205) for local sessions that can help to prevent employee dishonesty claims.

G-3.0205 Finances

In addition to those responsibilities described in G-3.0113, the session shall prepare and adopt a budget and determine the distribution of the congregation's benevolences. It shall authorize offerings for Christian purposes and shall account for the proceeds of such

offerings and their disbursement. It shall provide full information to the congregation concerning its decisions in such matters.

The session shall elect a treasurer for such term as the session shall decide and shall supervise his or her work or delegate that supervision to a board of deacons or trustees. Those in charge of various congregational funds shall report at least annually to the session and more often as requested. Sessions may provide by rule for standard financial practices of the congregation, but shall in no case fail to observe the following procedures:

- a. All offerings shall be counted and recorded by at least two duly appointed persons, or by one fidelity bonded person;
- b. Financial books and records adequate to reflect all financial transactions shall be kept and shall be open to inspection by authorized church officers at reasonable times;
- c. Periodic, and in no case less than annual, reports of all financial activities shall be made to the session or entity vested with financial oversight.

Other ways to minimize your exposure include:

- a. At least 2 individuals should be responsible for taking up the collection. The collected monies should be held in a secure area until counted and deposited.
- b. Counting should be done by at least 3 unrelated individuals in a secure area.
- c. Individuals responsible for collecting, counting and depositing monies should be rotated on a weekly basis.
- d. Responsibilities and function of monies should be divided so that no one person has control over all functions of money transactions. For example, the individual who makes the bank deposit or pays invoices should not be responsible for reconciling the bank statement.
- e. Check books should be stored in a secure place.
- f. Bank statements should be reviewed on a regular basis.
- g. Authorized signer of checks should not be the same person who reconciles the accounts.
- h. Reporting of financial records to congregations should be done at least quarterly. Congregations should be informed on how their money is being spent.

Terminology in this section is meant to provide general guidance and is not intended to require or not require specific audit procedures or practices as understood within the professional accounting community. Also see the section titled “Suggestions for Accounting Procedures to Reduce Susceptibility to Loss,” later in this Section.

9. Suggestions for Handling Employee Theft

- a. Report loss to church’s insurance carrier and legal counsel immediately. Follow procedures as set forth by both. Your insurance carrier may have specific protocol in this type of loss.
- b. Report the loss to local authorities for investigation, so that appropriate charges can be brought.
- c. Inform session in a closed meeting of the outcome of the investigation.
- d. Once investigation has been concluded, inform the congregation of the outcome of the investigation. This should be in a closed meeting as well. By keeping the session and

congregation informed of the process will help to keep the trust within the church community.

10. Automobile Liability

Automobile liability provides coverage to the insured for bodily injury and property damage claims arising out of the ownership, maintenance, use, loading or unloading of church-owned vehicles. Physical damage coverage for owned vehicles is insured separately. In many cases, the pastor and/or volunteer uses his or her own vehicle for church activities. In the event of an accident, the policy covering the vehicle provides the primary coverage, but it is very important for the church to have non-owned automobile liability coverage. The church's non-owned auto liability policy may also provide excess coverage for the church if the automobile owner's coverage is not adequate. Hiring car coverage is for the same coverage if a rental vehicle is used. Non-owned and hired car coverages are separate coverages that must be requested at issuance of the automobile liability policy. Issues involving rental vehicles can be very complex; consult your insurance agent prior to renting the vehicle.

11. Directors and Officers

This coverage protects the officers, directors, and trustees of the organization against damages from claims resulting from negligent or wrongful acts in the course of their duties subject to the terms and conditions of the policy and the circumstances involved. However, directors and officers coverage does not provide coverage for third party bodily injury or property damage claims because these would be covered by other policies. The insuring agreement, named insured, and exclusions should all be reviewed thoroughly when purchasing a policy. The directors and officers policy may be extended to cover the organization itself (entity coverage) and to cover employment practices liability. Both of these additions are recommended. Directors and officers coverage is almost always written on a claims made form with defense costs inside the limits of protection.

12. Business Travel Accident Insurance

Churches who have individuals that travel at the church's request both domestically and internationally should consider purchasing business travel accident insurance. This coverage provides accidental death and dismemberment insurance for individuals traveling on church business. The policy should also address the needs for travel outside the United States such as repatriation of remains and medical evacuation. This insurance can be purchased in various amounts of coverage and options. Check with your insurance professional to determine your business travel accident needs.

