Top Legal Issues for Churches and Ministries Heading into 2024

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Introduction



The Top 5 Reasons Churches and Religious Organizations Go to Court



This list is not speculative.

 It is based upon tens of thousands of state and federal court decisions read and categorized by attorney, CPA, and senior editor Richard Hammar, spanning nearly four decades.



#1: The Sexual Abuse of a Minor



Hammar's 14-step prevention plan includes:

- Personal interview
- Written application
- Institutional references
- Six-month rule
- Benchmarking with charities and public schools
- Two-adult policy
- Criminal background check (including offender registries)
- Prompt reporting of suspected abuse
- Addressing high-risk behaviors (grooming)
- Active supervision
- Ongoing training: Reducing the Risk



Related development:

- States continue to expand or eliminate the statutes of limitations for minors injured by sexual abuse/molestation.
- This means decades-old claims can be brought with greater ease against churches and ministries.
 - 50 states eliminated statutes of limitation for criminal claims.
 - 18 states eliminated them for civil claims.
 - 27 enacted "revival statutes" that "revive" claims that expired under prior law.
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#2: Property Disputes



- Generally arise when a local church breaks up with a parent denomination or a local church experiences a split.
- Incredibly complex body of law dating back to the 1871 case *Watson v. Jones* decided by the US Supreme Court.
- Two key factors (among many): Church polity (congregational v. hierarchical) and dispute resolution procedures written into deeds, trusts, governing documents of local churches and denominational agencies, and more.
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#3: Personal Injury



- Invitees (highest duty), Licensees (minimal duty), and Trespassers (no duty): With churches, courts usually find church visitors to be licensees (MI Supreme Court). Some have found them to be invitees.
 - If "invitees": Correcting known problems, inspecting regularly, and warning of known hazards (most common).
 - If "licensees": Correcting known problems and warning of known hazards.
 - Some courts: Reasonable care is the standard (victim's status is just one consideration).
- Common risks: Youth groups, wet floors, missions trips, retreats.
- Tools: Insurance, maintenance/groundskeeping.



#4: Zoning



- Municipalities, authorized by their state governments, set zoning laws dictating building types and uses allowed in geographic areas.
- Residential: Traditional (majority) view has allowed churches. But increasing challenges (traffic, cell towers, NIMBYism).
- Commercial: Numerous challenges (property and sales tax exemptions).
- Protections:
 - Constitution (First Amendment/Free Exercise; Section 1983 (monetary damages).
 - RLUIPA (differential treatment; substantial burden/compelling interest).



#5: Insurance CoverageDisputes



- The two most common:
 - Coverage exclusions. <u>Read your policies and regularly review</u>
 <u>them</u>.
 - Duty to notify: Read the fine print!
- Types of insurance you'll likely need: Property, Liability (slips and falls), Vehicles, Counseling, Employment Practices, D&O, Theft, Foreign Travel, Umbrella (\$ coverage beyond policy limits), and Workers' Compensation.

