

The Steward

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Quarterly Insight into Current
Insurance Concerns for Churches



Can Social Networking Get Your Church Sued?

By Frank Sommerville, an editorial advisor at Church Law & Tax Report.

Like the rest of the world, many churches are turning to social networking sites like Facebook, Instagram, and Twitter to connect with people and promote outreaches and other church programs. And that's what these tools were designed for—easy mass communication and media sharing. While this is a creative way to do business and connect with people inside and outside the church, using these social networks could cause some liability problems for your church if you do not set up the appropriate policies and monitoring procedures.

Public sites offer little security. There's virtually no privacy for your staff when they use a social networking site. Anything posted online is available worldwide and never dies, even after a user deletes it. Even if you restrict the privacy settings or the page is pass-

word protected, there are ways to get into that document. Facebook, for example, retains copies of these according to its "Terms of Use Agreement." Social networking sites are public and permanent, which means anything from them may cause you future harm. The New York Times reported a case where jurors were mining information about the defendant online. After one juror confessed, the judge discovered eight of the other jurors were also looking the defendant up online. The judge declared the case a mistrial.

It's easy to collect information on people these days. If your staff is going to talk about anything work-related on any webpage, that posting may create problems for your church, and, in some cases, a liability for your church. As a result, your church probably wants to avoid responsibility for everything

they say. The best way to avoid liability for staff members' postings to social media is to require them to agree that all postings will comply with the church's terms and conditions for social networking by its staff members. In addition to there being little to no privacy on these sites, information spreads easily—social networking can be a breeding ground for rumors and gossip. This is just another reason why your staff should agree to a social networking policy that includes a disclaimer for your church.

Which then leads to the question: Does your church have a social networking policy? Do employees know who "speaks" for the church on social media sites? Does your church have a Facebook page, a Twitter account, or an Instagram account? These are questions you should be addressing.



Let's Keep Playgrounds Fun AND Safe For All!

Here are some startling statistics from the U.S. Consumer Product Safety Commission (CPSC). There are 200,000 estimated emergency room-treated injuries annually due to playground equipment injuries. The most recent study of 2,691 playground equipment-related incidents reported to the CPSC from 2001-2008 indicated that falls are the most common hazard pattern (44% of injuries) followed by equipment-related hazards, such as breakage, tip over, design, and assembly (23%). Other hazard patterns involved entrapment and colliding with other children or stationary equipment. Playground-related deaths reported to the Commission involved entanglement of ropes, leashes, or clothing; falls; and impact from equipment tip over or structural failure.

So what can you do to reduce the risk of injury on your playground? There is a very thorough document by the CPSC, titled "Public Playground Safety Handbook." Just some of the key ways to reduce the potential for significant injury include:

Signs

Signs should be posted near the equipment giving guidance as to the age appropriateness of the equipment.

Appropriate surface materials to protect from falls

Ensure that an appropriate surfacing material is under the equipment. These include unitary materials (rubber mats and tiles) or loose-fill surfacing materials (engineered wood fiber or rubber mulch products designed specifically for playgrounds). Loose-fill materials will compress at least 25% over time due to use and weathering.

These surface materials should be maintained and replenished to maintain their appropriate level. Hard surfaces are not recommended, such as asphalt, carpet, concrete, dirt, grass, or wood mulch.

Inspections and Maintenance

A comprehensive maintenance program should be developed for each playground. The manufacturer's maintenance instructions and recommended inspection sched-

ules should be followed. Playgrounds should be inspected at least monthly. All repairs and replacements of equipment parts should be completed following the manufacturer's instructions. Worn out equipment should be removed.

Recordkeeping

Records of all maintenance inspections and repairs should be retained, including manufacturer's maintenance instructions and any checklists used. Also, any injuries should be recorded and maintained.

Also, if you are just starting to think about installing a playground, check with local ordinances to ensure compliance!

In addition to the CPSC's resources, some additional information and suggested checklists can be found on the Insurance Board's website, Volume 4 *Loss Control Manual Youth Activities: Day Care, Trips, and Camps*: http://www.insuranceboard.org/safety_solutions/youth_activity.aspx.

Our kids will thank you!

+ Lessons from a Loss: Don't Just Do it!

In the movies and on TV, firing people has turned into entertainment. Most famously, Donald Trump's signature expression: "You're fired!" In the real world, it's just not that simple. And let us make this clear up front: Don't ever terminate an employee without legal counsel or the advice of a seasoned human resources professional.

Recently we reviewed our Employment Practices Liability claims. By far, the most common source of claims is "wrongful termination." Even in an "employment at will" legal environment which favors employers, it is essential to carefully set the stage for a termination, especially if it's to be based upon issues of performance.

In all cases, no one individual should have the power to unilaterally terminate an employee without the approval of a higher authority. For example, the Director of a childcare program should be required to have Board approval. The objective, in part, is to take the "personal" out of "personnel," and to be sure another set of eyes is properly assessing the situation.

There are several key questions to answer:

1. What does the organization's by-laws or employment manual say about the termination process? For example, by-laws may be explicit about how clergy are selected

and approved, but they may be silent about termination and suggest that a vote of the congregation is required. As uncomfortable a prospect that may be, failure to act within the bounds of by-laws may result in litigation.