13. Insurance for Travel Abroad

As more and more churches sponsor trips abroad, insurance needs to be factored into the trip. While the trips have educational and spiritual value, they are not done without risks. One way to offset some this risk is through travel accident insurance. The insurance is an accidental death and dismemberment policy that should also include repatriation of remains and medical evacuation while traveling outside the United States. Depending on your trip other coverage may be necessary for travel abroad. Some additional insurance coverage to consider are: foreign commercial liability, commercial foreign automobile liability and foreign workers compensation and sickness insurance. Always check with your personal health care provider before traveling outside your policy area. Please contact your insurance professional to discuss your travel plans and to determine your insurance needs.

14. Employment Practices Liability

Employment practices liability provides coverage for employment related issues arising out of employee hiring, termination, or employment. Contact your insurance agent to discuss if these coverages are available under your directors and officers policy or whether they can be purchased under a separate employment practices liability policy. Employment litigation is one of the fastest growing areas of the law and this coverage is recommended.

B. Guidelines for Minimum Standards of Property and Liability Insurance for Churches, Presbyteries, and Synods

These minimum standards should be used as a general guideline only! As always, an insurance professional must be used to evaluate the insurance needs of each church and middle governing body. Insurance needs as well as alternate ways to reach their insurance goals should be discussed with an insurance professional. One possible alternative is the use of higher deductibles, which could lower insurance premiums. Ask your insurance professional about this and other cost-saving options.

1. Property

- a. Buildings and Contents at Appraised Replacement Cost as an agreed value endorsement.
 - Eighty percent Coinsurance: an alternative to agreed value, offered by some companies as a percentage of appraised value, providing coverage up to fixed limits.
 - Special Form: the broadest coverage available, normally including fire, vandalism, sewer back-up, theft of property, and so on, unless specifically excluded, or deemed not necessary by an insurance professional.
- b. Supplemental Coverage: off-premise coverage, newly acquired property, debris removal, rebuilding to code requirements, necessary demolition of building, personal property of ministers and others, stained glass, organ, other musical instruments, art work, valuable papers, loss of business income, and related extra expenses.
- c. Boiler and Machinery: as boiler and machinery types require, including all related expenses, spoilage, and similar costs.
- d. Earthquake, where appropriate for geographical area, is written separately unless specifically stated in policy.
- e. Flood, where appropriate, is also written separately, and may be offered with state or federal assistance.
- f. Also consider extra expense or loss of income coverage.

Note: Churches should be inspected periodically because of policy exclusions, such as mold, virus, lead paint, and asbestos for which many insurance companies may not provide coverage.

2. Liability

- a. **General Liability:** \$1,000,000 per claim/occurrence, \$2,000,000 aggregate; covers most risks, including products; bodily injury; property of others; \$10,000 no fault medical payments including volunteers, and athletic activities; contractual liability; fire legal liability at \$100,000 limit; day nursery/child care; pastoral professional liability and sexual misconduct coverage at \$1,000,000 limit.
- b. **Umbrella Coverage:** \$10,000,000 per occurrence or aggregate, in excess over primary limits of general and automobile liability; review of coverage by insurance professional for additional excess limits.

- c. **Automobile:** \$1,000,000 per occurrence or aggregate, including uninsured and underinsured motorist protection; \$10,000 medical coverage; personal injury protection in states where applicable; hired and non-owned coverage to policy limits.
- d. **Workers' Compensation:** As required in each state, including pastors and all employees.
- e. **Directors and Officers:** \$1,000,000 per claim/occurrence, or aggregate, for corporate protection of session, deacons, trustees, officers in performance of regular duties.
- f. **Employment Practices Liability:** \$250,000 per claim, or aggregate for claims related to employment, benefits, termination, and sexual harassment.
- g. **Crime Coverages:** \$50,000 per claim or occurrence for protection from employee dishonesty, theft or loss of money or securities, depositor's forgery; volunteers with access to church funds in any way should be covered.
- h. **International liability:** This coverage provides protection for incidents that occur outside the United States in which the church or individual would be legally obligated to pay. If your church sponsors mission trips outside the United States, consider purchasing this coverage. Analysis of your exposure should be done by your insurance professional.
- i. **Repatriation of Remains:** In case of death, this coverage will cover the expense of returning remains to the United States. Consider this coverage if your church is sponsoring mission trips outside the United States.

