Under cover

Protect your religious organization against employment-related claims

Claims against employers, for such things as wrongful termination, discrimination, sexual harassment and emotional distress, are a serious concern for organizations of all sizes. In 2012, the U.S. Equal Employment Opportunity Commission reported nearly 100,000 charges filed for workplace harassment alone, with payments exceeding $365 million. In addition to being time-consuming and costly, employment practices liability claims have the potential to damage the reputation and morale of a congregation.

“Employment liability is becoming progressively complex, and the costs for litigation and settlements are increasing annually,” said Richard Rossignol, an employment law expert and founder and principal of RTR Consulting – The Human Resources Experts. “Organizations need to understand the different types of employment-related claims in order to best protect themselves and mitigate their risk.”

The majority of employment-related claims fall into three categories:

- **Wrongful termination** — An employee is dismissed for reasons that are discriminatory and unlawful.
- **Discrimination** — Unfair treatment of an employee based on race, age, gender, disability, religion or other considerations.
- **Harassment** — Offensive discriminatory conduct in the workplace. This includes unwelcomed sexual advances and other verbal or physical conduct of a sexual nature, as well as verbal or physical conduct that degrades, offends, bullies or belittles an individual.

“Preventing employment liability claims begins with an understanding of expectations between the employer and employees as well as clearly outlined policies and procedures,” Rossignol said.

Employment policies and training

Every organization should have an employee handbook that outlines basic expectations of employees, general benefit information and employment policies, such as the antiharassment policy, antidiscrimination policy, family medical leave policy and workers’ compensation policy.

All new employees should receive a copy of the handbook as well as training about expectations or policies included in the handbook.

Require all employees to sign a document stating they read and received a copy of the handbook. This document should be kept in the employee’s personnel file.

“Employee handbooks should be reviewed and updated annually,” Rossignol said. “It is important to involve legal counsel when developing, reviewing and updating your handbook. Employment laws vary from state to state, and the laws change frequently.”
In addition to training new employees on expectations and policies, managers and supervisors should receive regular training on topics such as interview skills, performance review procedures and methods to help prevent and identify instances of harassment and discrimination.

**Reporting and resolving complaints**

Establish guidelines on how employees should report instances of discrimination and harassment. The guidelines should identify an appropriate contact person, other than a direct supervisor, and offer employees several ways to report a complaint. All complaints must be investigated in a timely and professional manner.

“If an employee feels bullied or harassed, (he or she) should feel confident that (his or her) complaint will be addressed,” said Susan Heathfield, management consultant and editor of the human resources section on [http://www.about.com](http://www.about.com). “Many organizations I’ve worked with get into trouble because human resources or management does not act on complaints — they ignore the complaint or take no action.”

With any complaint, an investigation should be conducted analyzing eyewitness accounts along with any evidence that is available. If there are possible conflicts of interest that make it difficult for an employer to make a decision free of bias, an outside investigation should be conducted. After the investigation is complete, immediate action should be taken, resulting in either discipline or dismissal of the complaint. All steps of the process should be clearly documented — from the initial complaint through the final judgment and action.

“Should the employee proceed with a lawsuit, it will reflect favorably in court that the offending employee was punished swiftly for the unfavorable conduct,” Heathfield said. “Or if the employee proceeds with a lawsuit for a dismissed complaint, having the paperwork that led to the final decision is imperative.”

**Managing terminations**

Terminations are a regular part of business practice. However, organizations need to take steps to ensure terminations are handled in a manner that minimizes their risk of litigation.

“Reducing your risk for a wrongful termination suit begins long before the decision to dismiss an employee is made,” Rossignol said.

“Consistent records and careful documentation should be maintained from the time an employee is hired until (his or her) employment ends,” Heathfield said. “This includes everything from regular performance reviews to any disciplinary action.”

Consistency also is important regarding any corrective action or performance improvement plans.

“Follow a fair and consistent process for dealing with any type of performance-related issues,” Heathfield said. “The process should be outlined in the employee handbook and might include multiple steps, such as oral or written warnings, a formal final warning and eventual termination.”

Before taking any final action, perform a careful review of the employee’s personnel file to confirm that proper procedures were followed and that the reasons for dismissal are clearly documented.

Seek legal counsel for any dismissals that include an employee who has previously filed a work-related complaint, as well as long-term employees and employees in a protected class.

“Above all, careful documentation is the key to avoiding a wrongful termination claim,” Rossignol said. “Well-organized and credible documents can demonstrate fair treatment, deter litigation, ensure employee honesty and, should litigation occur, demonstrate the employer’s actions.”

**Employment practices liability insurance**

Clear employment policies and management training can help prevent claims, but they will not protect an organization once a claim is filed. Employment practices liability insurance, or EPL, can provide insurance coverage for defense costs and indemnification connected with claims of discrimination, harassment and wrongful termination.

Most general liability policies exclude employment-related claims, requiring a separate EPL policy or coverage form to be purchased. Consider the following areas when reviewing policies:

- Types of claims covered
- Types of employees covered
- Damages covered
- Premiums, deductibles and coinsurance payments required
- How claims will be handled and paid

Our customers can find more information about employment practices liability by visiting www.churchmutual.com. Click on Safety Resources, then Workforce Management to download or order the DVD Wrongful Termination. Harassment. Discrimination. Avoiding Employment Law Pitfalls.

- For more human resources tips and information, visit http://www.humanresourcesabout.com.

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Editor: Amy M. Kimmes akimmes@churchmutual.com
Risk Control Advisor: Edward A. Steele, CSP, ARM esteele@churchmutual.com