

## **GUIDELINES: DRAFTING CHURCH EMPLOYMENT AND ADMINISTRATIVE POLICIES**

### **I. LEGAL EMPLOYMENT CONCERNS**

[Church] may not safely assume that visitors, volunteers, employees, or even members share its sincerely held religious beliefs on the contentious issues of marriage, sexuality, and gender identity. Though still a minority population, more and more self-identified Christians believe that (1) same-sex marriage is morally equivalent to man-woman marriage, and (2) gender is a malleable social construct, subject to individualized definition and practice.<sup>1</sup> For example, a salaried social worker filed a wrongful termination lawsuit against the Catholic Diocese of Kansas City after she was fired for publicly announcing her same-sex marriage to a female Lutheran Minister –notwithstanding the Roman Catholic Church's longstanding and well-publicized opposition to same-sex marriage. At the time of her employment application, the social worker advised that she was a single mother of two sons. She subsequently traveled to Iowa to obtain a same-sex marriage license.<sup>2</sup>

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<sup>1</sup> Freedom to Marry, Inc., "Polling Tracks Growing and Increasingly Diverse Support for the Freedom to Marry," available at [www.freedomtomarry.org/resources/entry/marriage-polling](http://www.freedomtomarry.org/resources/entry/marriage-polling).

<sup>2</sup> Michael Gryboski, The Christian Post, "Lesbian Files Suit Against Missouri Catholic Diocese, Says She Was Fired for Marrying a Woman," available at [www.christianpost.com/news/lesbian-files-suit-against-missouri-catholic-diocese-says-she-was-fired-for-marrying-a-woman-123688/](http://www.christianpost.com/news/lesbian-files-suit-against-missouri-catholic-diocese-says-she-was-fired-for-marrying-a-woman-123688/).

Similarly, Azusa Pacific University ("APU"), an evangelical Christian college, ratified and published its sincere religious belief that "humans were created as gendered beings." Pursuant to this written statement of faith, APU terminated the employment contact of Professor Heather Clements after she transitioned to a "transgender man." Surprisingly, Professor Clements argued that she was fully compliant with APU policy because she admittedly "was assigned the female gender at birth," but could find no written APU policy prohibiting gender change.<sup>3</sup>

As more Americans assimilate to sexually revolutionized definitions of marriage and family, faith-based organizations like [Church] need to become much more explicit in the presuppositions that underlie their Statements of Faith and belief. And as can be seen, particularly in the Catholic Diocese of Kansas City and APU examples, even professing Christians are - whether feigned or sincere - complaining that sexual standards that lack specificity are unfair and potentially illegal.

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<sup>3</sup> Sarah Pulliam Bailey, Religion News Service, "H.Adam Ackley, Transgender Theology Professor, Asked To Leave California's Azusa Pacific University," available at [www.religionnews.com/2013/09/20/transgender-theology-professor-asked-leave-california-christian-college-coming-1](http://www.religionnews.com/2013/09/20/transgender-theology-professor-asked-leave-california-christian-college-coming-1).

Because “religious organizations” are exempt from certain anti-discrimination laws under the First Amendment, Title VII, RFRA, RLUIPA, Charitable Choice regulations, the “ministerial exception” summarized in *Hosanna-Tabor*,<sup>4</sup> and SOGI exemptions,<sup>5</sup> the church should expressly state the religious mission of every ministry and minister – using supporting scriptures, doctrines, and Statements of Faith.

### A. Ministerial Protections

In addition to clearly stating its religious viewpoints on controversial subject matters (*see Statements of Faith*), [Church’s] employment practices may be further secured by ensuring that its employees fit within the “ministerial exception” to governmental regulation.

Three recent cases confirm that religious organizations such as [Church] should expressly state the religious mission of every ministry and minister: (1) *Spencer v. World Vision*, 619 F.3d 1109 (9th Cir. 2010); (2) *Hosanna-Tabor Evangelical Lutheran Church School v. EEOC*, 132 S. Ct. 694 (2012); and (3) *Conlon v. InterVarsity Christian Fellowship*, No. 14-1549, 2015 U.S. App. LEXIS 1871, (6th Cir. February 5, 2015).

