



SEXUAL HARASSMENT AND MISCONDUCT

PREVENTING A #CHURCHTOO EXPERIENCE

SEXUAL HARASSMENT AND MISCONDUCT: PREVENTING A #CHURCHTOO EXPERIENCE

It takes courage to step forward, shine a light, expose a wrong. Harder still is when an accusation touches a trusted member of a ministry community. Because of these barriers, victims can endure years of shame, fear, and abuse. *Will anyone believe me?*

It's not a new problem, of course—anywhere there's a power structure, there will be those few who abuse the privilege. But social change and high-profile cases have brought sexual harassment and sexual misconduct awareness to the forefront. Without meaningful change, these issues will continue to surface.

POLICIES AND PREVENTION

For Christian ministries, there's an added moral component. Religious leaders eager to protect the dignity of their ministry's people may struggle to craft new policies firmly rooted in law and grace. Is it possible to incorporate both?

We say, yes. First, it's important to recognize the difference between sexual harassment and sexual misconduct, and how even an allegation can stain every corner of your ministry. Then, you'll understand how Bible-based policies and reporting procedures protect all ministry employees and participants—and your financial resources.

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IMPORTANT INFORMATION

The information in this publication is intended to help ministry leaders better understand issues of sexual harassment and sexual misconduct, and assist them in developing policies appropriate for their churches and related ministries. No portion of this publication should be used without prior legal review, revision, and approval by an attorney licensed to practice law in your state.

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DEFINING SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

Your ministry may be confused or unaware of the difference between sexual harassment and sexual misconduct. While both are totally unacceptable in any form, there is a distinction in how the law defines and treats the behavior.

Courts will consider the legal definitions:

Sexual harassment is a form of sexual misconduct. It is generally limited to employee-on-employee misconduct and typically involves adults. In addition, the employer may be liable for harassment by any co-worker, vendor, independent contractor, or customer if it knew, or should have known, about the harassment and failed to take prompt and appropriate corrective action.

Actions that fall under this term can range from unwelcomed, offensive remarks to assault. It also applies when submission to conduct is a condition of employment, used to make employment decisions, interferes with work performance, or creates a hostile work environment.

Sexual misconduct is much broader and involves staff, teachers, volunteers, children, and vulnerable adults. This type of misconduct can be present anywhere, but high-risk areas include counseling, youth and vulnerable adult ministries, and after-school activities.

Actions that fit this term can be consensual or non-consensual, or further defined by coercion, retaliation, or unwanted sexual advances.

This chart highlights how the law applies to these concepts:

SEXUAL HARASSMENT	SEXUAL MISCONDUCT
A result of employment relationships	A result of relationships built within ministry environment
Includes employee-on-employee actions, usually between supervisory or peer adults	Can occur with adult to adult, adult to youth/vulnerable adults, youth to youth relationships
Title VII and state employment laws apply to your ministry (can vary widely state-to-state)	Federal, state, and case law apply to your ministry
Civil remedies; criminal cases are less common	Criminal and civil remedies
Insurance coverage is available—ask your agent about employment practices liability coverage	Insurance coverage is available—ask your agent about sexual misconduct liability coverage

Ministries are held to higher expectations. Actions or behavior that may be “permissible” under law, may be morally harmful in a ministry setting. While a specific action may not meet the legal definition of sexual misconduct or harassment, it may violate your ministry’s morality clause or code of conduct rules. How you care for your people reflects upon your ministry’s reputation—good or bad.

For any ministry, communication is the key. A clear policy, well-defined procedures, and training help level the playing field and raise awareness.

SEXUAL HARASSMENT AND PERCEPTION

Not all behaviors will be received the same by everyone. Sensitivities, boundaries, and comfort levels may differ person to person. This is especially true with behaviors such as hugs or other physical contact. A joke told by one person may be considered funny to some, while others may perceive it as offensive.

