

Top Legal Issues for Churches and Ministries Heading into 2024

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ChurchLaw&Tax
LEAD YOUR MINISTRY WITH CONFIDENCE

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.

#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.

#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 Coverage Disputes

- The two most common:
 - Coverage exclusions. **Read your policies and regularly review them.**
 - 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



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- **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.

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 only 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.