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<sup>4</sup> U.S. CONST., amend I; 42 U.S.C. §§ 2000e, *et seq.*; 42 U.S.C. § 2000bb, *et seq.*; 42 U.S.C. §§ 2000cc, *et seq.*; 42 U.S.C. §§ 9858, *et seq.*, Executive Order 13279, 67 F.R. 77141; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 702-16 (2012); *compare Spencer v. World Vision, Inc.*, 619 F.3d 1109, 1117-118 (9th Cir. 2010), *EEOC v. Catholic Univ. of Am.*, 856 F. Supp. 1, 11 (D.D.C. 1994), *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 501-02 (1979), *McClure v. Salvation Army*, 460 F.2d 553, 558-61 (5th Cir. 1972), *Combs v. Central Texas Annual Conference of the United Methodist Church*, 173 F.3d 343, 347-51 (5th Cir. 1999), with *EEOC v. Townley Engineering & Manufacturing Co.*, 859 F.2d 610, 617-22 (9th Cir. 1988), *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458, 459 (9th Cir. 1993).

<sup>5</sup> *See, e.g.*, Cal. Gov’t Code § 12926(d); Col. Rev. St. § 24-34-401; Conn. Gen. Stat. § 46a-81p; D.C. Code § 2-1401.03; Hi. Rev. Stat. § 378-3(5); 775 Ill. Comp. Stat. 5/2-101(B)(2); Iowa Code § 216.6(6)(d); 5 Me Rev. Stat. §§ 4553(4) & 4573-A; 49-B Md. Code § 18; 151B Mass. Gen. Laws § 4; Minn. Stat. § 363A.20; Nev. Rev. Stat. § 613.320 & 613.350; N.J. Stat. § 10:5-12; N.H. Rev. Stat. § 354A:7; N.M. Stat. § 28-1-9(B); N.Y. Exec. Law 296(11); Or. Rev. Stat. § 659A.006; R.I. Gen. Laws § 28-5-6(7)(ii); 21 Vt. Stat. § 495; Wash. Code § 49.60.040(3); Wis. Stat. § 111.337.

In *Spencer*, the United States Court of Appeals for the Ninth Circuit ruled that the non-profit ministry, World Vision, is a “religious organization” and therefore exempt from Title VII of the Civil Rights Act of 1964, which bars religious discrimination in hiring. Important here, the Ninth Circuit held that the Free Exercise Clause protects faith-based ministries that are “less pervasively religious than churches . . . [and] are organized for a religious purpose and have sincerely held religious tenets, but are not houses of worship.”<sup>6</sup>

In *Hosanna-Tabor*, the United States Supreme Court held religious organizations are free to hire or terminate their “ministers” without being subject to Title VII anti-discrimination laws. Important here, Justices Alito and Kagan noted that the “ministerial exception” should apply to “any employee who leads a religious organization . . . or serves as a messenger or teacher of its faith.” The Court did not adopt a “rigid formula for deciding when an employee qualifies as a minister,” but did identify several factors: (1) religious training and credentialing, (2) formal title, (3) substance of title, (4) employee’s use of title, and (5) important religious functions performed.<sup>7</sup>

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<sup>6</sup> *World Vision*, 619 F.3d at 1114-15 (internal marks omitted).

<sup>7</sup> *Hosanna-Tabor*, 132 S. Ct. at 707-16 (internal marks omitted).

In *Conlon*, which was decided on February 5, 2015, the United States Court of Appeals for the Sixth Circuit held that an InterVarsity employee who served as a “spiritual formation specialist” and “spiritual director” qualified as a “minister.” Examining her formal title, the Sixth Circuit explained, “courts need only determine whether the wording of the title conveys a religious — as opposed to secular — meaning. The word ‘spiritual’ is such an identifying term.” Examining the religious functions performed, the Sixth Circuit looked to the employee’s job description: “to cultivate intimacy with God and growth in Christ-like character through personal and corporate spiritual disciplines.” Finally, the Sixth Circuit held that the “ministerial exception” applied when at least two *Hosanna-Tabor* factors are present: (1) formal title, and (2) religious function.<sup>8</sup>

Employment decisions with respect to employees who are "ministerial" are outside the scope of government regulation - a very strong protection for the religious employer. As Justices Kagan and Alito noted in *Hosanna-Tabor*, the ministerial exception does not apply merely to persons that are traditionally thought of as "ministers."

