THE
DEACON'S
BENCH®

Practical risk management guidance
to help today's Christian ministries thrive

STRENGTHEN YOUR
MINISTRY WORKPLACE

5 TRENDS TO KEEP AN EYE ON

THIS ISSUE
OF THE DEACON'S BENCH

helps you, as a Christian employer, strengthen your workplace policies and procedures. We've highlighted a few of the workplace issues that have gained national attention in the news. Ministries should keep an eye on these trending topics: discrimination, harassment, social engineering, mental health, and misuse of prescription drugs.

ADDITIONAL ARTICLES

Drugs in the Workplace

Organizations are updating their drug-free workplace policies to make one thing clear: When it comes to certain prescription medications—like opioids—employees have a workplace responsibility.

Drug Testing for Bus Drivers

Does your ministry comply with federal regulations? Find out who in your ministry is required to undergo mandatory testing.

Six Tips For Happier Employees

Favoring some employees over others can induce stress and lessen productivity. The practice also can lead to legal issues. These six tips help create an atmosphere of fairness.

RESOURCE

What Are the Holes in Your Handbook?

If you need help, Brotherhood Mutual's team of attorneys can review your handbook and provide risk management guidance. Legal Assist is a free service for Christian ministries.

DON'T BE

SHADOWED

BY DISCRIMINATION

Smart policies deal with discriminatory hiring practices as well as workplace retaliation. Christian ministries can face the same issues found in secular business. How they handle the issues is what should set them apart.

HIRING DISCRIMINATION IN THE CHRISTIAN MINISTRY

Christian organizations walk a fine line when hiring. On the one hand, there is narrow protection for ministries to hire based on faith. However, this one exemption from strictly following Title VII of the Civil Rights Act doesn't give ministries creative license when developing policies that guide their hiring decisions.

Hiring practices are enforced by the Equal Employment Opportunity Commission (EEOC). The federal law states that nonprofit and religious organizations may generally discriminate based on the applicants religious affiliation for all positions. It's important to note that some states and counties have narrowly permitted religious discrimination only for those positions performing a "purely religious function," for example, pastors, youth pastors, and worship pastors. This makes it important to have your local attorney review your policies.

"Hiring based on religion is generally not a problem for churches. It gets much more complicated with schools. If you have a lifestyle statement that teachers and staff must abide by, it gives the school some flexibility," said Kathleen Turpin, vice president, human resources at Brotherhood Mutual.

Make sure your policies clearly state your religious beliefs and informs of specific conduct that is strictly prohibited by those beliefs. This helps give the ministry more protection against potential discrimination lawsuits.

RETALIATION

Like discrimination, retaliation is covered under federal law and enforced by the EEOC. It is unlawful to retaliate against an employee who makes a charge, testifies, assists, or participates in enforcement proceedings.

"Typically, retaliation is demonstrated when someone makes a complaint, and as a result, he or she is adversely affected in their employment situation," said Turpin. For example, someone who was a high performing employee suddenly gets a bad review, doesn't receive a raise, or they're blocked from advancement.

When developing or updating policies, ministries should clearly define retaliation and state their position on it. Ideally, the ministry's statement should reaffirm each employee's right to lodge a complaint without fear of retribution. This protection should also extend to anyone who participates in an investigation as witness. It should also highlight the procedure for filing a complaint and the complaint investigation process. A solid policy would indicate that two individuals (preferably one male and one female) are available for employees to report perceived discrimination, unethical behavior, or other concerns.

