



BROTHERHOOD  
MUTUAL®

# *5 Legal Issues*

THAT CONCERN CHURCH LEADERS

## 1. Loaning Ministry Buildings

### How Do We Protect Our Ministry Against Risks While Letting Others Use Our Building?

Occasionally, people will ask to use part of a church or school for their organization's activities. Being a good neighbor suggests you should be open to helping people. Being a good steward suggests you shouldn't assume the risks of an activity you didn't sponsor. So it's important to know the possible risks of loaning your building to others and take steps to minimize them. Here's how:

- **Identify the Group.** Get a solid understanding of the organization that will be meeting on your property. Is the group's reputation well established and generally accepted by your community? Will it offer a product of service to the public that is consistent with your ministry's biblical values?
- **Know the Activities.** Ask enough questions to understand the types of activities that will happen while the group is in your building. You'll want to know:
  - If the activities are likely to lead to injuries.
  - If the group will adequately supervise any child or youth activities.
  - If the activities will cause undue wear and tear on your facilities.
  - If the group needs to use the entire building or certain parts of it.
- **Require an Agreement.** Decide who will be responsible for any injury or damage caused by the other group's activities. Then have the borrower sign a [Facilities Use Agreement](#) that documents the decision and explains any additional rules the group must follow. Without a written agreement, a court could hold your church or school legally responsible for any accidents that happen.
- **Take Security Measures.** Allowing unrestricted access to your building could leave your ministry vulnerable to theft. It's smart to secure all parts of the building that you want to keep off-limits and lock valuables out of sight. You may also want to have a church member present, supervising the building while others are using it.

Once you've done these things, it's time to extend a warm welcome to the people you desire to host. Most organizations will have no problem accepting responsibility for any loss arising from their activities. In fact, they may have assumed that responsibility was theirs from the beginning.

### Want more information?

Read this free article, [Lending Church Facilities: Facility Use Agreements](#), on [BrotherhoodMutual.com](#).

## 2. Avoiding Lawsuits

### What Are Activity Participation Agreements, and How Can We Use Them to Protect Our Ministry?

Sometimes called a waiver or release, an activity participation agreement helps ensure that someone participating in an activity understands and accepts the risks associated with it. To protect themselves from liability, ministries should have participants sign an agreement before they engage in any activity that could cause physical injury. This would include activities that happen at the church, as well as off-site locations.

A good activity participation agreement is drafted specifically for your ministry and addresses the unique risks people are likely to face. Brotherhood Mutual offers a general form that you can alter, as needed, to address your particular circumstances. After revising the agreement, check with a local attorney to ensure it satisfies the legal requirements in your area.

- **Ask Parents to Sign Agreements for Minors.** Activity participation agreements have limited effectiveness when signed by minors (ages 18 and under). A minor's signature may indicate that he or she understood the nature of the activity. However, a minor will not be bound as strictly by a written agreement as an adult. Therefore, parents should be required to sign any agreement involving a minor, and the agreement should include language that indicates the parents' willingness to be financially responsible for the minor's injuries.
- **Use One Agreement For Each Activity.** In general, it's best to obtain separate signed participation agreements for each activity. For instance, if one participant signs up to go on a whitewater rafting trip and to play paintball a month later, he or she should turn in two separate participation agreements. If multiple high-risk activities are planned to take place during one excursion, it's okay to use one agreement to cover the excursion, as long as each activity is described in the agreement.
- **Require New Agreements Annually.** For ongoing activities that have less likelihood for injury, you may be able to use one participation agreement to cover the recurring activity. For instance, if your group goes bowling once a month, you may want to use one agreement for that activity instead of asking each participant to have a signed release every time you go bowling. Never rely on an activity participation agreement for more than one year—have participants turn in a new signed agreement each year that they participate.

### Need a form to get started?

Download the sample [Activity Participation Agreement](#) from BrotherhoodMutual.com.

### 3. Classifying Independent Contractors

#### How Can Our Ministry Identify an Independent Contractor for Tax Purposes?

For tax purposes, the Internal Revenue Service has developed tests for distinguishing independent contractors from employees. State revenue agencies generally use the IRS tests, as well. The distinction between contractor and employee applies to every worker—from the handyman who performs routine maintenance to the administrative assistant who folds bulletins and supports the church staff. Failing to properly determine an individual's worker status can result in significant penalties at both the state and federal levels.

The IRS says that ministries need to evaluate these three categories when determining whether a worker is an independent contractor or an employee:

- 1. Behavioral** – Does the ministry control or have the right to control what the worker does and how the worker does his or her job?
- 2. Financial** – Are the business aspects of the worker's job controlled by the payer? These include aspects like how the worker is paid, whether expenses are reimbursed, who provides tools and supplies, etc.
- 3. Type of Relationship** – Is the relationship based on a written contract? Does the contractor receive employee-type benefits, such as a pension plan, insurance, or vacation pay? Will the relationship continue? Is the work a key aspect of the business?

Evaluate these categories with the help of a locally licensed attorney. It's essential that you make the proper determination.

As the IRS states on its website, "The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self-employment tax. How the parties work together determines whether the worker is an employee or an independent contractor."

If you still have trouble classifying a worker after consulting with an attorney, you can take the case to the IRS. Fill out and submit IRS Form SS-8 to ask for a ruling on the worker's status. Be aware, however, that this ruling applies for tax purposes only. It may not necessarily be the same for liability or workers' compensation purposes.

#### Looking for more information?

Read through the complete list of Legal Q&A questions about [independent contractors](#).

## 4. Church Security

### How Do We Develop A Volunteer Safety And Security Team?

By following this five-step process, you can create a volunteer force that sustains itself and provides fulfillment to the individuals who give their time and energy to make it a success.