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<sup>8</sup> *Conlon v. InterVarsity Christian Fellowship/USA*, 2015 U.S. App. LEXIS 1871, 10-11 (6th Cir. 2015) (internal marks omitted).

This definition potentially covers most if not all [Church] employees. With that said, it would benefit [Church] to establish clear employment documentation for each of these factors:

1. Religious training and credentialing requirements for employment positions (*see* “Formal Training, Eligibility, and Ordination Requirements below”);
2. Formal religious titles that convey a religious – as opposed to secular – meaning (*e.g.* “pastor,” “reverend,” “priest,” “bishop,” “spiritual” or “rabbi”);<sup>9</sup>
3. The substance reflected in that title;
4. Employee’s own use of that title; and,
5. The important religious function employee performs for the church, give a distinct role from that of most church members.

To expand, each employee's job description and responsibilities should be drafted to emphasize the religious nature of the employee's role as a messenger or teacher of its faith. For leadership positions, this role is easily established. But other job descriptions – counselor, manager, receptionist – may also outline how the employee is called to represent Christ and the beliefs of [Church] to the larger community.

[Church] may state that the employee will “have a duty to assist others to cultivate intimacy with God and growth in Christ-character through personal and corporate spiritual disciplines” or “interact with community as an ambassador of the faith.”<sup>10</sup> Duties should reflect the employee’s “role in conveying the [Church’s] message and carrying out its mission and leading others toward Christian maturity,” as well as “teaching faithfully the Word of God, the Sacred Scriptures, in its truth and purity as set forth in all the Holy Scripture.”<sup>11</sup>

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<sup>9</sup> *See Conlon*, 2015 U.S. App. at 11-12.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *See Hosanna-Tabor*, 132 S. Ct. at 708.

Further, define “skills of ministry” and “ministerial responsibilities” as it pertains to the religious function the employee will be performing.<sup>12</sup> For example, include “biblical interpretation, church doctrine, and the ministry of religious \_\_\_\_\_,” or “performs important religious function for church” in the employee’s job description if it applies. Include that the employee is “tasked with performing [office] according to the Word of God and Biblical standards as drawn from the Holy Scripture.”<sup>13</sup> Review skills and responsibilities periodically to provide “continuing education as a professional person in the ministry of the Gospel.”<sup>14</sup>

## **B. Employment and Volunteer Policies**

In light of the language in *Spencer*, *Hosanna-Tabor*, and *Conlon*, [Church] should expressly state the “ministerial” title, substance, and religious function of every volunteer, staff member, administrator, officer, board member and employee — using supporting scriptures, doctrines, and Statements of Faith, where possible.

Explain that [Church’s] mission includes instruction, supervising, and providing a moral example for members and non-members alike, particularly as its staff and volunteers convey [Church’s] religious message and carries out its mission. State that “[Church] and its members draw much of their emotional enrichment from close ties with others.”<sup>15</sup> Therefore, all volunteers, staff members, and leadership play a critical role in the culture and traditions of [Church] by cultivating and transmitting shared ideals and

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<sup>12</sup> See *Hosanna-Tabor*, 132 S. Ct. at 707.

<sup>13</sup> *Id.*

<sup>14</sup> See *Hosanna-Tabor*, 132 S. Ct. at 707.

<sup>15</sup> See *Roberts v. United States Jaycees*, 468 U.S. 609, 621 (1984).

beliefs, thereby fostering a religious environment that propagates [Church] beliefs by joining in a common religious endeavor.<sup>16</sup>

It is imperative that [Church] delineate how it “places its faith in the hands of its ministers, administrators, officers, employees, and volunteers. For this reason [Church] exercises complete control over the selection of those who will personify its beliefs.”<sup>17</sup> [Church] effectively shapes its own faith and mission through said appointments.<sup>18</sup>

Go on to specify the necessity to exclusively employ or associate with Christians “who demonstrate a commitment to Christian living, are endowed with and espouse a Christian philosophy of life, and belief in the Christian Church and her teachings”<sup>19</sup> in accordance with [Church] stated policies and beliefs. Characterize employees and volunteers as possessing the “obligation to be a visible witness to the Church’s philosophy and principles.”<sup>20</sup>

Additionally, cite to and incorporate all [Church] [list any and all written organizational policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy] (the “Written Statements of Faith”), by reference in employment and volunteer policies. In this manner, emphasize that [Church] “remains committed to living out its faith through its work, because we demonstrate our faith

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<sup>16</sup> See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 383-386 (1978); *Moore v. East Cleveland*, 431 U.S. 494, 503-504 (1977) (plurality opinion); see also *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 482-485 (1965); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (U.S. 1925); *Poe v. Ullman*, 367 U.S. 497, 542-545 (1961) (Harlan, J., dissenting); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-462 (1958).