POLICIES PROTECT THE CHURCH AND ITS PEOPLE

Christian ministries seek to provide a safe and accommodating workplace. Clear policies help foster a culture that aims to treat all employees with dignity and respect. Policies can't prevent all behavioral issues or eliminate human error, but they can be a written record of your ministry's desire to create an environment that aims to treat employees with fairness and equality.
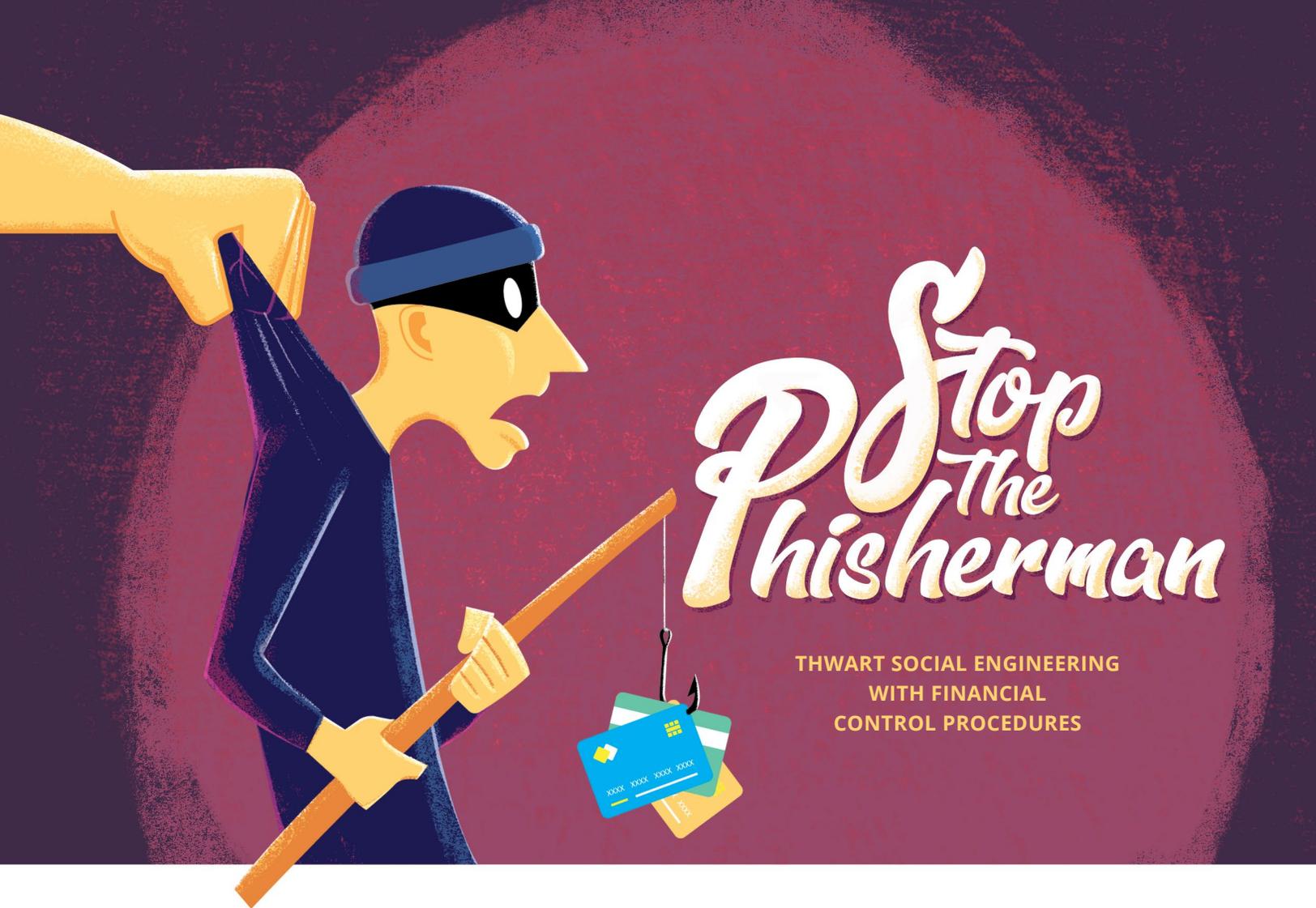
Stop the Phisherman

THWART SOCIAL ENGINEERING WITH FINANCIAL CONTROL PROCEDURES

Today's scammers are much more sophisticated than the ones who created the "Nigerian prince" email scams of the 1990s. While the techniques may have changed, the goal is still the same—to separate your ministry from its financial resources.