2. Are there potentially issues of discrimination latent or implied in the termination – age, gender, disability, race? In a case we encountered, it appeared that an employee's disability had become inconvenient for the employer, while no attempts had been made to accommodate the disability or otherwise document a performance issue.
3. If performance is an issue, has there been a process of progressive discipline? The immediate defense of a performance based termination is "No one told me I was doing something wrong." Progressive discipline means a documented series of steps to include verbal and written warnings and perhaps even an improvement plan.

While religious institutions may be exempt from certain employment law, these standards are a matter of conscience and good faith. A termination can be a traumatic event, and should be done with compassion. The process must be



defensible in court. Therefore, we encourage an investment in legal counsel **before** termination.

Please visit www.InsuranceBoard.org and see *Safety Solutions/Church Management. Loss Control Manual, Vol. 5, Church Management (p. 15) includes info: "Termination Interview Conduct."*

For lots of good additional advice regarding Employment Law for churches, visit our website and view the recently recorded webinar done by ROETZAL law firm. This is free and can be found at: http://www.InsuranceBoard.org/safety_solutions/webinar_information.aspx

Fire Prevention Safety Checklist!

While fire prevention should be a year-round effort, there are specific things that you should do at least once every year, without fail. Regardless of whether your ministry is a church, school, or camp, take steps to protect your ministry, and the families you serve. Have you recently done all of the following?

- ◇ Update your emergency contact list and give a copy to ministry staff members and your local fire department.
- ◇ Update and distribute copies of your church floor plans to your local fire department.
- ◇ Update your evacuation plans and review with your staff and volunteers.
- ◇ Update maps and evacuation routes and post them visibly in every part of the building. Each location should have at least two possible emergency exit routes.
- ◇ Update your property inventory list with any new items or equipment that you've added over the last year. If you've never taken an inventory, create one this month.
- ◇ Check all your emergency lights both inside and outside, and replace burned out bulbs and batteries.
- ◇ Be sure exterior trash containers are kept away from the building to prevent fire and avoid being easy targets for arson.
- ◇ Ensure that any space heaters are used appropriately, and are at least three feet away from flammable items.
- ◇ Check your storage areas. Be sure to use pallets or shelving units rather than having boxes rest directly on the floor. Items should be at least 18 inches below sprinklers or 24 inches below ceiling height. (Be sure to check with your local fire department as regulations vary.) Do not store anything in your mechanical or furnace rooms.
- ◇ Check all entrances/exits to be sure they aren't blocked by storage items, furniture, or landscaping, etc.



Cell Towers: To Lease or Not?

Frequently, churches are approached by phone companies, requesting that they lease land or exterior building access to install a cell phone antenna and/or tower.

While a cell tower lease is a real income

opportunity for a church, the commitments are for a very long time and may be complicated. Cellular leases usually last from 20 to 35 years.

For such a commitment, it is important to

retain competent legal counsel from a specialist. Sign nothing, not even an "option" until you have had a conversation with legal counsel.

Among the issues that may arise: mortgage approval, income and terms for escalation of rent, restrictions on building use or changes, impact on building structure, size and visibility of antennas, insurance, and multiple providers on a single tower.

No matter who is a tenant on your property, it is important that you have a lease. As the landlord, you should have control and understand the terms.

If you are considering a cell tower lease, see more complete information on our website courtesy of John Pestle, Esq., Varnum Attorneys, "Cell Tower Leases – Do's and Don'ts for Churches", 2010.

What Your Church Board Should Know About Gun Laws

In recent weeks we have seen a number of publicized incidents of shootings in public places. At the same time, we are seeing a number of States enact new "concealed carry" gun laws. Most State laws provide a business or institution the opportunity to forbid weapons in their establishments by posting notices at entries. Wisconsin has passed a most peculiar law that grants legal immunity to any institution that permits concealed carry in their buildings.

The U.S. has a unique gun culture compared to other countries, but yet within the U.S. there are widely differing views about guns. The variety of laws and the differing views, even among church members, has required the IB to respond to questions and provide guidance about guns in churches, to include concealed weapons as a component of church security.

Depending on worship attendance numbers, accessibility characteristics and the age of congregants, we recommend that churches train an usher cadre to be responsive to the safety and security of congregants. That is, they should be more than greeters. They should be able to direct an efficient evacuation using all available exits. We encourage First Aid/CPR/AED training. Likewise, leadership should assess the risk of unwanted visitors or intruders in the particular community. This might include a generalized threat or specific threat arising from an ongoing family dispute. We would expect such an assessment be based on data rather than sentiment.

If the threat rises to the level of requiring an armed guard, we recommend that your church retain the services of an off-duty police officer which has many advantages including the visible deterrent of a uniformed professional and the knowledge that the officer has been fully trained. (S)he has more immediate access to back-up support, and likely will be defended by the local jurisdiction if there is an allegation of an improper shooting.

Most security guard services provide guards without weapons. That is because of the high challenge of properly training individuals with firearms to respond appropriately to a threat situation. We recommend that your ushers be trained to contact police when they identify a threat and that you not sponsor or condone a program in which congregants are armed.



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