C. Suggestions for Property Lease Procedures to Reduce Loss

1. The tenant should sign a lease spelling out the rights and liabilities of the parties. As part of that lease, there should be an indemnification and a hold harmless agreement in favor of the church. The church should carefully draft the lease in conjunction with its legal counsel so that the church's requirements and needs become lease obligations of the tenant. For example, if your congregation has sexual misconduct and child and youth protection policies (as required by the *Book of Order* G-3.0106), these should be referenced in the lease and the tenant should be required to comply with them and copies of the policies provided to the tenant. To confirm receipt of those policies, draft a simple receipt form to have an authorized agent of the tenant sign, date, and acknowledge receipt.
2. As part of its duties under the lease, the tenant should be required, prior to occupancy, to submit a current certificate of insurance from the tenant's liability insurer naming the church as an additional insured under that policy. If the lease is a multi-year agreement, a new certificate should be submitted each year. The certificate of insurance should show general liability and property coverage. It should also show property insurance for the tenant's contents. If the tenant is conducting a business such as a day care, the certificate should show workers' compensation insurance for their employees. A copy of all insurance certificates should be sent to the church's insurance agent for review.
3. There should be an inquiry made in writing to the church's current insurance company to make sure coverage is provided for any liability resulting from the proposed rental. Also check with your insurance agent for possible increases in premium or for possible exclusions that may apply. Any increase that is incurred may be offset by adjusting the terms of the lease or requiring the tenant to pay for the increase. The church also may wish to review the adequacy of its own insurance policy limits in light of any new activity. If supplemental or specialized coverages are needed, they should be obtained prior to lease execution and property occupancy. Ask the insurance agent to send you a binder or endorsement showing coverage is in effect for the new occupancy. The lease should not be signed until you receive written confirmation from your agent. If any insurance claim or lawsuit should arise, give immediate written notice to your agent and the insurance company.

D. Federal Bus Regulations

If your church has vans or buses you may be required to comply with federal regulations which are summarized at this link:

<https://www.fmcsa.dot.gov/regulations/faith-based-organization-related-transportation>

You should speak to your insurance company about those regulations when you discuss your insurance needs for the vehicles.

For more information about the regulations, contact the Federal Motor Carrier Safety Administration at (855) 368-4200 or find a field office near you at www.fmcsa.dot.gov/mission/field-offices .

E. Arson and Bombing Attacks on Churches

After the mid-1990s, there were arson and bombing incidents against local churches. While the problem seems to be decreasing, there is cause for concern, and incidents are still being reported. Churches are easy targets for the arsonist. Most of the time they are unoccupied, and schedules of activities are predictable. Arson is often an afterthought to cover up another crime or a crime of emotion. Whatever the reason for the increases, the federal government has taken an aggressive stance against these acts. For more information on arson and bombing attacks on churches you can contact the Bureau of Alcohol, Tobacco, and Firearms:

Bureau of Alcohol, Tobacco, and Firearms: <https://www.atf.gov/contact> (<https://www.atf.gov/>)

ATF National Arson Hotline: 1-888-283-3473

ATF National Bomb Hotline: 1-888-283-2662

- a. For Your Records (*see* Appendix N)
- b. Safe Conditions and Practice Survey: A Self-Inspection Guide (*see* Appendix O)

Section 11 – Do’s and Don’ts When a Lawsuit is Filled – And Until It is Over

I. When the papers arrive

Lawsuits usually are initiated by the filing by a plaintiff of a summons and complaint with the court clerk’s office. It is the plaintiff’s responsibility to serve those papers on other parties. Depending upon the rules of that particular court, those papers may be served on you (if your council or congregation is a party to the lawsuit) by a process server, such as a sheriff’s deputy, or by mail. Here are things to consider when you are served:

1. Do not sign anything other than a simple messenger's receipt that acknowledges your receipt of papers from a process server or mailed to you from a party. Admit nothing, say nothing. If you are asked to sign for the papers read what the receipt says and sign to acknowledge receipt with your job title and date.
2. Keep the envelope or wrappers that the papers arrived in.
3. Date stamp the first page or write the date and time the documents were received and the method by which they were received (hand-delivery by a sheriff’s deputy or process server, mail, other — be specific).
4. Note the instructions on the summons or other papers that tell you how many days you have to respond and immediately put that date in your calendar with a reminder a week in advance so you do not default in responding.
5. Immediately call your insurance broker or agent. Forward a copy of the papers to your broker/agent, with a dated cover letter (save a copy of the cover letter too), and if you already have an attorney, inform the broker you plan to contact your attorney to provide the attorney a copy of the documents. Your insurer will decide if the claims in the complaint are covered by insurance and if the company will provide you with a defense, meaning that it will pay your attorney. It is possible you have a deductible to pay first, which means you pay the deductible by paying your attorney first and when the deductible is exhausted the insurance company pays the attorney. If your insurance company acknowledges that your council or church is covered, it has a list of attorneys it has approved to handle such cases. If the insurer denies coverage, you will need to hire an attorney to defend your organization.
6. Immediately call your attorney for instructions, note the date and time of the call.
7. Determine whether your organization has a policy already in place for what to do when a lawsuit is filed, make sure you follow the requirements outlined in such a policy, if it exists.
8. Deliver a copy of the papers to other leaders in your organization, as appropriate (check your bylaws for such instructions; if none, for example, , deliver the documents to the teaching elder/head of staff, the treasurer, the clerk of the session).
9. Notify your IT department or the employee in charge of your computer system or the vendor who handles your electronic systems and instruct them to protect e-mail and electronic documents which may have any relevance to the lawsuit. Bring your attorney into that conversation.
10. If the complaint names the Presbyterian Church (U.S.A.) or the General Assembly as a defendant, please contact the Legal Services Office immediately. (Michael Kirk (888)-728-7228 ext. 5390).