Avoid Crossing the Line

Every individual has acceptable boundaries, but not everyone can clearly state their own bright line. Especially in ministry, the goal is to have professional interpersonal relationships and avoid pushing boundaries. Repeated compliments about a co-worker's outfits may seem innocent enough, but over time, the person may perceive comments like these to be sexual advances.

- Pay attention to non-verbal indicators: avoiding eye contact, not returning personal messages, making excuses to avoid interaction, or pulling away from non-sexual touch.
- Groping, forced sexual advances, or requests for sexual favors in exchange for employment-related opportunities are illegal and never acceptable.
- A combination of behaviors can add up to inappropriate behavior. By themselves, setting appointments after-hours, commenting about attire, or discussing marital issues may not constitute legal sexual harassment. But together, the combination is morally concerning, and should be addressed.

The legal standard is higher for supervisors. Supervisors and authority roles need to heighten their sensitivity to unwanted behaviors. Because the power differential favors these roles, an employee may fear retaliation if they call attention to behavior that makes him or her uncomfortable.

If you receive, or witness behavior that is unwelcome, you have a duty to ask the individual to stop. If the behavior continues, you should follow your employer's harassment policy and report it to the appropriate party.

The Ministry's Role in Preventing Sexual Harassment

The ministry or members of the board of directors may be subject to liability for a hostile environment created by a supervisor, regardless of knowledge, unless you:

- Adequately communicate your sexual harassment/misconduct policy;
- Exercise reasonable care to prevent and correct harassing behavior; and
- Demonstrate that the employee failed to take advantage of preventive or corrective opportunities provided by the ministry.

The following pages outline how to create policy and reporting procedures, tips for hiring, firing, and discipline, and safer counseling practices.



Need a Resource?

A morals clause for your ministry cites scripture as the basis for your sincerely held beliefs and sets lifestyle expectations for staff members. [This sample policy](#) from Brotherhood Mutual gets you started.

THE HIGH COST OF SEXUAL HARASSMENT

While emotional fallout is the most significant cost of sexual harassment, the costs to defend or pay damages can be staggering. Payout limits vary case by case, but for a ministry with at least 15 and up to 100 employees, the most a person can recover for damages is \$50,000 under U.S. Equal Employment Opportunity Commission (EEOC) guidelines. States also have their own laws regarding sexual harassment, which can have substantially higher limits for damages. Add the legal fees, lost wages, and other fees, and a sexual harassment claim can easily reach more than \$100,000.

If you have fewer than 15 employees, you're not off the hook. Every state has laws and penalties for discrimination and harassment.

Case Studies Show How Policies and Procedures Save Money

How Christian ministries respond to claims of sexual harassment can help determine the outcome. The following example illustrates the importance of a written policy:

Two female employees believe they've been subject to sexual harassment by a male supervisor. They claim their supervisor has created a "hostile environment" by using his authority to coerce the females. After enduring weeks of harassment, the women decide to tell the church's administrative pastor.

Response #1: No, or weak, sexual harassment policy:

- *Fearing for the church's reputation, the pastor tells the female employees that he'll speak with the male co-worker, which he never does. Because the supervisor's behavior continues, the female employees file complaints with the EEOC. Since the pastor was made aware of the co-worker's behavior and failed to take immediate action, the church is liable for the male co-worker's behavior.*

Response #2: A well-written and well-followed policy:

- *The pastor immediately informs the board and they launch an internal investigation. Upon the conclusion of the investigation, the board recommends and immediately implements a series of corrective measures. The male supervisor is warned that one more complaint will lead to his termination. Since the church took immediate corrective action, it is most likely not liable for the supervisor's behavior.*

What's the liability if the ministry is unaware of the harassment?

- **The ministry does not have a written sexual harassment policy.** If a female employee files a sexual harassment complaint with the EEOC, even if she doesn't inform church leadership, the church may still be liable because it didn't have a written and/or enforced sexual harassment policy.
- **The ministry has a written policy.** With a written policy, the ministry would not be liable unless they became aware of the harassment and failed to report the incident or take immediate corrective action.

