



# Church as Employer: Avoiding Pitfalls and Potholes

- I. Introduction
- II. “Right to Work”
  - a. Arizona is a “Right to Work” state
  - b. Cannot be required to be a member of a union
- III. Employment at Will
  - a. A.R.S. Section 23-1501
  - b. Without a written contract, employer or employee can terminate “for any reason or no reason”...
  - c. ... Just not a prohibited reason
- IV. Legal Arizona Workers Act
  - a. A.R.S. Section 23-212
    - i. No exception for churches

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- ii. An employer shall not knowingly employ an unauthorized alien.
- iii. Includes “contractors”
- iv. “Employer”
  - 1. Includes churches
- v. “Employ”
  - 1. Hiring an employee after 12-31-07

### **b. A.R.S. Section 23-212.01**

- i. An employer shall not intentionally employ an unauthorized alien.
- ii. Attorney General can investigate
- iii. Consequence is an order requiring termination of employee
- iv. Suspension of “license”
  - 1. Articles of Incorporation?

### **c. A.R.S. Section 23-214**

- i. E-Verify
- ii. No exception for churches
- iii. Are you on the list?
- iv. No real consequence for not using, but creates defenses...

## **V. I-9**

### **a. Federal Requirement**

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- b. No exception for churches
- c. For employees hired after 11-6-1986
- d. Must keep for 3 years after hire, and 1 year after termination

### VI. Arizona Minimum Wage

- a. A.R.S. Section 23-363
- b. \$7.25 per hour for 2010
- c. No exception for churches
- d. AZ minimum wage poster
- e. Must maintain payroll records for 4 years
- f. Must show each day, hours worked, and wages paid
- g. Subject to claims from employees and civil penalties

### VII. Discrimination

- a. Title VII – Federal Law
- b. A.R.S. Section 41-1461 – Arizona
- c. Applies to churches with 15 or more employees
  - i. Aggregation?
- d. AZ prohibits discrimination in hiring or firing on basis of:
  - i. RACE, COLOR, RELIGION, SEX, AGE,  
DISABILITY OR NATIONAL ORIGIN

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- e. FED prohibits discrimination in hiring or firing on basis of:
  - i. RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN
  
- f. RELIGIOUS EXCEPTION:
  - i. FED AND AZ: Religious organization employs a person of a particular religion to perform activities of any kind
  - ii. DOES NOT provide exception for race, color, sex or national origin
  
- g. MINISTERIAL EXEMPTION
  - i. Race and gender ARE permissible bases for discrimination in hiring ministers
  
- h. BFOQ
  - i. Bona Fide Occupational Qualification
  - ii. Secular opportunity to justify discrimination
  - iii. Examples: mandatory retirement for bus drivers and airline pilots

### VIII. Sexual Harassment

- a. Hostile Work Environment

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b. Quid Pro Quo

### IX. Family and Medical Leave Act

a. No exemption for churches

b. 50 or more employees

c. 12 work weeks of unpaid leave

i. First year after birth of child (adopted, foster or birth)

ii. Serious health condition of employee, spouse, child, parents

d. Must hold job

e. Must keep health insurance benefits

### X. Overtime

a. Time and a half for hours over 40 hours

b. "Salary" does not relieve employer of OT obligation

c. "Exempt" (no OT) categories:

i. "Executive"

ii. "Administrative"

iii. "Professional"

iv. "Highly Compensated"

d. Executive Exempt

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- i. \$455 per week or more;
- ii. Primary duty must be managing the enterprise, or a department;
- iii. Customarily and regularly direct the work of at least two or more other full-time employees; and
- iv. Authority to hire or fire, or the employee's suggestions and recommendations must be given particular weight.

### **e. Administrative Exempt**

- i. \$455 per week or more;
- ii. Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer; and
- iii. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

### **f. Professional Exempt**

- i. \$455 per week or more;
- ii. Primary duty must be the performance of work requiring advanced knowledge;
- iii. The advanced knowledge must be in a field of science or learning; and

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- iv. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

### **g. Highly Compensated Exempt**

- i. Annual compensation of \$100,000 or more;
- ii. Primary duty includes performing office or non-manual work; and
- iii. Customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

## **XI. “Employee or Independent Contractor”**

### **a. Behavioral control**

- i. Instructions the business gives the worker
  1. When and where to do the work
  2. What tools or equipment to use
  3. What workers to hire or to assist with the work
  4. Where to purchase supplies and services
  5. What work must be performed by a specified individual
  6. What order or sequence to follow

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- ii. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.
- iii. An employee may be trained to perform services in a particular manner.
- iv. Independent contractors ordinarily use their own methods.

### **b. Financial control**

- i. The extent to which the worker has unreimbursed business expenses.
- ii. The extent of the worker's investment.
- iii. The extent to which the worker makes services available to the relevant market.
- iv. How the business pays the worker.
- v. The extent to which the worker can realize a profit or loss.

### **c. Type of relationship**

- i. Written contracts describing the relationship the parties intended to create.
- ii. Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- iii. The permanency of the relationship.

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- iv. The extent to which services performed by the worker are a key aspect of the regular business of the company.

### **XII. Discipline and Termination**

- a. Is there room in the law for redemption?
  - i. Example: Married youth pastor involved with 20 year old youth volunteer
    - 1. Terminate?
    - 2. Counsel?
    - 3. Get youth pastor's wife involved?
  - ii. Is this conduct a violation of the job description?  
Employee manual?
- b. Generally, the law doesn't care about redemption or forgiveness.

### **XIII. Severance**

- a. Why?
- b. "Soften the blow"?
- c. Release of claims?
- d. Both?
- e. Non-Disparagement / Confidentiality?

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### XIV. Insurance

- a. Does your insurance policy cover any of this stuff?

### XV. Confidentiality

- a. Do all employees and staff sign confidentiality agreements?

### XVI. Alternative Dispute Resolution

- a. Do you have binding agreements that require disputes to be resolved out of court?

### XVII. Additional Issues

- a. Americans with Disabilities Act
- b. Equal Pay Act
- c. OSHA
- d. Genetic Information Non-Discrimination Act
- e. Worker's compensation
- f. Garnishment
- g. Jury duty
- h. Whistleblower protection
- i. ADEA
- j. Polygraph Protection Act

### XVIII. Keys to Success

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- a. Written employment contracts
- b. Written independent contractor agreement
  - i. IRS Factors
- c. Employee manual – does Sunday count?
- d. JOB DESCRIPTIONS
- e. Vacation policy
- f. Volunteer hours policy
  - Overtime policy (approved in advance)
- g. Timekeeping policy