<sup>17</sup> See *Hosanna-Tabor*, 132 S. Ct. at 706.

<sup>18</sup> See *id.*

<sup>19</sup> See *Herx v. Diocese of Fort Wayne-South Bend Inc.*, 2014 U.S. Dist. LEXIS 122456, 5 (N.D. Ind. Sept. 3, 2014).

<sup>20</sup> See *Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 7 F.3d 324, 331 (3d Cir. 1993).



through life, deed, word, and sign; our Christian witness is integrated into and communicated through all that we do.”<sup>21</sup>

### *1. Formal Training, Eligibility, and Ordination Requirements*

Employee and Volunteer training and ordination requirements should be definitively articulated. [Church’s] Staff Manual should incorporate the formal employee and non-employee volunteer eligibility requirements, from its Written Statements of Faith by reference. As the United States Supreme Court has observed, training for religious professions and training for secular professions are not fungible.<sup>22</sup> Training someone to lead a congregation is an essentially religious endeavor.<sup>23</sup> Therefore, [Church] should set forth the interdependence its employment requisites and religious mission have. State that employment is akin to a religious calling.<sup>24</sup>

For instance, include as a condition of employment or volunteering, “the knowledge of and respect for the Christian faith. Commitment to abide by the tenets of the Christian Church, to exhibit a commitment to the ideals of Christian living, and to be supportive of the Christian faith.”<sup>25</sup> Also, state [Church’s] intent to “employ only persons whose beliefs and conduct are consistent with the [Church’s] religious precepts<sup>26</sup> and who agree to accept and adhere to its Written Statements of Faith.”<sup>27</sup>

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<sup>21</sup> See *World Vision*, 619 F.3d at 736.

<sup>22</sup> See *Locke v. Davey*, 540 U.S. 712, 721 (2004).

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> See *Herx*, 2014 U.S. Dist. LEXIS at 5.

<sup>26</sup> See *id.*

<sup>27</sup> See *World Vision*, 619 F.3d at 736.

Expound upon the eligibility or standards to become a minister, including formal spiritual training, endorsement from a religious leader, academic transcripts, letters of recommendation, personal statement, written answers to various ministry-related questions, passing oral examination by a faculty committee, membership in a church, and requirement to have or receive religious instruction or training. [Church] should require potential employee and volunteer applicants to submit personal statements describing their relationship with Jesus Christ.<sup>28</sup>

[Church's] Staff Manual should incorporate, explicitly or by reference, a Standard of Morals and Conduct. All of [Church's] Employment and Volunteer Applications should be revised to incorporate the same language pertaining to formal employment and volunteer eligibility requirements and Standards of Morals and Conduct. Emphasize that at all times and locations, employees and volunteers are expected to conduct themselves in a manner consistent with [Church] principles. Specify that [Church] requires “faithful practice,” extending to standards of conduct, morals requirements, and marriage and sexuality. Delineate clear standards of conduct regarding sexual morality, identity and orientation, and other non-sexual behaviors (*e.g.* Cheating, stealing, lying, etc.). In addition, incorporate [Church's] Statements of Faith by reference.

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<sup>28</sup> See *World Vision*, 619 F.3d at 1111.

[Church] should also outline employment and volunteer “disqualifiers,” including but not limited to conduct or views that offend the precepts of the faith.<sup>29</sup> [Church] is guaranteed freedom and protection of its private right to refuse to foster, repeat, advertise, or disseminate views, messages, or statements divergent from its own.<sup>30</sup> Therefore, explicitly reserve the “right to reject [employees/volunteers] whose opinions conflict with [Church’s] declared mission and beliefs, as [Church] maintains its autonomy to choose the content of its own message.”<sup>31</sup> If [Church] intends to exclude anyone from an opportunity based on religion or sex, this criteria should be clearly defined in employment descriptions.