#### 1. Identify Potential Volunteers

Decide whom you want involved in your ministry. It's important to look for people with professional law enforcement backgrounds, retired or active. For the safety side of your team, look for emergency medical technicians, registered nurses, and doctors. Recruit with care. While a person may have a license to carry a concealed weapon, inexperienced gun carriers generally do not have the proper skills to react in stressful situations. They may not be the best choice for your team.

#### 2. Recruit Team Members

Now that you identified potential volunteers, meet them in person. Describe exactly what you're recruiting for, and explain all of the ups and downs involved in this position. Make sure your prospective volunteer knows that an application process involving a criminal background check is required.

#### 3. Train Your Team

In a potentially dangerous ministry like safety and security, policy and procedural guidelines play a big part in the training process. Safety and security training should be ongoing, scheduled, and completed at regular intervals. Attendance should be mandatory—no exceptions.

#### 4. Deploy Carefully

Introduce new volunteers to their areas of responsibility. Check in at regular intervals to see they're doing. Over time, you also should rotate all your volunteers into each of the positions your ministry oversees. Flexibility is an important element of an effective safety and security ministry.

#### 5. Manage Time Off

Arguably, this could be most important step in the process. In managing the ministry, you'll not only help volunteers assume an important job in the church, but also help them to see it as a personal ministry. Try not to allow volunteers' excitement about their ministry to cause them to serve all of the time. Establish a schedule that gives volunteers time off with their family. Everyone needs time away for spiritual refreshment and time to relax. The result is likely to be long-term service and volunteers who are refreshed and ready to serve.

## Want a more in-depth resource?

[\*The Church Safety & Security Guidebook\*](#) provides step-by-step instructions on creating a church safety and security team.

## 5. Firing an Employee

### What steps should we take before letting an employee go?

For various reasons, ministry leaders may realize that an employee is no longer a good fit for his or her job. When preparing to let a ministry employee go, the key is to view termination as a process, not an event. If an employee poses a safety threat or is otherwise significantly disrupting the ministry, consider placing the individual on paid leave while ministry leaders take the following steps.

#### **STEP 1: Talk to Your Attorney**

Employment laws vary significantly from state to state. Before terminating a ministry employee, always consult with a locally licensed attorney for legal advice based on the employment laws in your state.

#### **STEP 2: Determine Whether the Individual is an At-Will Employee**

This doctrine holds that an employer may terminate an employee for any reason not prohibited by law, unless there's a contract stating otherwise. Factors that can weaken at-will employment protection include:

- **Verbal assurances to an employee:** Oral assurances from the employer, such as “we will be able to keep you through year end.”
- **Employment handbook:** Provisions in a handbook that expressly state or imply that employment is to be year-to-year or that termination is only for “just cause.”
- **Employer conduct:** Telling a ministry staff member that his or her position is secure, provided weekly giving remains stable, or a similar statement.

#### **STEP 3: Provide Documentation**

Ministry leaders should carefully maintain documentation for each ministry employee from the time that the ministry hires the individual until their employment ends. The contents of employee files are often critical in defending an employer's decision to terminate employed staff.

#### **STEP 4: Review Employment Handbook**

When you consider an employee termination, review your employment handbook to ensure that the steps you are taking line up with the policies stated in the handbook. Involve your attorney in this process.

### Need a resource?

Read [Letting Staff Go – Best Practices for Ministry Employers](#)

## Brotherhood Mutual's Legal Assist Service

Every day, ministries face legal questions and challenges that can have a lasting effect on the people they serve. As nonprofit organizations, ministries generally can't afford to contact an attorney every time they encounter an issue with legal implications. So they look for guidance elsewhere. Perhaps they turn to a friend, or the internet, or their insurance company.

Before Brotherhood Mutual started offering its free Legal Assist service to ministries in 2008, our attorneys would get calls and emails from Christian ministry leaders. They needed a place to turn, and other sources didn't always deliver helpful guidance.

We found that many of the issues facing ministries could be addressed with general risk management guidance. Sometimes, they needed to hire a local attorney. When our in-house legal team started receiving more than a few calls a week, we launched Legal Assist.

### What is Legal Assist?

Legal Assist provides free, ministry focused resources and services to Christian ministries. Our team has a clear understanding of many of the legal issues ministries face and a desire to see them resolved. We offer three levels of service:

- **Legal Q & A:** Quickly find general answers to the questions ministries leaders ask most often. We point you to related articles, forms, and checklists on our website for more information.
- **Attorney Referral Service:** Seek out attorneys in your area who are members of the Christian Legal Society, the nation's largest Christian legal association.
- **Personal Response Service:** Pose a pressing question to our in-house legal team by submitting a question online. Our attorneys respond personally to every query.

### How Has the Need Grown?

Over the past 10 years, the number of questions posed to our Legal Assist team has grown exponentially. Today, the Legal Assist Personal Response service fields more than 200 questions each month. Society is becoming increasingly complex. As it does, so do the issues that ministries face. Providing accurate, balanced information is just one of the ways Brotherhood Mutual serves Christian ministries. That way, your ministry can avoid pitfalls and stay on course. This document addresses the most common questions ministries are asking our team today.

### Where Can You Find Legal Assist?

Visit [BrotherhoodMutual.com](http://BrotherhoodMutual.com). Find **Legal Assist** at the top of the page or type **Legal Assist** in the search box.

*The information we provide is intended to be helpful, but it does not constitute legal advice and is not a substitute for the advice from a licensed attorney in your area. Accordingly, no attorney/client relationship is created through this process, and no legal advice will be provided. We strongly encourage you to regularly consult with a local attorney as part of your risk management program.*