

Workman's Compensation

Is a church REQUIRED to carry Workman's Compensation for a part-time pastor?

I recently received the following question:

Until recently, we shared a pastor with the another presbyterian church, who carried Workman's Compensation Insurance.

Now, we no longer share a pastor. We will now have a part-time pastor, who will be our only employee.

Are we required to purchase Workmen's Comp for him? Is each church required to find their own insurance carrier? Or is there a group plan from the Presbytery that we would fall under?

RESPONSE

I reached out to our legal folks – who also have been working with us on personnel issues. You can see their responses below. They confirmed my initial reaction – its minimal cost for potentially a major benefit and protection for the church AND the employee.

Whether a person is a contractor not subject to workers compensation is determined by a “direction and control” test. Case law over the years has become more and more employee-favored, and courts are more likely to view a person as an employee than as a contractor.

A cursory observation would suggest that the pastor, even if he is part time, would be required to conduct sermons at a time and place prescribed by his employer, and will have other functions he is required to do. Apparently the fines for not providing coverage can be substantial, and there are penalties if an injury would occur and there was no required coverage. Our advice would be for the church to provide coverage—it should not be very expensive in this circumstance. The upside is if an injury would occur, the pastor's recourse would be insurance coverage and the church would typically be insulated from lawsuits and other liability.

Additionally –

There are no minimum number of employees before it kicks in.

The act defines “employer” as synonymous with “master.”

It is possible there are more facts with this arrangement that would support an independent contractor relationship, but from the little provided below our legal counsel would lean towards providing coverage versus finding out too late that they should have had coverage. There are criminal penalties for failure to provide workers' compensation insurance for any employee.