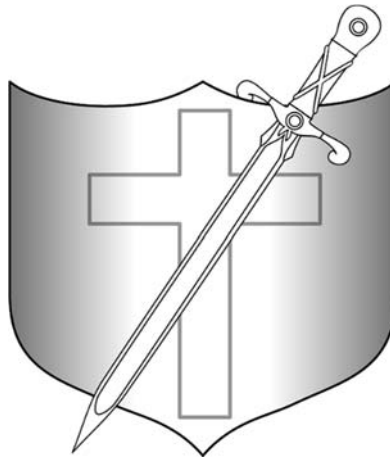


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**EMPLOYMENT LAW AND HANDBOOK CONSIDERATIONS
FROM THE ATTORNEY'S PERSPECTIVE
*THE EMPLOYER'S SWORD AND SHIELD IN THE EMPLOYMENT ARENA***



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EMPLOYEE HANDBOOK CONSIDERATIONS

THE SWORD AND SHIELD OF THE EMPLOYMENT ARENA

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Most employers, or at least those who attempt to incorporate “best practice” concepts, generally apply a great deal of resources towards the forging and honing of an employee handbook. This is true even though, as a sword and shield are discretionary weapons to a soldier, so, too, is an employee handbook to an employer; a handbook is not, generally speaking, a legally required weapon or tool of the employment arena.

However, without a well-crafted employee handbook, forged to meet specific employment- and mission-related philosophies of the employer, the employer stands greatly exposed to employee mistrust and misunderstanding, inefficiencies, a lack of empowerment throughout staff, poor succession planning, financial loss, litigation, and so on. On the other hand, a thoughtfully-crafted handbook, with policies that are consistently honed and followed, may substantially defend against and mitigate, if not at times eliminate, many of these risks.

A good **sword** should be hard enough to hold an edge, while **strong** and **flexible** enough that it may absorb tremendous shock at just about any point along its length without loss of integrity. A sword should be balanced throughout its length so that it may be wielded effectively. **Strength. Flexibility. Balance. Effective.** *Attributes also of a well-honed employee handbook.*

Below is a list of concepts for employers to consider when forging and honing their own unique employee handbook.

1. Unique Employment Culture Must Be Considered. Employee handbooks may serve as an excellent tool to convey the employer’s faith, culture, and philosophy on how human capital should be managed (and honored) in the workplace. Form handbooks many times contain irrelevant policies, may omit important policies, or may include promises or processes that not all employers are able to meet or follow. Each employer’s handbook should express a specific tone or culture of employment, and should avoid, *where possible and advisable*, boilerplate policy description or intimidating language. *For religious organizations especially, employee handbooks should be tailored to proudly and boldly address and express the faith and mission of the employer’s workplace and existence.*

2. Expectations. Another central goal of the employee handbook is to appropriately set expectations amongst staff, management and the organization as a whole. The handbook is a communication tool. It orients and educates employees, new and seasoned, to the ins and outs of various, and usually anticipated, workplace scenarios. Well-written policies that allow appropriate flexibility to management will generally best serve the more difficult or unusual circumstances that may arise in the workplace, and employee expectations may be appropriately managed even in the most unusual of employment scenarios.

3. Keep it simple, if you can. Policies should be brief (as the circumstances permit) and easy to understand. The entire employee population should be considered when drafting a handbook. Some very important legal considerations make brevity a challenge. For example, the Family Medical Leave Act and anti-harassment policies are generally not “short” on content, but there is good reason for the content. Do as the attorney says, not as the attorney does...

4. In the Beginning and the End, there is Buy-In. As a general consideration, the initial page of an employee handbook should not be the employment at-will policy statement - - *We can fire you whenever we feel like it! Welcome!* Statements such as this may set a defensive tone in the reader and may cause the employer to lose an opportunity of employee buy-in. Instead, consider using the first page of the handbook as a welcome message that incorporates the employer’s culture, faith, and philosophy on how human resources are honored and appreciated. The at-will policy statement is a necessary element to any handbook, but not before the tone of the culture is established.

5. Consistency and Efficiency. *Consistent application of employment policies is a key factor to mitigate staff mistrust and misunderstanding.* A consistent application of policies will protect the employer from discrimination claims and other claims based upon some form of unfair treatment. Moreover, management personnel may be greatly empowered and efficient and forthright in their decision-making when a written policy exists to address and process certain employment situations. *Indeed, an employee handbook, consistently applied, may serve as an administrative time saver, not to mention a shield against employment-related claims.*

To conclude the handbook, the employer should incorporate an employee acknowledgement of receipt, indicating that the employee has received and had the opportunity to review (or has reviewed) the handbook, and reiterate the at-will policy and certain welcoming statements used in the introduction. The acknowledgement should affirm that the employee has the opportunity to at any time discuss any policy with management. The acknowledgement, signed by the employee, should be maintained in the employee’s personnel file.