A SEXUAL HARASSMENT POLICY: WHAT'S IN IT

A sound, well-followed sexual harassment policy helps ministries establish, publicize, and enforce anti-harassment policies and complaint procedures. Failure to do so may make it difficult for an employer to prove that it exercised reasonable care to prevent and correct harassment.

An anti-harassment policy should contain, at a minimum, the following elements:

- **Prohibition against harassment.** This includes three parts:
 1. A clear description of the types of conduct that constitute harassment
 2. A forceful statement that such conduct is prohibited by the organization as well as state and federal law
 3. A strong assurance that the policy covers everyone in the workplace (e.g., supervisors, co-workers, volunteers, vendors)
- **Protection against retaliation.** Fear of retaliation is an effective inhibitor to reporting harassment. Your policy should include a statement of assurance that employees who report harassment or provide related information will be protected against retaliation. Management also should scrutinize employment decisions affecting the complainant and witnesses during and after the investigation to ensure that such decisions are not based on retaliatory motives.
- **Effective reporting process.** Your harassment reporting procedure should be designed to encourage victims to come forward. See page 7 for more details.
- **Confidentiality.** Your policy should assure employees that you will protect the confidentiality of harassment allegations to the extent possible. While it may be necessary to reveal certain information to the alleged harasser or witnesses to conduct an effective investigation, other records relating to the complaint should be kept confidential.
- **Investigative process.** Your policy should set up a mechanism for a prompt, thorough, and impartial investigation into all allegations. Your investigation may include the following action items:
 - Take steps that no further harassment or any retaliation occurs against the victim.
 - Interview the victim, accused, and witnesses separately and in the presence of another member to compare notes.
 - Summarize all interviews in a document and develop a timeline that includes conversations, texts, and emails.
 - Stick to the facts. Do not reach a conclusion of innocence or guilt. You can include observations from the interview about the person's demeanor (e.g., agitated, defensive, answering questions with a question).
- **Corrective action.** Pull together documents and consult with legal counsel before taking any action. Your policy should include all choices of action along with assurances that the employer will take immediate and appropriate corrective action if it determines that harassment has occurred.

Your ministry should provide every employee with a copy of the policy and review it annually with staff. Other measures include posting the policy in central locations, incorporating it into employee handbooks, and providing training to all employees to ensure that they understand their rights and responsibilities.

ENCOURAGING VICTIMS TO REPORT PROTECTS YOUR MINISTRY

Sexual harassment reporting continues to increase, especially in the ministry realm. High-profile cases and recent social movements contribute to a heightened awareness of the issue. From the front office to the sports field, no ministry or activity is immune.

Certain behaviors, such as groping, forced sexual advances, or requests for sexual favors in exchange for employment-related opportunities are illegal and are never acceptable. An employer's harassment complaint procedure should be designed to encourage victims to come forward. Your reporting procedure should be:

- **Easy to understand and follow.** Avoid language barriers, hard-to-find instructions, or unreasonable obstacles, such as a rigid adherence to completing paperwork. When an employee makes a claim of harassment, the ministry must investigate the allegation, regardless of whether it conforms to a particular format or is made in writing.
- **Know who receives the report.** Your policy should outline a clear path to reporting. Your ministry can determine the first person to receive a report. He or she could be a pastor, human resources contact, board member, or another appropriate individual. If the complaint is against a supervisor or ministry leader, your policy should provide choices on who receives the report.

Confidentiality

A conflict may arise between an employee's desire for confidentiality and the employer's duty to investigate. An employee may fear retaliation and ask the supervisor to keep the matter confidential and take no action.

Inaction by the supervisor in such circumstances could lead to a liability claim later. It's important to acknowledge the fear, but to tell the victim that you are obligated to investigate the matter. Assure the victim of confidentiality and review the investigation methods outlined in your written policy.

The Matthew 18 Principle and Reconciliation Attempts

Ministries often desire reconciliation when conflict exists between employees. By citing the Matthew 18 principle, your ministry may sincerely seek to reach reconciliation by bringing all parties together.