## *2. Internal Dispute Resolution, Dismissal, and Removal*

In order to further insulate [Church] from liability pertaining to employment determinations, [Church] should clearly identify requirements and procedures for internal dispute resolution, dismissal, and removal. “[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.”<sup>32</sup>

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<sup>29</sup> See *Hurley v. Irish-American Gay*, 515 U.S. 557, 581 (1995).

<sup>30</sup> See *id.*

<sup>31</sup> See *id.* at 557.

<sup>32</sup> See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976).

Not only does [Church] have the right to control the selection of those who will personify its beliefs, it also has a right to shape its own faith and mission through its appointments.<sup>33</sup> Therefore, [Church] should establish specific disciplinary and removal procedures for employees and volunteers, grounded in scripture, and apply these procedures consistently. Timing, means, and congregational involvement should be established. Further, it is the [Church's] prerogative to include policies relating to grace and reconciliation, including express procedures for employee and volunteer repentance, where applicable. The latter is particularly important in a post-Christian society: [Church] must have written procedures explaining why a repentant employee receives leniency while an unrepentant employee is immediately terminated.

[Church] should identify any controversial issues deemed terminable for employees and volunteers. Simply put, [Church] must define what it intends to defend. If [Church] intends to discipline, terminate, or refuse employment based on an issue, its written policies must expressly state a sincerely held religious belief on that issue. Explain further why an employee or volunteer is not allowed to counter-witness on said issue, particularly because it will damage the testimony and mission of the church. [Church] should define behavior that it will deem to qualify as counter-witnessing, heresy, or apostasy.

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<sup>33</sup> See *Hosanna-Tabor*, 132 S. Ct. at 706.

Finally, define cause for employment termination to include “failure to perform in accordance with the terms and conditions of this contract as stated herein and in [Church] Written Statements of Faith, which are incorporated herein by reference as if fully set forth herein.”<sup>34</sup> Identify “the support of activities which espouse beliefs contrary to [Church] teaching and Statements of Faith” as sufficient cause for termination.<sup>35</sup>

In regards to termination, [Church] officials should state its policies as well as reasons for terminating employees in ostensibly ecclesiastical terms.<sup>36</sup> Language should indicate termination due to an employee or volunteer’s “refusal to foster, repeat, advertise, or disseminate views, messages, or statements” in accordance with [Church’s] own.<sup>37</sup> Finally, employees and volunteers should understand the requirements and procedures for rescission and voluntary withdrawal, as previously discussed.

### *3. Employment and Volunteer Contract Forms*

[Church] should implement a signed Employment Contract Form and Volunteer Contract Form, binding [Church] employees, staff, administrators, board members and non-employee volunteers to church Written Statements of Faith.

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<sup>34</sup> See *Little v. Wuerl*, 929 F.2d 944, 945-46 (3d Cir. 1991).

<sup>35</sup> See *id.*

<sup>36</sup> See *Serbian*, 426 U.S. at 724-25; *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 714 N.E.2d 253, 262 (Ind. Ct. App. 1999); *Black v. Snyder*, 471 N.W.2d 715, 719-21 (Minn. Ct. App. 1991).

<sup>37</sup> See *Hurley*, 515 U.S. at 581; *State ex rel. Gaydos v. Blaeuer*, 81 S.W.3d 186, 195, 2002 Mo. App. LEXIS 1065, 24-25 (Mo. Ct. App. 2002); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732, 741 (D. N.J. 1999); *Yaggie v. Ind. Ky. Synod Lutheran Church*, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994), *aff'd* 64 F.3d 664 (5th Cir. 1995); *Schoenhals v. Mains*, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993); *Farley v. Wis. Evangelical Lutheran Synod*, 821 F. Supp. 1286, 1290 (D. Minn. 1993).

In order to prevent counter-witnessing, [Church] should revise the Employment and Volunteer Contract Forms to include language stating that counter-witnessing employees immediately forfeit their privileges at [Church]. Incorporate [Church's] definition of heresy, apostasy, or counter-witness as well as a provision explaining why the employee or volunteer may be terminated for any conduct that contradicts [Church's] stated beliefs. It is necessary to distinguish between what [Church] will consider to be informative or open discussions or debate and counter-witnessing.