6. Statement of Faith. For churches and similar religious organizations, the employee handbook should affirm and expressly incorporate the organization’s Statement of Faith. The Statement of Faith should reflect the organization’s sincerely held religious beliefs. If those beliefs include prohibition of activities such homosexual activities or same-sex marriages, the Statement of Faith should incorporate as much, as should the handbook (not to mention other governing documents). All applicants and employees may be required to affirm the Statement of Faith, and the affirmation should be renewed annually.

Since the laws on same-sex marriages changed so recently, no one is certain what steps will be needed to protect religious freedom in this regard. By adopting a Statement of Faith and incorporating it into an employee handbook and other important governance or operational policies, religious organizations will be in a better position to shield itself if the need arises.

7. Legal Compliance. The employee handbook should take into account the secular laws that swirl throughout the employment arena. Federal, state and local laws and regulations have a substantial impact on employment practices, and these laws may vary from state-to-state or by locality. Federal employment laws and regulations are generally uniformly applicable. *An employee handbook should be crafted in a way that expresses an employer's general understanding of and, if nothing else, an appreciation for applicable laws.* For example, policies should address employment law concepts and practices recommended, if not dictated by the Fair Labor Standards Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Civil Rights Act of 1964, and the Immigration Reform and Control Act of 1986, to name a few.

For religious organizations, there are certain exceptions or exemptions available to with respect to certain otherwise unlawful or discriminatory employment practices. For example, a church may dismiss an employee who is a “minister” (as defined by applicable judicial legal opinions) without regard to certain secular employment laws. For another example, “ministers” who perform sacerdotal functions (and not necessarily all “ministers” as defined by applicable judicial legal opinions in relation to other employment law exemptions) are subject to different federal withholding and self-employment tax rules.

It is important to include or refer to applicable exceptions or exemptions in the employee handbook. By such inclusion or reference, a church employer may eliminate or mitigate potential misunderstanding by an employee who may be affected by certain “special rules” that govern the employer-employee relationship, and the employer may avoid adverse legal treatment if such exceptions are omitted or are otherwise altered by secular, boilerplate policy statements.

8. Be Aware of Mandatory Language. *A handbook should be sufficiently flexible to allow for appropriate managerial discretion in most situations.* Words such as “shall”, “must” and “will” are generally to be avoided when outlining a particular policy. For example, rather than using, “If this policy is violated, the employment shall be disciplined or terminated.”, consider using, “If this policy is violated, employee discipline may occur, up to and including termination of employment.” Management of human beings on a day-to-day basis is so unpredictable that managerial discretion should accompany most employment policies. There may be certain policy statements for which the organization maintains a zero tolerance, but remain cautious of mandatory language that should, in all reality, be discretionary or more flexible.

9. Be Aware of Detailed Procedures. In addition, employers should be ever aware of detailed procedures contained in any particular policy. Investigative procedures, disciplinary procedures, and evaluation procedures are a few areas commonly riddled with written details on how these subjects should or must be administered.

For example, a policy such as -- “Each employee will be evaluated quarterly and a written evaluation will be provided.” -- may well put a mandatory burden on employers to evaluate employees quarterly, which opens the door to misapplied policies and practices. The policy

should mirror or dovetail with the standard practice, not vice versus, generally speaking, and the policy should be flexible enough to allow for managerial and administrative discretion.

Another example, just about every notice or hint of harassment in the workplace should bring the particular human resource manager *first* to the anti-harassment policy to identify the procedures the organization has in place to address such workplace situations. The procedures not only empower the investigative personnel, but they also leave the employer open to missteps or misapplication of important policies and procedures. Without continual reference to and use of the procedures that are established for particular circumstances, the risk for inconsistencies in the approach, investigation and determinations increases. This could open the employer up for additional scrutiny by disgruntled employees, investigatory agencies, and even the judiciary, if a claim proceeds to formal litigation.

10. Defining Employee Categories. Employers generally have several different and unique definitions of the various employee categories, such as part-time, full-time non-exempt, full-time exempt, temporary, seasonal, intern, probationary, ministerial, and so on. The employee handbook should be tailored to meet the employer's employment model and to capture the requirements of applicable employment law (discussed, in part, below).

The use of defined terms should be consistent throughout the handbook. This can become difficult or troublesome when federal law, for example, has specific criteria for particular benefits. For example, the Patient Protection & Affordable Care Act (ACA) necessitates counting hours for part-time employees, and requires that employers make certain affordable healthcare insurance available to certain employees.

If a law, such as the ACA, defines full-time employee as an employee who is regularly scheduled to work 30 or more hours a week, an employer's different definition (i.e., an employee who is scheduled to work 35 hours per week, for example) will be trumped and of no effect in regard to the applicable law. The application of a policy that conflicts with federal or state law may be an unlawful employment action and could subject the organization to employment-related lawsuits among other adverse bi-products.