This is not appropriate in sexual harassment claims. You should never encourage the victim to confront the accused personally. Additionally, if a harassment claim is filed with a court, the courts generally are unsympathetic to any ministry which sends the victim to meet with the accused, especially in a one-on-one setting.

Instead, consider Proverbs 31:8 (CSB) which says:

*Speak up, judge righteously, and defend the cause of the oppressed and needy.*¹

When someone is under pervasive harassment, he or she often feels helpless. It's the ministry's moral duty to step in and defend the person.

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SEXUAL MISCONDUCT: THE VULNERABILITY OF PASTORAL COUNSELING

Pastoral counseling is an important component of almost every church. Unfortunately, those same beneficial bonds may also contribute to additional risk for the ministry. The privacy associated with one-on-one counseling can lead to real or false accusations of sexual harassment and misconduct—when it's one person's word against another, it can be hard to untangle the truth.

It's possible to strike a successful balance between offering Bible-based counseling and protecting your counseling staff and those receiving counseling.

- **Guard against opportunity for inappropriate relationships.** Counseling sessions should take place on church property and with other people in the building. Meet in a room with a window looking into the office or with the door partially open.
- **Publicize a set time and session length.** Prohibit off-site meetings, or meetings in the home of the counselee or the pastor.
- **Obtain signed consent.** The form should detail your ministry's counseling practices and confidentiality practices. Because each state's rules regarding consent are unique, consult a locally licensed attorney.
- **Guard against unlimited counseling.** Add to your agreement the total number of sessions, and frequency of sessions, available to counsees.
- **Protect your pastors.** Always have a second adult present when counseling minors. Consider having counselors of both genders available to adults and minors.

Check your coverage. Ask your insurance agent to review your church's liability policy. You'll want to know if the church is covered for counseling, the amount of coverage, and if there are any limitations or exclusions—including exclusions for criminal acts. Some insurance companies require a written policy and procedural plan to obtain higher coverage limits.

It's impossible to eliminate the threat of sexual misconduct for any organization. By establishing boundaries and enforcing guidelines, you send a message to your staff and congregation that providing a safe environment and protecting the counseling trust is of primary importance.



Need a resource?

Does your pastoral counseling policies need a safety check? [This checklist](#) from Brotherhood Mutual helps your board of directors identify other risk issues associated with counseling.

CLAIM EXAMPLE

A church's policy prohibits staff from one-on-one meetings with members of the opposite sex.

A pastor previously receives a warning from the board for violating the policy. The board learns that the pastor is continuing the practice once a woman comes forward.

She claims the pastor threatened to disclose confidential information unless she performed a sex act on him. The church fires the pastor for repeated rules violations. Satisfied with the board's decision, the woman does not pursue further legal action.

SAYING HELLO AND GOOD-BYE: HIRING, DISCIPLINE, AND FIRING

It's difficult to imagine problems when a new employee begins work. Hiring is often the time when both the applicant and the ministry are most idealistic about their future together. As a ministry employer, you don't anticipate problems at this stage.

Discipline and termination are a bit trickier. Consistent, documented rules in these areas not only help when dealing with reported claims of sexual harassment and sexual misconduct, but work to communicate overall expectations and consequences.

The steps you take at each stage of the employer-employee lifecycle decrease the ministry's liability exposure and improve ministry-staff relations.

The Hiring Process

The groundwork you do on the front end leads to a smoother hiring process and helps ensure a successful hire.

- **Write a description.** A well-crafted job description is not only beneficial to protect your ministry legally, but it also spells out what is expected to perform a job successfully. It's also a legal starting point when determining whether the job has been appropriately classified as exempt or non-exempt if challenged in court.
- **Standardize your interviewing process.** Create a formalized application or standardized method to collect the necessary information that's consistent for all applicants. Before you start interviewing candidates, write out your questions in advance—that keeps the interview on track. Having two or more staff present for the interview allows you to compare notes following each interview.
- **Screen, screen, screen.** Resist temptation to skip a background screen. [Conduct screenings](#) on all employees, especially if they work with children or vulnerable adults. Use a reputable company, then take results seriously. Finally, ask the applicant for references and actually check them.
- **Provide a formal offer letter.** An offer letter gets everyone on the same page. It may be tempting simply to issue a verbal "handshake" when offering a position. That practice makes it difficult for both parties to know what was agreed upon. An offer letter should include explicit language that the letter itself does not constitute an employment contract.

