

GODLY HR POLICIES AND PROCEDURES

Frank Sommerville, JD, CPA

HR STRATEGY

- Relationships first!
- Transformation rather than transactional
- Integrity and Excellence
 - Romans 13:1-2: *Let every person be in subjection to the governing authorities (and their laws).*
 - 1 Peter 2:13: *Submit yourselves for the Lord's sake to every human institution.*
 - Titus 3:1: *Remind them to be subject to rulers, to authorities.*

LAW CHANGES

- LGBTQ Issues
 - New administration has changed the priority on enforcement of Title VII as applied to LGBTQ
 - One appellate court decision affirming an exception for religious employers, so far
 - But two have denied religious employers an exemption
 - US Supreme Court ruled individual religious freedom prevails over LGBTQ rights.

POLL

- Where is Canada located compared to Texas?
 - East
 - West
 - North

MINISTERIAL EXCEPTION

- No labor law applies to the relationship between the church and its religious employees (called the ministerial exception).
- Applies to all clergy employed by the church.
- It may also apply to employees without ministerial credentials:
 - Music Directors
 - Childcare workers with religious responsibilities
 - Children's Directors
 - Teachers in Christian schools with religious responsibilities

NON-CLERGY SUBJECT TO MINISTERIAL EXCEPTION

- Applies to all employees with religious or spiritual responsibilities.
 - Religious training
 - Title
 - Perform in agreement with religious tenets
 - Communicates the church's message and mission
 - Selects or creates religious content
 - Leads others to Christian maturity
 - Church reviews employees using ministerial requirements
 - Church provides continuing religious education

MINISTERIAL EXCEPTION – BUILDING THE CASE

- Don't assume this exception will apply
- Take active steps to identify and document these positions before any challenges
- Mark job descriptions to note the exception
- Making this determination affects
 - Employment agreements
 - Pay arrangements
 - Work requirements
 - Life requirements

RECENT MINISTERIAL EXCEPTION CASES

- *Billard v. Charlotte Catholic High School*, 101 F.4th 316 (7th Cir. 2024). Ministerial exception defense cannot be waived by the church/school.
- *Garrick v. Moody Bible Institute*, 95 F.4th 1104 (7th Cir. 2024). Disparate treatment because of gender can be actionable under Title VII, though the religious employer has sincerely held religious beliefs about gender.
- *Seattle Pacific University v. Ferguson*, 104 F.4th 50 (9th Cir. 2024). In response to many complaints, the State of Washington may open an inquiry into the employment practices of the Christian University because it prohibits employees from participating in same-sex intercourse and marriages. The state may determine which employees are subject to the ministerial exception.

POLL

- What is the longest river in Texas?
 - Rio Grande
 - Trinity
 - Brazos

NEW HARASSMENT DEFINITION

- Harassment is unwelcome conduct that is based on race, color, religion, sex (including **sexual orientation, gender identity, or pregnancy**), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history).
- Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- Sex-based harassment includes harassment based on sexual orientation or **gender identity, including how that identity is expressed**.

PAYROLL & FRINGE BENEFITS

- Making Sure Workers are Classified correctly
 - IRS
 - DOL
 - State
 - **New Minimum Salary for Exempt Employees** - As of July 1, 2024, the federal minimum salary for an exempt employee is \$844 per week. As of January 1, 2025, the federal minimum salary for an exempt employee is \$1,128.
- **New DOL Contract Labor Rules** – Effective March 11, 2024, the DOL uses the economic reality test to determine independent contractor or employee status for FLSA. First, is the worker economically dependent on the company for work? Second, does the worker have a realistic opportunity to make a profit or lose money? It also re-emphasizes the importance of the six-factor economic reality test.

FLSA

- Two basic steps:
- Classify the employee *properly*
 - *Ministerial exception*
 - *Exempt employee*
 - *Nonexempt employees*
- Apply the rules
 - Compensation
 - Recordkeeping

DUTIES THAT QUALIFY FOR EXEMPTION

“EAP EXEMPTIONS”

- Minimum weekly salary requirement is \$684
- “Primary Duty” = 80%+ of employee’s time
- Keep records and verify at least once per year
 - Accurate job descriptions for *every* position are key.
- Executive Exemption
- Administrative Exemption
- Professional Exemption

SPECIAL RULES

- Part-time workers still must meet the minimum salary test
- Comp time must be taken within the same work week.
- Volunteer time must be paid if the employee volunteers in an area related to their work responsibilities
- Nonexempt workers must be paid overtime – even if it was not authorized

POLL

- What is the largest metropolitan area in Texas?
 - Dallas
 - Houston
 - San Antonio

THANK YOU

- Frank Sommerville, JD, CPA
- fsommerville@nonprofitattorney.com