11. Employee Classifications and FLSA Considerations. The Fair Labor Standards Act defines "employ" as "to suffer or permit to work", and defines "employee" as "someone employed by an employer". Exempt employees - - administrative, executive, professional, etc. as defined by the FLSA - - are not entitled to overtime compensation, while non-exempt employees are entitled to overtime compensation for "employ" beyond 40 hours in a particular workweek. To limit budgetary exposure, some organizations define full-time employees as those who are regularly scheduled to work 40 hours in a work week. Many times this type of classification is designed to limit the number of employees entitled to certain fringe benefits, such as vacation pay, time off, sick leave and so forth.

However, the same organization may also hold a strong policy against allowing work into overtime. In the example above, there is a thin line between an employee who is appropriately

classified for employment-benefits purposes and one who risks violation of policies applicable to the prohibition of working overtime. This situation described is not very flexible and is destined to break upon the slightest resistance. Employers are wise to allow for some flexibility in employee categorization so that employees and management may concurrently and efficiently comply with established policies and the law.

Employees who are “ministers” or “teachers”, as defined by applicable law, may be exempt from certain FLSA minimum wage and compensation requirements. Be careful, however, not to classify custodial, daycare-type employees as “teachers” if such a classification would run afoul of applicable FLSA and Department of Labor guidance and regulations.

12. Payroll Practices. The handbook should outline non-exempt employees’ duty and responsibility to record all time worked. The employer, on the other hand, has a non-delegable duty to have and maintain records showing hours worked by non-exempt staff. Appropriate employee interaction should help to explain how these processes work. Exempt employees may also be required to record time worked, but such recordation is not required by the FLSA. Pay periods and mandatory and permissive deductions (for exempt and non-exempt staff) are also good policies to incorporate into the handbook.

13. Hours of Work. Consider how the employer’s business hours are defined in any policy statement. Regular hours, special work days/nights, and inclement weather situations are customary policy statements. Also, if certain staff members of a church or religious organization are required to attend religious services on weekends, a policy statement to that effect will help level expectations. (A non-exempt staff member’s attendance at required, or even strongly recommended religious services is likely compensable time worked.) Time recordation and payroll practices may be facilitated by transparent scheduling and communication processes.

14. FMLA, ADA and Workers’ Compensation. The statutes that constitute this confluence of employment law can be one of the most challenging to manage for an employer. The Family Medical Leave Act, the Americans with Disabilities Act and State Workers’ Compensation laws are each overseen by a separate agency, and these laws generally overlap to some extent. If an employer is not a covered employer under the FMLA, the employer may well be a covered employer under the ADA and workers’ compensation rules. Managerial staff should have a decent grasp on if, when and how these laws apply and how to comply with their sometimes difficult to identify or manage requirements. Policy statements can greatly assist employers address these laws, and can certainly get the employer on the right track right from the start of an employee’s leave taken under and protected by any of these laws.

For example, an employee may be out on FMLA leave for 12 weeks and then may be entitled to additional leave under the ADA. Portions of the leave may be paid due to employer policy or for paid time off accrued by the employee. Additional compensation, deductions, and reporting issues arise for a leave that is spurred by a work-related injury. This trifecta of laws can be a challenge, but with appropriate policy creation and application, the employer may honor the law, the employee and the organization as a whole.

15. Employment Benefits. The handbook is a good place to outline the various employment-related benefits. Vacation, paid time off, bereavement leave, sabbatical leave, disability benefits, and so on. Policy statements in this regard should always include a disclaimer that the nature and extent of benefits may change at any time, with or without notice to the employee, and the handbook should express the employer's discretion to discontinue any benefit. The benefits summary should be a general overview and should allow for flexibility. In all cases, the specific plan documents control over the handbook. Many times "See HR for details" is an appropriate way to manage expectations and any conflicts between a plan and a policy.

16. Attendance and Time Off. Most handbooks identify attendance and punctuality as core employment requirements. Employers should avoid policies that indicate, such as, "After three days of unreported absences, the employee shall be deemed to have resigned." The Americans with Disabilities Act or other laws may require more from an employer, such as attempted dialogue and an attempt to understand an employee's particular situation. The handbook may identify holidays recognized by the employer (and a policy to reasonably accommodate other religious holidays recognized by an employee). Also, vacation time and other opportunities for leave may be identified. If leave is compensable, consider identifying the manner in which it may be taken, such as in 1-hour or 1-day increments, and how the leave is recorded for compensation and leave-bank purposes.

17. Child Abuse Reporting. Organizations that maintain children's or youth programs or daycare should consider adopting a child abuse reporting policy that addresses applicable state law on the issue. Child abuse reporting laws are similar but may vary some from state to state, so any policy should be tailored to meet the applicable legal requirements. A sample policy (under Texas law) is attached.