Goal-Oriented Discipline

The goal of discipline is to create a stronger employee that's able to overcome his or her behavioral issues. As a ministry, it's tempting to be nice and offer grace when an employee's behavior becomes an issue. That approach often creates bigger, and potentially costly, issues later. The kindest thing—and the thing that best protects the ministry—is to just be honest.

WHAT'S A SAFE QUESTION?

As a ministry, you're allowed to ask about the applicant's testimony and willingness to agree to a lifestyle statement consistent with your sincerely held beliefs and ministry mission.

Ministries should avoid initiating questions about age, nationality, family status, and health-related questions. If the candidate touches on these topics during the interview, don't ask follow-up questions and move away from the subject quickly.

If the candidate is not offered the job, he or she can take legal action, claiming discrimination based on what was revealed.

Progressive discipline matches the problem with the appropriate level of discipline:

- **Oral warning.** This is a less-formal first step and starts with a simple conversation. Explain to the employee the behavior in need of correcting. Provide examples and clearly communicate the employee's next steps. Document the warning so that you have a record.
- **Written warning.** This type of discipline is more formal. The behavior is addressed in a meeting. Review previous verbal warnings, explaining where the employee fell short of expectations, and give specific next steps. Obtain signed employee acknowledgement that this meeting took place and what was discussed.
- **Corrective action plan.** This is a more serious, written warning that enumerates all previous conversations related to discipline. Tangible goals are specifically stated along with potential consequences if goals are not met. Obtain signed acknowledgement.
- **Last chance agreement.** This type of agreement is typically reserved for serious issues. For reasons that may include grace, your ministry may not be ready to terminate even though the behavior is a direct violation of your policies or procedures. Lay out conditions for immediate termination if the employee fails to meet certain conditions. Obtain signed acknowledgement.

Firing with Compassion

Unfortunately, there are times when parting with an employee is necessary. You've worked through the discipline process and arrived at termination. Take the following steps to help produce a favorable outcome and protect the ministry:

- **Surprises aren't good.** Employees should never be surprised if they are terminated. Anxiety and desperation that follow a sudden firing often lead the employee to file a lawsuit. A consistent process ensures employees understand your ministry's expectations every step of the way.
- **Consult with local counsel.** In most states, employees are considered at-will employees. That means that the ministry has the right to terminate any employee, provided it doesn't violate the law. You do run the risk of legal action, however, if you treat people differently based upon transgressions. Your local attorney can let you know if the person falls under a protected class or other issues that are unique to your situation.
- **Gather paperwork and documents.** Consider what the employee may have that belongs to the ministry, especially if the employee occasionally worked from home. This can include files, work product, or other information that the employee doesn't have a right to keep.
- **Plan the exit strategy.** Your strategy should include whether the person has a chance to say goodbye or is escorted off the property. Decide if the employee or the ministry will collect personal items from the workstation. If the employee needs to return anything to the ministry, know your state's position on whether you can set conditions on issuing the final paycheck.
- **Consider a severance package.** Although not required, severance offers a level of protection for the ministry. Severance pay is a legal document that offers a monetary sum or other benefits. In exchange, the employee agrees to release the ministry from future legal action. You'll need specific language in the severance document if the person is over 40 years of age, so consult with your legal counsel. You may also be required to pay out accrued vacation or sick time, or extend other benefits, so make sure you know your state's regulations.
- **Discuss security.** Make sure you know how you'll protect the ministry and staff during the termination conversation and after. Collect any keys or key cards prior to the employee's exit. Make sure you can shut down the person's access to email or the church database.