BEWARE OF THE APPEAL TO AUTHORITY

Social engineering is the term used for scams that prey on human vulnerabilities. "A social engineer wants to get you to act before you think," said David Longenecker, security operations manager for AMD and author of the *Security for Real People* blog. Longenecker explains a person's instinct is to be helpful, especially in the religious organization world. "If I see this person as an authority figure, I want to respond, and I want to respond quickly."

Examples of social engineering include phishing, whaling, and pretexting. Successful techniques target known trust signals to infiltrate your organization. They use easy-to-obtain information to appear credible or trustworthy—like the names of your pastor's family members—from your ministry's social media or website, or scammers call from a number that features your area code. The common thread is that an email or phone call demands that you act immediately.

Social engineers:

- **Craft a good story.** A common one, especially at tax time, is a request for employees' W-2s that looks like it comes from a person of authority within your ministry.

- **Use scare tactics or extortion.** This may involve getting you to open an attachment that carries a virus or installs ransomware. Other tactics include a threat to expose a "wrong-doing" to extort your organization.

"A social engineer wants to get you to act before you think."

DEVELOP TWO-PERSON VERIFICATION. STICK TO IT. NO EXCEPTIONS.

When it comes to scams, the list is exhaustive and ever-changing—people are the number one target of cyberthieves. Your best defense is to adopt stringent financial control procedures. To help guard against the "urgent ask," develop a two-person verification procedure. "Having more than one person involved in financial transactions is the single best thing you can do to avoid this type of fraud," said Longenecker. A two-step process gives your staff time to think and ensures that no one person can distribute ministry funds alone, for any reason.

A two-person verification procedure works only if it's used. Your process may include documentation for all requests, like a written or electronic form that details who's making the request and for what reason. It also should be signed by two people with authority to do so.

FOUR KEYS TO THWARTING THIEVES:

1. **Put your procedure in writing.** Make it available to staff.

2. **Train all staff on the steps.** Annually retrain those that handle money and communicate reminders to all staff.

3. **Strictly enforce the procedure.** Empower those who distribute funds to say, "no." A script will help staff compassionately communicate the steps, with language like, "I'm truly sorry, but I need to protect the resources of the ministry. I'm sure you understand."

   Email requests. Never hit "reply" to an email to complete verification. Independently verify the request with that person using a known and reliable form of communication. Better yet, get confirmation in person.

   Phone call requests. Never give out banking information or credit card numbers over the phone unless you can independently verify the person's identity and the fund distribution has been approved per your policy.

   In-person requests. Explain your procedure for distributing funds, then obtain the person's information.

4. **Guard banking information.** Never provide sensitive personal or banking information by email.

RECOGNIZING RED FLAGS

The big idea is to put into place control measures that protect against accidental fraud. Your ministry may get a phone call from someone impersonating local law enforcement, your bank, or a denominational leader—someone you would expect to have authority. Two-person verification takes the pressure off acting immediately. "It protects a ministry's financial resources by preventing one person from being tricked into executing a transaction," said Longenecker. "If it's out of the ordinary, it's a red flag."

SOCIAL ENGINEERING: BE SUSPICIOUS

So, how does social engineering work? "An immediate request for money should be a red flag," said Longenecker. Social engineering uses familiar trust signals to get into your organization:

• An email from an address that looks nearly identical to a trusted source. Your pastor's email may be *pastorb.smith@XYZChurch*.org. A scammer can create an email like, pastorb.smith@XYZChurch.gmail.com, and hope that you won't notice.

• A phone call claiming a wrong amount was entered for a charitable donation. Verify, in fact that they did make the $50,000 contribution, and *it's cleared the bank*, before refunding the money. This can be tough, especially if the scammer claims that bills will go unpaid, etc.