18. Update and Train. When an employee handbook is ready for presentation to staff consider how it may be rolled out. Consider training and educating managerial staff on the handbook and how the employer expects the handbook to be used on a regular basis. Consider hosting "lunch and learns" for staff to focus on certain sections of the handbook, and maintain a record of attendance. For those employees who do not or cannot attend, consider having the employees confirm via email or other record that they reviewed the policies that were part of the staff development session. Perhaps assign different managerial staff to facilitate different meetings scheduled for these purposes. These opportunities are a great way to build trust, strengthen the mission and faith, and to avoid misunderstanding down the road.

19. Handbook is No Substitute. *A handbook, no matter how well-crafted and honed, is no substitute for effective employment practices.* Personal interaction and dialogue are critical components to maintain legal compliance and employee morale. One-on-One interaction with individual employees is an excellent way to manage expectations and employee production. The handbook may well serve as a guide to these interactions, but it is in fact the fair, consistent and law-honoring interactions, not the policies themselves, that will best make the employer-employee relationship a healthy one.

20. Key Sections to Consider. This paper is not intended to be a complete compilation of all employment policies that may be advisable for any particular organization. Again, each organization's culture, faith, mission and employment philosophy is important in determining the scope of policies to be formally adopted. However, below is a list of policy considerations, and some policy considerations are attached.

- a. Drug/Alcohol.
- b. Confidentiality.
- c. Introductory/Probationary Period.
- d. Payday.
- e. Moonlighting.
- f. Nepotism.
- g. School or Assistance Programs.
- h. Sabbatical.
- i. FMLA.
- j. Dress Codes.
- k. Intellectual Property.
- l. Use of Employer-Owned/Leased Vehicles.
- m. Workplace Violence.
- n. Anti-Retaliation / Whistleblower.
- o. Personnel Files and Records that Must be Maintained.
- p. Jury Duty (state law driven, primarily, with some FLSA implications).
- q. Computer Use and Technology.
- r. Social Media.
- s. Equipment Use and Return.
- t. Weapons in the Workplace.
- u. Termination of Employment.



THANK YOU.

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EXAMPLE: At Will Employment

Employment with the organization (“ORG”) is voluntarily entered into and is “AT-WILL”, which means that the employee is free to resign at will at any time, with or without notice or cause. Similarly, ORG may terminate the employment relationship at any time, with or without notice or cause, so long as there is no violation of applicable federal or state law. No one at ORG has the authority to make verbal statements that change the at-will nature of employment, and the at-will relationship cannot be changed or modified for any employee except in a written agreement signed by that employee and an authorized representative of ORG.

Policies set forth in this Handbook are not intended to create a contract for employment, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between ORG and any of its employees. The provisions of the Handbook have been developed at the discretion of ORG and, except for its policy of employment-at-will, may be amended or cancelled at any time, at ORG’s sole discretion, with or without prior notice.

EXAMPLE: Equal Employment Opportunity Statement for Church ORG

ORG is committed to equal employment opportunities (EEO) to all qualified persons, without regard to race, color, national origin, gender, age, disability, marital status, or status as a covered veteran in accordance with applicable federal, state and local laws. ORG complies with applicable state and local laws governing nondiscrimination in employment as they apply to churches. This policy applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, leaves of absence, compensation and training.

Existing and functioning as a religious and faith-based church, and pursuant to applicable federal and state law, ORG reserves the right to employ persons who have a religious background and philosophy of ministry similar to ORG and who, in the opinion of ORG’s leadership, have a work history and lifestyle which is consistent with ORG’s religious principles. All employment decisions will be made in compliance with applicable labor laws.

ORG is committed to employing only United States citizens and aliens who are authorized to work in the United States. In compliance with the Immigration Reform and Control Act of 1986, each new employee and former employees who are rehired, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility.

EXAMPLE: Americans with Disabilities Act (ADA) Policy Statement

ORG recognizes and promotes diversity within the workplace, and is committed to providing reasonable accommodations to individuals with a qualified disability within the limits of and as defined by the Americans with Disabilities Act (ADA), as amended. It is the policy of ORG to comply with all federal and state laws concerning the employment of persons with disabilities.

These policies apply to ORG application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.

ORG will, according to applicable law, reasonably accommodate qualified individuals with a disability so that they may perform the essential functions of their job unless doing so causes a direct threat to any staff member and the threat cannot be eliminated by reasonable accommodation and/or if the accommodation creates an undue hardship or burden to ORG. ORG reserves all rights under such laws.

EXAMPLE: Workers' Compensation Benefits

To provide an opportunity for payment of employee medical expenses and for partial salary continuation in the event of work-related accident or illness, ORG maintains workers' compensation insurance provided by ORG's insurance carrier of choice. The cost of this insurance is paid by ORG.