II. The Next Steps . . .

1. Sit down immediately with your attorney and a small group of leaders (the group will vary depending on the nature of the lawsuit) and decide key strategy issues. Let your attorney be your guide on these issues:
 - a. Prepare for possible media interest and press statements, if necessary. Your attorney may want to be the point of contact.
 - b. Decide who is going to be the up-front person on the lawsuit to handle inquiries, to assist counsel, to follow what's happening, and so on. (Note: This person should be someone who has excellent follow-through skills, knows how to keep information in strict confidence, and who consistently uses good judgment about delicate matters.). Ensure that this person gets the training that they need on what is appropriate to say, when and to whom.
 - c. Discuss contacting all employees and members who might have documents and records relevant to the litigation and ask them to deliver their documents to the employee who is the principal contact with your attorney.
 - d. Ensure that a file of all documents (hard copy and electronic) is maintained. Decide who is going to maintain that file and be responsible for it.
 - e. Decide whether the congregation needs to be informed of the lawsuit, as applicable (again, be careful — seek legal advice).
 - f. Decide whether any local church pastoral care will be needed and develop a plan to address these needs.
 - g. Decide whether pastoral care will be important for anyone else — including yourself!
 - h. If the lawsuit is based on some type of misconduct of a teaching elder, determine whether there has been an internal disciplinary action filed and, if so, what is its status. If no action has been filed, decide whether it would be appropriate to pursue such an action at this time (again, be careful — seek legal advice). Consult with the pastor's presbytery of membership.
 - i. If you are a teaching elder, ruling elder, deacon or Certified Christian Education and the allegations involve sexual abuse of a minor or an adult who lacks capacity to consent, review the mandatory reporting requirements in the *Book of Order* (G-4.0302), and determine your mandatory reporting duties.
2. Preserve notes, correspondence, and files that relate to the matter.
3. Do not talk with anyone about the lawsuit, except your attorney and the small group of leaders who work together to develop a strategy for what to do next. Determine if the Session as a whole should be informed as the lawsuit progresses.
4. Do not call the plaintiff, his or her attorney, or anyone else who might be on the other side in this matter **and do not accept calls from them**. If they call refer them to your attorney. Once you have an attorney, the attorneys should contact each other, not the parties.
5. Do not call, write, or visit with the judge, at any time, for any reason.
6. Ask your attorney before you act.

III. When You Meet with Your Attorney . . .

1. Be completely open, truthful, and forthright. Your attorney cannot help you if you hide information. Do not try to decide what information is important or unimportant — let your attorney be the judge of that — tell everything you know.
2. Bring a copy of all documents, writings, and things that may have anything to do with the lawsuit. Keep the originals, unless your attorney asks for them.
3. Talk with your attorney about your insurance coverage.
4. Educate your attorney about the Presbyterian Church (U.S.A.) as a denomination. Make sure that the attorney understand the importance of the structure of the Church.
5. If you receive a "reservation of rights" letter — or a "denial of coverage" letter from your insurance carrier, you should obtain an opinion from a special insurance coverage attorney about whether there are steps you should take to protect your legal rights under the insurance policy(s).

IV. As the Case Progresses . . .

1. Remember the do's and don'ts from above!
2. Call your attorney immediately if you receive any additional official papers related to the lawsuit.
3. Make sure your up-front person is continually updated about the status of the case and has access to independent legal counsel to help answer questions about legal strategies and maneuverings and address concerns regarding insurance coverage or actions being taken in the lawsuit by your attorney or others.
4. Try to be patient: the court system is often very slow and cumbersome. It may seem like it's taking forever for your case to progress to resolution.