- **Communicate decision to employees.** Stick to the facts. Avoid providing personal details. Explain why additional details will not be forthcoming by restating your ministry's confidentiality standards.

A Note about:

Offering a reference. Whether the employee left on good terms or was terminated, you are not obligated to offer a reference at any point. However, it's not a good idea to pick and choose the people for whom you'll offer a reference. For consistency, develop a policy and stick to it. If you decide to give references, they must be accurate. This includes making prospective employers aware of a person's past misbehavior. If your ministry intentionally provides inaccurate information or shields an applicant's past acts of violence or sexual abuse, it could be sued for negligence. To protect the ministry, require those seeking a reference to provide a liability release signed by the former employee.

Firing volunteers. Volunteers are the mechanism that pumps life into your mission. But a volunteer is not an employee—and the ministry is under no legal obligations when it comes to hiring or firing. While not necessary, it never hurts to have a description of the volunteer position or job expectations. Using the same discipline steps helps develop your ministry's high standards.

COMPARING COVERAGES FOR SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

A robust sexual harassment and sexual misconduct prevention policy certainly helps mitigate liability, but your ministry, its leaders, and its employees can still be sued. In general, liability insurance policies rarely cover sexual harassment and sexual misconduct claims. For these types of claims, costs can be staggering. Without coverage, the ministry pays costs for damages and legal fees out of pocket.

Brotherhood Mutual's unique, ministry-focused coverages offer financial protection from costly claims. You should know the difference between employment practices liability coverage and sexual acts liability coverage—especially when it comes to sexual harassment claims.

	GENERAL LIABILITY POLICY COVERAGE	SEXUAL ACTS COVERAGE	EMPLOYMENT PRACTICES LIABILITY COVERAGE
WHY YOU NEED IT	Protects your ministry from liability claims if someone is injured on your property or while in your care.	Sexual harassment reporting continues to increase, especially in the ministry realm. High-profile cases and recent social movements contribute to a heightened awareness of the issue.	Employment practices are one of the leading causes of lawsuits filed against nonprofit organizations. Standard liability insurance excludes coverage for this risk.
WHO IT COVERS	Your ministry, its leaders, employees, appointed persons, and volunteers	Your ministry, its leaders, employees, appointed persons, and volunteers	Your ministry, its leaders, and its employees
WHAT IT COVERS	Claims made by non-employees for bodily injury, property damage, and fire liability	Claims made by non-employees for: <ul style="list-style-type: none"> • Sexual acts • Sexual harassment • Molestation of a minor 	Claims made by employees or applicants for: <ul style="list-style-type: none"> • Discrimination • Sexual harassment (only if paired with Sexual Acts Liability Coverage) • Breach of contract • Errors in supervision
WHAT IT DOES	<ul style="list-style-type: none"> • Pays damages related to bodily injury claims made by non-employees. • Pays limited legal funds to defend your ministry against claims. 	<ul style="list-style-type: none"> • Pays damages for bodily, personal, and emotional injury from a sexual act when a non-employee is hurt. • Address issues of improper reporting of a sexual act and improper supervision of convicted non-employee sex offenders. • Pays limited legal costs if the alleged perpetrator denies involvement. 	<ul style="list-style-type: none"> • Pays damages due to emotional injury, personal injury, and financial damage sustained by a past or present employee or job applicant. • Addresses issues related to employment decisions. • Pays legal costs to defend your ministry, its leaders, and its employees against lawsuits related to your employment practices.
WHEN COVERAGE DOESN'T APPLY	If a claim is made for employment practices or sexual acts or harassment.	If a leader, employee, appointed person, or volunteer conceals a sexual act or harassment, or knows about a previous molestation record.	If a leader, employee, or appointed person conceals harassment or fails to take appropriate action.

This page provides a brief description of coverages offered in Brotherhood Mutual's MinistryFirst® insurance program. This publication itself does not provide coverage of any kind, nor does it modify the terms of any policy. All property and liability coverages are subject to conditions, coverage limits, limitations, and exclusions. For precise detail of coverage, please refer to actual policy forms.