If an employee is injured or becomes ill on the job, the employee must immediately report such injury or illness to a supervisor. An employee's failure to follow this procedure may result in the late filing of the appropriate workers' compensation report in accordance with the law, which may delay benefits in connection with the injury or illness.

Questions regarding workers' compensation insurance should be directed to _____.

EXAMPLE: Anti-Harassment Policy and Complaint Procedure

ORG is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment. Therefore, ORG expects that all relationships among persons in the office will be business-like and free of bias, prejudice and harassment.

ORG encourages reporting of all perceived incidents of discrimination or harassment. It is the policy of ORG to promptly and thoroughly investigate such reports. ORG prohibits retaliation against any individual who, in good faith, reports discrimination or harassment or who participates in an investigation of such reports.

Definitions of Harassment

Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; b) submission to or rejection of such conduct by an individual is used as the basis for employment

decisions affecting such individual; or c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature.

Harassment on the basis of any other characteristic is also prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual that a) has the purpose or effect of creating an intimidating, hostile or offensive work environment; b) has the purpose or effect of unreasonably interfering with an individual's work performance; or c) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that disparages or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on ORG work time or using ORG equipment via e-mail, phone (including voice messages), text messages, tweets, blogs, social networking sites or other means.

Complaint Process

Individuals who believe they have been the victims of conduct prohibited by this policy statement or who believe they have witnessed such conduct should discuss their concerns with the _____ or _____, if the complaint involves _____.

When possible, ORG encourages individuals who believe they are being subjected to such conduct to promptly advise the offender that his or her behavior is unwelcome, request that it be discontinued and reported. Often this action alone will resolve the problem. ORG recognizes, however, that an individual may prefer to pursue the matter through complaint procedures.

ORG encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken before relationships become irreparably strained. Therefore, although no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Any reported allegations of harassment, discrimination or retaliation will be investigated promptly and otherwise as the circumstances warrant. The investigation may include individual

interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action.

Retaliation against an individual for any good faith report of harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action. Acts of retaliation should be reported immediately and will be promptly investigated and addressed.

Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately.

EXAMPLE: Military Leave of Absence

It is ORG's policy and desire to comply with all provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

ORG is committed to protecting the job rights of employees qualified absent on applicable military or service leave. In accordance with federal and state law, it is ORG's policy that no employee or prospective employee will be subjected to any form of unlawful discrimination on the basis of that person's membership in or obligation to perform service for any of the Uniformed Services of the United States as defined by USERRA. Specifically, ORG will not unlawfully deny employment, reemployment, promotion or other benefit of employment on the basis of such membership.

Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under applicable law or policy. If any employee believes that he or she has been subjected to discrimination in violation of policy or the USERRA, the employee should immediately contact _____.

Employees taking part in a variety of military duties are eligible for benefits under this policy. Such military duties include leaves of absence taken by members of the uniformed services, including Reservists and National Guard members, for training, periods of active military service and funeral honors duty, as well as time spent being examined to determine fitness to perform such service. ORG reserves all rights afforded under the USERRA.

EXAMPLE: Background and Reference Checks

To ensure that individuals who join ORG staff are well qualified and to ensure that ORG maintains a safe and productive work environment, it is our policy to conduct pre-employment background checks on all applicants who accept an offer of employment. Background checks may include verification of any information on the applicant's resume or application form.

All offers of employment are conditioned on receipt of a background check report that is acceptable to ORG. All background checks are conducted in conformity with the Federal Fair Credit Reporting Act, the Americans with Disabilities Act, and state and federal privacy and anti-discrimination laws. Reports are kept confidential and are only viewed by individuals involved in the hiring process.

If information obtained in a background check would lead ORG to deny employment, a copy of the report will be provided to the applicant, and the applicant will have the opportunity to dispute the report's accuracy. Background checks may include a criminal record check if and to the extent relevant to the particular job, although a criminal conviction does not automatically bar an applicant from employment.

Additional checks such as a driving record or credit report may be made on applicants for particular job categories if appropriate and job-related.

ORG also reserves the right to conduct a background check for current employees to determine eligibility for promotion or reassignment in the same manner as described above.

EXAMPLE: Progressive Discipline

Every employee has the duty and responsibility to be aware of and abide by existing rules and policies. Employees also have the responsibility to perform his/her duties to the best of his/her ability and to the standards as set forth in his/her job description or as otherwise established.

ORG supports the use of progressive discipline to address issues such as poor work performance or misconduct. Our progressive discipline policy is designed to provide a corrective action process to improve and prevent a recurrence of undesirable behavior and/or performance issues. Our progressive discipline policy has been designed consistent with our values, best practices and employment laws.

Outlined below are the steps of our progressive discipline policy and procedure.

ORG reserves the right to combine or skip steps in this process depending on the facts of each situation and the nature of the offense. The level of disciplinary intervention may also vary. Some of the factors that will be considered are whether the offense is repeated despite coaching, counseling and/or training; the employee's work record; and the impact the conduct and performance issues have on ORG.