• Any communication that requires you to verify your information.

• Anyone that comes to your facility unannounced, claiming to be on an IT service call.
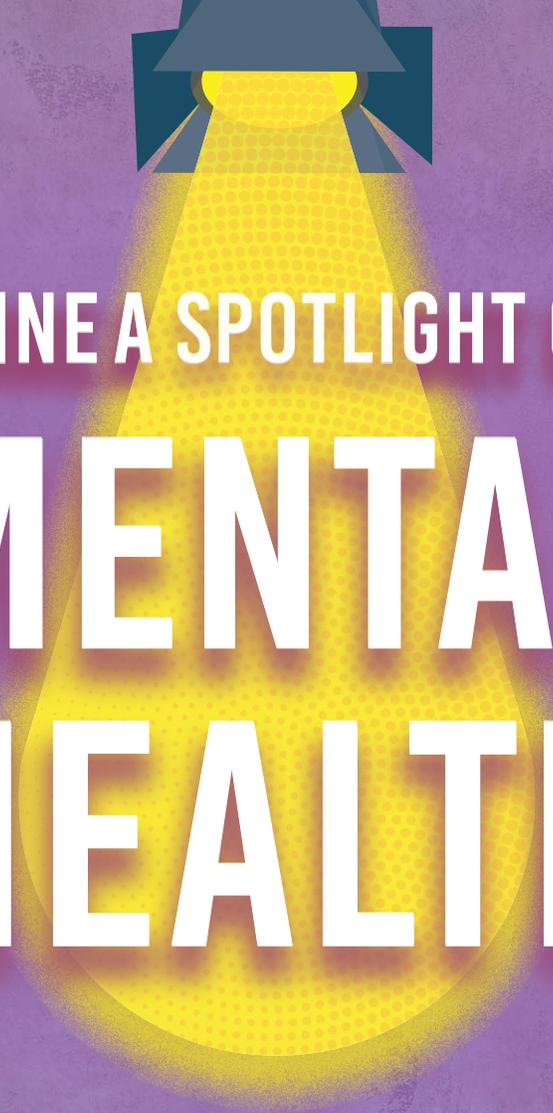
SHINE A SPOTLIGHT ON
MENTAL HEALTH

Many employers feel unsure about how to approach mental health issues. There's good news: as a ministry employer, you have opportunity to help struggling staff members without breaching medical privacy laws.

OFFER ACCESS TO SELF-HELP

Many people have mental health concerns from time to time.[1] A ministry can help by directing employees to self-help and self-reporting tools. If you offer health care benefits to employees, check with your plan administrator to see if mental health benefits or an Employee Assistance Plan (EAP) are included. If not, consider taking on a private plan.

Erika Cole, known as The Church Attorney® and a partner with Whiteford, Taylor & Preston, explains

The Centers for Disease Control and Prevention says that mental health is an important part of overall health and well-being.[2] It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices.

how ministries handle mental health benefits is important. "Now more than ever, it's important that employers, including churches and schools, ensure that the benefits they provide to their employees include a plan for supporting good mental health."

Information should be easy to access or posted in a common area. "Make sure that employees know how to access the benefit," said Cole. Provide information, such as:

• The phone number for a local crisis center.

• Your state's suicide prevention hotline.

• The National Alliance on Mental Illness HelpLine: 800-950-6264.

• For Pastors—information about Full Strength Network.

• The 1-800 phone number offered by your EAP provider, if you have one. Include a detailed list of EAP services offered and limits to care. Some plans may address only work-related issues. Other plans offer wide-ranging counseling programs for family and legal issues, substance abuse, emotional problems, and financial counseling.

Your ministry might also consider consulting with a mental health advocate. A professional can help you:

• Communicate your information.

• Respond to employees who self-report.

• Identify programs that promote overall well-being.

