



2018 FISHER PHILLIPS WEBINAR
MARCH 14 | TAMPA

Is Your Volunteer a Liability?

Agenda



- The Fair Labor Standards Act
- Background Checks
- When Things Go Wrong
- Volunteer Agreements



Wage & Hour Issues

4 Main FLSA Requirements

1. A minimum wage (currently \$7.25 an hour).
2. Premium pay for overtime work (at a rate of 1.5 times the “regular rate” of pay for over 40 hours worked in a single workweek).
3. Certain recordkeeping, including accurate time records.
4. Limitations on the employment of minors under 18.

Definition Time

- Employee = “an individual employed by an employer.”
- Employ = “to suffer or permit to work.”
- Volunteer = “an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.”

Volunteers

- Churches have many types of volunteers who serve regularly. Many may not be “volunteers” under the Wage Hour Law:
 - Must be truly voluntary work (not required or forced)
 - Must be serving without contemplation of pay
 - Must be performing services that the church does not typically pay for
 - Must be for a charitable or religious organization (only non-profits)

Problem Areas

- Employees cannot volunteer to do the same type of work they do for the church as their primary job
- Volunteers handling reception duties, lawn maintenance, computer repair, etc. (functions we usually pay for)

The Department of Labor Weighs In

- “The Buffet cannot rely on the goodwill of the Church members to provide labor that would otherwise be done by paid employees and be compensable under the Act. And the Buffet cannot pressure individuals into providing free labor, then shield itself from FLSA liability under the guise of the Church’s religious mission.”

Liability Issues

- Employees can claim back pay for unpaid overtime for 2 years if it is a non-willful violation; 3 years if it is willful.
- If they retain a lawyer, they can go right to court (and often do) and recover attorneys fees for any recovery.
- These laws are strictly interpreted; you cannot almost get it right.
- Most employers have serious problems in wage hour compliance; we usually recommend settling right away rather than spending more fees than necessary.
- We recommend you have a wage hour audit to get your employees properly classified and then correct the problems at an appropriate time (determined with counsel).

Workers Compensation

- Scenario – your volunteer falls off a ladder and breaks his leg while hanging church Christmas decorations. He presents the church with his medical bills. Who pays?
- In most states, workers' compensation insurance policies do NOT cover volunteers.



Criminal Background Checks

Who Should be Background Checked?

- All employees
- Volunteers with unsupervised access to children
- Contractors with unsupervised access to children
- Volunteers who will handle money



What Type of Criminal Background Check?

- Contractors/volunteers:
 - Either fingerprinted; or
 - State criminal record search only
- A state search will only show those issues occurring in Florida



Who Should Bear the Cost?

- Employees/Volunteers – typically the church bears the cost.
- Contractors – depends; some church require the contractor to bear the cost as a condition of the contract.
- If your contractor has other employees (i.e., a food vendor with employees working at your church), you should require that either you do the background check at the contractor's cost or that the contractor be required (by your contract) to share the criminal background reports with you. Don't rely on their judgment that someone is fit to work at your church.

What Criminal History Should Preclude Involvement?



Criminal Background Reports

- These reports are difficult to read.
- They might not always show a disposition.
- Technical terms may lead you to the wrong conclusion.
- If you are unsure what the information in the report reflects, check with counsel before you make any decisions.
- You may need to get additional details from the applicant about their background before you can proceed.

What Types of Crimes Should Preclude Involvement?

Crimes involving:

- Violent, aggressive, or sexual offenses.
- Offenses involving children, domestic issues, the elderly or disabled.
- Drug or alcohol related offenses.
- Multiple offenses of a non-aggressive nature.
- Financial offenses if the individual will have unsupervised access to money.
- Driving related offenses if applicable.

Criminal Records

- Scenario – a member of your church has volunteered to teach Sunday School. You do a background check and reveal that this member was convicted of petty theft 10 years ago. You are not sure what to do.

When Things Go Wrong

- If you receive a complaint, or have reason to suspect of inappropriate behavior, take immediate action just as you would if one of your employees was at issue.
- Investigate all concerns promptly and follow back with the person who raised the concern initially.
- You **can** stop someone from volunteering and this should be your policy whenever you are investigating concerns.

When Things Go Wrong

- Scenario – a trusted volunteer leads your weekly youth bible study. One of the students tells you that the volunteer has been sending her some suggestive texts that make her uncomfortable. You, however, know the volunteer is happily married and cant believe that he would ever do anything inappropriate.

When Things Go Wrong

- Scenario – Your church is hosting a smorgasbord dinner this weekend to raise money. Several kind church ladies have volunteered their time to help prepare the food in the church kitchen. Some have done this before, and some are new this year. When you stop by, you notice that the volunteer working on meatballs is coughing a lot, and that the meat seems to have been left out of the refrigerator for a long time. You are a bit concerned, but want to be careful to not offend her.

Volunteer Agreements

- Are they required.... No.
- Are they a good idea....Yes.
- Having all volunteers sign an agreement can help minimize the risks of future allegations.

Volunteer Agreements

- I am not an employee; I am volunteering my time to the Church as a service of my own free will, and without any expectation of receipt of any form of wages or compensation. Similarly, because I am not an employee of the Church I understand that I am not entitled to any other terms, conditions, or benefits of employment, including any workers' compensation benefits or unemployment benefits

Volunteer Agreements

- I have received a copy of the Church's policies and procedures and understand that I am expected to abide by the Church's policies and procedures and external regulations governing my actions, including but not limited to those relating to ethical behavior, safety, protection and non-disclosure of confidential information, computer use, financial responsibility, and alcohol and drug use.

Volunteer Agreements

- I also agree that I will not now, or in the future, either directly or indirectly commence or prosecute any action, suit, or other legal proceeding against the Church related to my participation in any volunteer events or activities.



Final Questions



THANK YOU

FOR THIS OPPORTUNITY

Lisa A. McGlynn

lmcglynn@fisherphillips.com

813.769.7518