The following outlines ORG's desired (but not guaranteed) progressive discipline process:

- **Verbal warning:** A supervisor verbally counsels an employee about an issue of concern, and a written record of the discussion is generally recorded and placed in the employee's file for future reference.
- **Written warning:** Written warnings are used for behavior or violations that a supervisor considers serious or in situations when a verbal warning has not helped change unacceptable behavior. Written warnings are placed in an employee's personnel file.
- **Performance improvement plan:** Whenever an employee has been involved in a disciplinary situation that has not been readily resolved or when he/she has demonstrated an inability to perform assigned work responsibilities efficiently, the employee may be given a final warning or placed on a performance improvement plan. Performance improvement status will last for a predetermined amount of time not to exceed 90 days. Within this time period, the employee must demonstrate a willingness and ability to meet and maintain the conduct and/or work requirements as specified by the supervisor and the organization. At the end of the performance improvement period, the performance improvement plan may be closed or, if established goals are not met, additional discipline, demotion or dismissal may occur.

ORG reserves the right to determine the appropriate level of discipline for any inappropriate conduct, including oral and written warnings, suspension with or without pay, demotion and/or immediate termination of employment.

EXAMPLE: Reporting Suspected Child Abuse (Texas Law) Policy

In accordance with Texas law, ORG requires that any person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report and shall immediately report the incident to the employee's immediate supervisor and/or HR manager.

If the accused "abuser" is an employee or volunteer of ORG, he or she will be immediately removed from his/her position, with or without pay, until a full investigation can be completed and a report submitted to the appropriate authorities.

Under Texas law regarding reporting suspected child abuse, "abuse" includes, but is not limited to, the following acts or omissions by a person:

- (A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

- (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child;
- (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- (E) sexual conduct harmful to a child’s mental, emotional, or physical welfare.

“Neglect” includes placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child, or placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse as defined above.

If the reporting person is a “professional”, the person must report the abuse not later than 48 hours after the hour the professional first suspects that the child has been or may be abused or neglected. A professional may not delegate to or rely on another person to make the report.

“Professional” means (1)(a) an individual who is licensed or certified by the state or (1)(b) who is an employee of a facility licensed, certified, or operated by the state and (2) who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers and day-care employees.

The report should be made to (1) any local or state law enforcement agency (2) the Texas Department of Family and Protective Services; (3) the state agency (if any) that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or (4) the agency designated by the court to be responsible for the protection of children.

The report should reflect the reporter’s belief that a child has been or may be abused or neglected or has died of abuse or neglect, and should identify, if known: (1) the name and address of the child; (2) the name and address of the person responsible for the care, custody, or welfare of the child; and (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

The requirement to report applies without exception to an individual whose personal communications may otherwise be privileged, including a member of the clergy.

EXAMPLE: Employee Classification Categories

All employees are designated as either nonexempt or exempt under state and federal wage and hour laws. The following is intended to help employees understand employment classifications and employees’ employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time. The right to terminate the employment-at-will relationship at any time is retained by both the employee and ORG.

Exempt Employees – ORG staff members who are salaried and whose positions are considered as “executive,” “administrative,” or “professional” under the guidelines of the U.S. Department of Labor are classified as exempt – meaning that the employee is not entitled to (and is “exempt” from) overtime pay and are excluded from certain provisions of federal and state wage and hour laws.

Non-Exempt Employees - Other employees are classified as non-exempt and are entitled to overtime pay for time worked beyond 40 hours in a workweek. Non-exempt employees are required to submit accurate time records of all hours worked. They are not permitted to work overtime without prior written approval from their supervisor; nor are they permitted to work “off the clock”.

ORG has established the following categories for both nonexempt and exempt employees:

- **Regular, full time:** Employees who are not in a temporary status and who are regularly scheduled to work ORG’s full-time schedule of 30 or more hours per week. These employees are eligible for the full benefits package, subject to the terms, conditions and limitations of each benefits program.
- **Regular, part time:** Employees who are not in a temporary status and who are regularly scheduled to work less than the full-time schedule. Regular, part-time employees may be eligible for some of the benefits offered by ORG, subject to the terms, conditions and limitations of each benefits program and depending on the nature of the employment.
- **Temporary/Seasonal:** Employees who are hired as interim replacements to temporarily supplement the workforce, to assist in the completion of a specific project, for a specified season, or on an irregular schedule (such as a few hours every month but with no defined schedule). Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary/Seasonal workers are not eligible for company benefits unless specifically stated otherwise in ORG policy or are deemed eligible according to plan documents.
- **Ministerial Staff** – Employees in this category include the employees that ORG designates as Ministerial Staff. **ORG’s designation is for internal, religious responsibility assignments, and benefits-assignment purposes. Other employees, such as teachers in the ORG’s religious education programs or musicians, for example, may not be a ORG-designated or ordained Ministerial Staff, but may be an “ecclesiastical” or “minister” employees under applicable federal and/or state law and ORG reserves all rights under such laws.**

The determination of whether you are an “exempt” employee depends on your actual job duties, not your job title. You will be advised of your classification at the time you are hired or if your job duties subsequently change. If a misclassification was made initially, the employee will receive any wages and back pay required by law, and appropriate corrective measures will be instituted to mitigate further errors in classifications.