Offer Support Beyond Spiritual Needs

Methods for treating mental illness should include spiritual work, but often, people need additional help from a mental health professional. "The Bible makes clear that we are triune," said Cole. "So that means we are spirit, soul, and body. Regardless of what part of us is wounded, we know God can help us. Methods for treating mental illness often need help from a mental health professional. Jesus said, 'if they're hungry, give them food.' In this instance, if there's a mental health issue, point them to the resource that supports their mental health needs and feeds their spirit. I don't think a ministry has to choose whether to care for the body or the spirit—it can do both."

For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in.
 —Matthew 25:35 (NIV)*

THE COST OF MENTAL ILLNESS

Serious mental illness costs in the United States amount to $193.2 billion in lost earnings per year.[3]

1 in 5 Americans will experience a mental illness in a given year.[4]

[3] Insel, T.R. Assessing the Economic Costs of Serious Mental Illness. Am J Psychiatry. 2008 Jun;165(6):663-5. doi: 10.1176/appi.ajp.2008.08030366.

[4] Key substance use and mental health indicators in the United States: Results from the 2015 National Survey on Drug Use and Health. Rockville, MD: Center for Behavioral Health Statistics and Quality. Substance Abuse and Mental Health Services Administration. 2016.

MAKE YOUR
HARASSMENT
POLICY
TRANSPARENT

REMOVE THE MYSTERY FOR AN EQUITABLE WORKPLACE

Harassment policies should clearly outline your organization's goals for promoting a safe and welcoming workplace. A clear plan and guiding documents help set appropriate procedures to safeguard the organization and its employees. Effective policies should educate employees, state that accusations are taken seriously, and outline that allegations of harassment are investigated thoroughly.

PROTECTING PEOPLE AND MINISTRIES WITH BOLD POLICIES

Many Christian ministries want to take a bold stance against sexual harassment in the workplace. The damage that can result in terms of personal, professional, legal, reputational, and moral, can destroy a Christian organization, such as a church, school, or college. Effective written policies are a baseline from which a culture of transparency and accountability flourishes.

DEVELOPING EFFECTIVE POLICIES

Developing effective policies begins with a clear definition of harassment. Even if it seems intuitive, it's important to state clearly the types of behaviors that are not acceptable.

"An effective harassment policy should educate and train employees to recognize and report. Encouraging employees to report, backs up your statement that it won't be tolerated," said Kathleen Turpin, vice president, human resources at Brotherhood Mutual.

Sexual harassment exists when submission to the conduct is a condition of employment (stated or implied), is used for making employment decisions, substantially interferes with work performance, or creates an intimidating or hostile work environment.

An effective sexual harassment policy should:

• Define sexual harrassment. Unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information that:

- Becomes a condition of continued employment

- Is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive

• Provide examples of sexual harassment.
- Unwelcome sexual advances (visual, verbal, or physical)
- Requests for favors
- Other conduct of a sexual nature (verbal or physical) including offensive behavior
- Gender-based harassment of a person of the same or opposite sex as the harasser

• State that harassment will not be tolerated.

• Clearly outline reporting procedures. It's good policy to have both a male and female available for handling employee reports.

• Encourage employees to report any harassment—this tells employees you want to know so you can work together to make it better.

• Explain the investigation process—the policy should state that allegations are taken seriously and investigated, if warranted.

• Protect those who report from retaliation.

• Discuss disciplinary action—if harassment-is found, disciplinary measures should take place. Depending on the findings, discipline can include clarification of rules/definitions up to and including termination.

UNDERSTANDING AND CLARIFYING HARASSMENT

With sexual harassment, it can start as a misunderstanding as to what behavior is acceptable. "We're hesitant to discuss this in ministry because we're dealing with male/female boundaries and it can be confrontational, which is uncomfortable. We need to create a culture where if something makes an employee feel uncomfortable, they can talk about it with human resources," said Turpin.