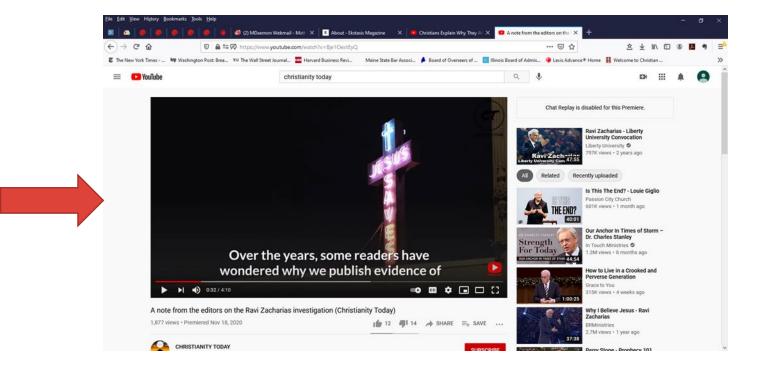


Additional Developments

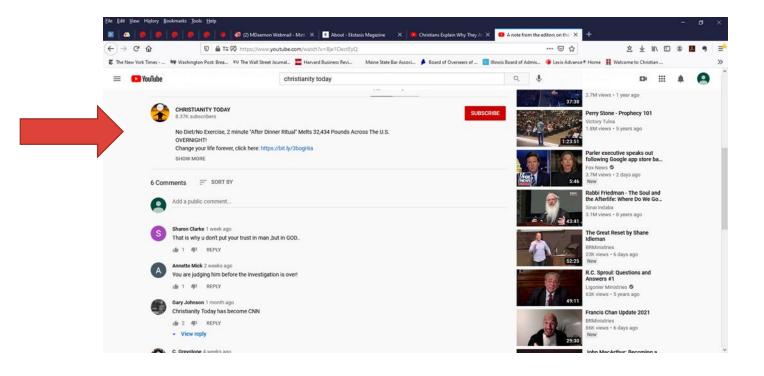


Unauthorized Use of Your Ministry's Name and Brand











Concerns:

- Damage to your organization's name and brand.
- Violations of your organization's copyrights and trademarks (and/or licenses if you obtain material, such as articles or photos, from others and agree contractually to challenge misuses).



How to challenge:

- The platform usually provides a webform.
- Screenshots with time and date stamps.
- USPTO information (if the violation includes trademarked material).
- Cease-and-desist letter(s) to offending party.
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Cyberfraud



- Improved sophistication thanks to ChatGPT
- Limit publicly disclosed information (especially information revealing who internally handles financial functions)
- Using "old school" internal procedures for verifying requests and instructions (pick up the phone!)



ChatGPT and Artificial Intelligence



Fraud (as noted above)

- Work product
 - Authenticity and transparency—requiring employees to create their work.
 - Needs for original content (things your members and follows look to you to provide) v. routine content (customer service responses, generally known information, and so on).
- Applicants for employment (work samples, responses to questions)



Pay Transparency Laws



California

• Salary or hourly wage range data for applicants and current employees (15+ employees), plus title/wage history for 3 years after employee leaves. Annual pay data reports submitted to state's civil rights department (100+ employees). Civil penalties (\$100 to \$10,000 per violation).

Colorado

• Salary or hourly wage range data for applicants and employees (1+ employees), plus title/wage history for 3 years after employee leaves.



New York

• Compensation ranges and job descriptions for all open positions (4+ employees). Recordskeeping requirement (unspecified).

Washington

• Salary and hourly wage ranges and benefits information for all current employees and all open positions. Salary history questions prohibited.

KEY POINT: There are no religious exemptions with any of the state laws enacted thus far!



Title VII



- Bostock: Title VII's term "sex" includes sexual orientation, sexual perception, gender identity, and transgender individuals.
- Religious organizations and exemption: Conflicting views on the test defining "religious organization" (*Seattle Gospel Mission, Scaffidi*) and the application of the exemption (*Bear Creek Bible*).
- State laws.



- Possible steps, given the uncertainty:
 - Purchase employment practices liability insurance.
 - Identify ministerial exception positions.
 - Review EEOC statements made by your organization in governance documents, employee handbook, and employment policies.
 - Include the organization's position(s) on human sexuality in its statement of beliefs.
 - Require employment applicants to agree with the church's beliefs statement.



Overtime Pay Laws

(aka, things that happened in 2020 that we may have overlooked)



- Executive, administrative, professional, and computer employees fall under the "white collar" exemption from federal minimum wage and overtime pay requirements.
- However, that's <u>only</u> if they earn more than \$35,568 per year—or \$684 per week (a 50-percent increase when changes took effect in 2020).
- Any employees categorized with white-collar exemptions, and normally wouldn't receive overtime pay, are eligible if they earn less than the threshold.
- Don't forget about your state's wage and overtime pay requirements.
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