EXAMPLE: Other Wage Deductions Generally

In accordance with federal and state laws, earnings are withheld for federal income tax, the employee’s share of FICA, and other mandated deductions. Upon the employee’s written authority, additional compensation may be withheld for the group insurance programs, 403(b) contributions, and health savings plans, and for other purposes consistent with ORG policy.

ORG may also require payment for or otherwise deduct from the employee’s compensation an amount to cover for the cost of repairing or replacing any ORG supplies, materials, equipment, money, or other property that the employee may damage (other than normal wear and tear), lose, fail to return, or take without appropriate authorization from ORG. Any deduction from wages shall be in accordance a Wage Deduction Authorization Agreement or other agreement signed by the employee. An employee’s refusal to pay for or replace or reimburse ORG for such property may be grounds for discipline, up to termination.

ORG prohibits improper deductions from an employee’s compensation. If an employee believes ORG has made an improper deduction from the employee’s compensation, the employee is encouraged to bring the matter to the attention of ORG for review and to provide any information necessary or requested to explain the employee’s complaint. If the deduction was improper, ORG shall reimburse the employee for the amount improperly deducted, and ORG will make a good faith commitment to comply in the future. ORG prohibits all forms of retaliation against an employee who, in good faith, brings a complaint regarding a deduction from compensation.

Deductions from Exempt Employee Pay.

An employee will be considered to be paid on a “salary basis” if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee’s predetermined compensation are made for absences occasioned by ORG or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

However, ORG reserves the right to and may deduct pay from exempt employees under the following non-exclusive scenarios:

(1) **Absence for Personal Reasons.** Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons (other than sickness or disability) unless such personal days are otherwise compensable according to ORG's policy on personal days. For example, ORG may deduct one-day of pay from an exempt employee's pay if the employee is absent for personal reasons for a full day after exhausting the number of personal days accrued by the employee.

(2) **Absence for Sickness/Disability.** Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with any bona fide plan, policy or practice of ORG that provides compensation for loss of salary occasioned by such sickness or disability.

a. In this regard, ORG is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder.

b. Thus, for example, if ORG maintains a short-term disability insurance plan providing salary replacement for 12 weeks (for example) starting on the fourth day of absence, ORG may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the 12 weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits.

c. Similarly, ORG may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) **Jury Duty.** While ORG does not make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave in a workweek when work is performed, ORG may offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week.

(4) **Safety Rules Infractions.** Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees. A deduction from pay as a penalty for violations of major safety rules may be made in any amount.

(5) **Disciplinary Suspensions.** Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions are imposed pursuant to the written policies applicable to all employees. Thus, for example, ORG may suspend an exempt employee without pay for three days (for example) for violating ORG's written policy prohibiting sexual harassment. Similarly, ORG may suspend an exempt employee without pay for (for example) twelve days for violating ORG's drug-free workplace policy.

(6) **Beginning/End of Employment.** ORG is not required to pay the full salary in the initial or terminal week of employment. Rather, ORG may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement.

(7) **FMLA Leave.** ORG is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the FMLA, ORG may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the FMLA, ORG may deduct 10 percent of the employee's normal salary that week.

Calculation of Deductions.

When calculating the amount of a deduction from pay as described herein, ORG may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee.

Garnishment.

If a court-ordered wage garnishment is received by ORG, ORG is required by law to withhold the required amount from an employee's bi-weekly paycheck. ORG will inform the employee when a wage garnishment is received and how their paycheck amount may be affected.

EXAMPLE: Pay periods and Timesheets

Employees are paid twice per month, generally on the 1st and the 15th day of each month. If a payday falls on a weekend, employees will be paid on the Friday immediately before the weekend. All non-exempt employees are responsible for submitting and are required to submit a completed time sheet for each pay period to ORG. The furnished time sheet lists the dates of the pay period and the day the report is due.

The completed time sheet must accurately reflect the employee's actual hours worked performing assigned duties, and leaves of absence. The time sheet requires the employee to record the actual time when they begin work, when they leave for a lunch period or unpaid break, when they return to work, and when they leave work at the end of the day. The time sheet also requires the signature or other indication of approval of the supervisor.