HANDLING ALLEGATIONS

When an investigation does need to take place, ministries should do a proper, unbiased investigation. Document all the evidence.

Be intentional and methodical. Turpin emphasizes, that if a ministry mishandles an investigation, it will get out and people will doubt the system.

When dealing with an allegation of sexual harassment, don't tell people who don't need to know. "While you can't promise absolute confidentiality, you should limit those who know as much as possible," said Turpin.

SEXUAL HARASSMENT-LEGAL CONSIDERATIONS

Courts consider multiple factors when determining whether sexual harassment occurred:

• Frequency of conduct
• Severity
• Whether conduct is physically threatening or humiliating
• Whether conduct unreasonably interferes with an employee's ability to perform work
• The totality of circumstances

A key element of sexual harassment is that the behavior must be unwelcome.

As one court stated:

In the day-to-day social exchange between employees, "the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected" sexual advances may well be difficult to discern. *Barnes v. Costle*, 561 F.2d 983, 999, 14 EPD 7755 (D.C. Cir. 1977) (MacKinnon J., concurring). It's important to note this distinction because only when it is unwelcome does sexual conduct become unlawful.

A Higher Expectation

In addition to staying within the legal boundaries for sexual harassment, there are higher expectations about the behavior of people who are involved within ministry.

What may be acceptable or "permissible" under the law, may still be unwise or harmful in a Christian organization.

ANALYZE YOUR CODE OF CONDUCT

DOES IT ADDRESS THE MISUSE OF PRESCRIPTION DRUGS?

CODES OF CONDUCT allow organizations to express the standards of behavior they expect from employees. A code might instruct employees to conduct themselves with integrity, for example. With the opioid epidemic reaching national proportions, it may be a good time to review what your ministry's code of conduct says (or doesn't say) about the misuse of prescription medication.

Many employers feel unprepared to deal with workers who misuse or abuse prescription medications. A 2017 survey by the National Safety Council found that more than 70 percent of employers had been affected by absenteeism, impaired job performance, or other issues created by workers' misuse of prescription drugs. Only 19 percent felt extremely well prepared to deal with the issue.[1]

The National Safety Council surveyed businesses with 50 or more employees. Smaller organizations, including Christian churches, schools, and nonprofits, may feel less prepared. If an employee were to disclose a struggle with substance abuse, would your workplace policies provide enough guidance to respond in a fair and legal way?

If you're not sure, help is available. Several national organizations offer free toolkits containing best practices for responding to the opioid crisis. Many include sample policies and procedures to help you navigate the legal issues involved. Experts

also recommend employee education, supervisor training, and helping employees gain confidential access to treatment. You may find that your medical benefits provider, insurance company, denomination, or attorney can provide guidance in many of these areas.

PURSUING A SAFE AND HEALTHY WORKPLACE

Every organization must develop policies and programs that meet its individual needs. Some ministries develop a personal conduct policy to discourage employees from using drugs, alcohol, or other intoxicants. Others follow drug-free workplace policies. Some do both.

PERSONAL CONDUCT POLICIES

Ministries use personal conduct policies to state their lifestyle expectations for employees. Such policies can address a broad range of behavior, including the use of legal substances like alcohol or tobacco. Typically, ministries reference scripture to support their position. Basing the policy on a

ministry's sincere religious beliefs may help provide First Amendment protection against legal challenges. Consistency is important when applying codes of conduct to employees.

Whenever you create or update ministry policies, it's important to have a local attorney review them. Employment law is a patchwork quilt of federal, state, and local requirements. A lawyer licensed in your state can examine your policies and advise how to stay in compliance. Updating policies regularly can help your ministry address emerging issues and stay in step with changing laws.

HELP IS AVAILABLE

You may feel uncertain about how to address complex challenges like employee drug use in an appropriate, caring, and legal way. If so, consider sending questions to Brotherhood Mutual's Legal Assist team. Our attorneys offer ministries guidance on risk management issues, including employment policies, for free.

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