EXAMPLE: Jury Duty

If an employee is summoned to serve for jury duty that includes required reporting for jury selection when summoned, whether or not used as a juror, ORG will grant time off and pay [OR MAY NOT PAY, DEPENDING ON APPLICABLE LAW] per this policy and subject, however, to the following conditions:

- When excused (temporarily or finally) from duty, the employee should return directly to work if at all practicable, given the hour of the day;
- The employee must provide to a copy of the jury summons and the signed dismissal from the court; and
- ORG may offset any amounts received by an employee as jury fees leave.

[COMPENSATION FOR JURY DUTY LEAVE IS GENERALLY NOT REQUIRED FOR NON-EXEMPT STAFF, BUT THE FOLLOWING MAY BE USED AS A GUIDE FOR EMPLOYERS WHO MAY DECIDE TO COMPENSATE ALL OR PORTIONS OF JURY DUTY LEAVE] For non-exempt employees, this jury duty shall be paid only for those days the employee would have been scheduled for work but did not as a result of jury service. Unless required otherwise by law, the obligation of ORG is limited to providing jury duty pay to non-exempt employees for a maximum of seven and one-half (7.5) hours in any one day (or the amount of hours regularly scheduled for the employee, whichever is less), for a maximum of five (5) days in any consecutive twenty-four (24) month period.

Time spent on jury duty is not counted as time worked for purposes of overtime calculation. For jury duty leave in excess of the jury duty paid leave provided, the employee may use any accumulated paid time off or vacation pay, or the leave may be unpaid. ORG will not terminate an employee because of a summons or service on a jury.

[THIS IS A STATEMENT OF FEDERAL LAW] If an exempt (salaried) employee is absent during portions of a work week due to jury duty, ORG will not make deductions from the employee's pay, provided the employee performs work during the particular workweek. However, ORG may offset any amounts received by an employee as jury fees against the salary due for that particular workweek without loss of the exemption. Exempt employees are not entitled to pay for any workweek in which they perform no work, even if the complete lack of work is occasioned by jury duty.

Employees must notify their supervisor immediately upon receipt of a jury summons in order that scheduling adjustments can be made.

ORG reserves the right to request a release from the court if such absence might be interpreted as detrimental to the operation of ORG.

EXAMPLE: Marriage Policy and Prohibition of Same-Sex Marriage
(For religious/church organizations. Must comport with sincerely-held religious beliefs)

ORG employees must adhere to the following marriage policy.

We believe that because God our Creator established marriage as a sacred institution between one man and one woman, the idea of marriage is a covenant only between one man and one woman has been the traditional definition of marriage for all of human history (“Traditional Definition of Marriage”). Because of the longstanding importance of the Traditional Definition of Marriage to humans and their relationships and communities, and, most importantly, the fact that God has ordained that marriage is between one man and one woman, as clearly conveyed in God’s inerrant Scriptures, including for example in Matthew 19:4-6 where in speaking about marriage Jesus referred to the fact that “he which made them at the beginning made them male and female,” the Church hereby creates this policy, which shall be known as the “Marriage Policy.”

Under this Church’s Marriage Policy, the Traditional Definition of Marriage is the only definition of marriage that will be recognized or accepted. No director, officer, employee, servant, agent, or any person, corporation, organization, or entity under the direction or control of this Church shall commit any act or omission, or make any decision whatever, that would be inconsistent with, or that could be perceived by any person to be inconsistent with, full support of this Church’s Marriage Policy and strict adherence to the Traditional definition of Marriage rather than any alternative to the Traditional Definition of Marriage.

This Church’s Marriage Policy specifically prohibits acts or omissions including but not limited to permitting any Church assets or property, whether real property, personal property, intangible property, or any property or asset of any kind that is subject to the direction or control of the Church, to be used in any manner that would be or could be perceived by any person to be inconsistent with the Church’s Marriage Policy or the Traditional Definition of Marriage, including but not limited to permitting any church facilities to be used by any person, organization, corporation, or group that would or might use such facilities to convey, intentionally or by implication, what might be perceived as a favorable impression about any definition of marriage other than the Traditional Definition of Marriage.

We believe this Church’s Marriage Policy is based upon God’s will for human life as conveyed to us through the Holy Scriptures, upon which this Church has been founded and anchored, and this Marriage Policy shall not be subject to change through popular vote; referendum; prevailing opinion of members or the general public; influence of or

interpretation by any government authority, agency, or official action; or legal developments on the local, state, or federal level.

In addition, ORG believes that homosexual conduct is inconsistent with the beliefs and values of Christian teachings and the ORG Statement of Faith. No Minister Staff member may perform any type of marriage, cohabitation, or covenant ceremony for persons who are of the same sex. Such a ceremony may endorse homosexuality which is contrary to ORG's religious belief system (Leviticus 18:22; 20:13; Romans 1:26,27; 1 Corinthians 6:9; 1 Timothy 1:9-11). Any Minister who performs a ceremony for these types of disapproved relations, unless innocently deceived into doing so, may be dismissed from employment or otherwise subject to appropriate discipline.