In summary, the Employment Contract Form and Volunteer Contract Form should incorporate the following elements:

- Formal employment/volunteer eligibility requirements;
- Bind [Church] employees and non-employee volunteers to Standards of Morals and Conduct;
- Bind [Church] employees and non-employee volunteers to Scripture and Canonicity;
- Bind [Church] employees and non-employee volunteers to Statements of Faith and Doctrine;
- Bind [Church] employees and non-employee volunteers to Discipline, Mediation, and Termination;
- Bind [Church] employees and non-employee volunteers to Property and Facility Use Policy;
- [Church's] religious motivation for implementing the Employment and Volunteer Contract Forms;
- A statement informing the applicant that employment or volunteering “is contingent upon agreement and compliance with [Church's] [list any and all written organizational policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy] (the “Written Statements of Faith”), which are incorporated herein by reference as if fully set forth herein.”

- An acknowledgment that the applicant has received, read, and discussed these documents, as well as subscribes wholeheartedly to the principles inherent therein;
  - *“I have received, reviewed, and agree to adhere to all of [Church’s] policies, including the Written Statements of Faith. I have read and fully understand [Church’s] policies and subscribe, whole-heartedly, to the principles inherent therein. Further, I agree to adhere to all guidelines, requirements, restrictions and other provisions set forth herein.<sup>38</sup> I will work diligently to maintain and strengthen the Church and its members and will reflect the values of the Church in word and example.<sup>39</sup>”*
- Counter-witnessing Clause;
  - *“We, [Church], affirm that we are a ministry of the Christian church, and as such strive to present our doctrine in its fullness. We further affirm that we hold, believe and practice all that the Christian church teaches, believes and proclaims to be true, as set forth in our Written Statements of Faith, whether from the natural moral law or revelation from God through Scripture and traditional teachings of the Christian church. When [employees/volunteers] of [Church] endorse views contrary to these teachings, such counter witnessing creates a toxic confusion about our fundamental values among both employees and society at large. [Church] requires all [employees/volunteers] to conduct themselves in a manner that is compatible with the statements of faith and mission of [Church].*
  - *We, [Church], acknowledge that some of our administrators, staff, volunteers, and employees may struggle to achieve fidelity to some of our teachings, but we are all nevertheless called and required to stand as effective and visible professional participants and proponents of [Church]. As effective professionals in our ministry setting, all [employees/volunteers] are required and expected to avoid fostering confusion among the faithful and any dilution of our Christian mission and statements of faith. Therefore, administrators, staff, employees and volunteers are expected to arrange and conduct their lives so as not to visibly contradict, undermine, or deny these truths. To that end, further, we all must refrain from public support of any cause or issue that is explicitly or implicitly contrary to that which [Church] holds to be true, as set forth in our Written Statements of Faith. Those [employees/volunteers] who consider themselves to be Christians but who are not in a state of full assent to the beliefs of [Church], moreover, must refrain from participation in activities that support or advocate issues or causes contrary to the beliefs of [Church].*

<sup>38</sup> See *World Vision*, 619 F.3d at 736.

<sup>39</sup> See *Cline v. Catholic Diocese*, 206 F.3d 651, 658 (6th Cir. 1999).

- We, [Church], acknowledge that all administrators, staff, employees and volunteers who engage in this ministry have a higher calling, according to which they must not only avoid public contradiction of their status as professional agents in the mission of [Church], but are also called to conform their hearts, minds and consciences, as well as their public and private behavior, ever more closely to the truths taught by [Church]. Recognizing as we do that no person can give perfect witness to these truths, [Church] professionals are nevertheless called to strive for assent and fidelity.”<sup>40</sup>
- Counter-witnessing Acknowledgement and Automatic Termination Clause; and,
  - “I recognize the religious nature of [Church] and agree that [Church] has the right to dismiss me for public immorality, scandal, or rejection of the official teachings, doctrine or policies of [Church], thereby terminating any and all rights that I may have hereunder, subject, however, to the personal due process rights promulgated by [Church].<sup>41</sup> I understand that I automatically forfeit all [employee/volunteer] privileges for any conduct or avocation of conduct that stands in contradiction to [Church’s] stated beliefs, policies, and mission as set forth herein.<sup>42</sup> I understand that such beliefs or practices would make me unfit to advance [Church’s] mission<sup>43</sup> as it would impede and burden the integrity and religious mission of [Church]. I submit to the designated authority of [Church] to resolve any disputes relating to [employee/volunteer] policies and practices.”<sup>44</sup>
  - “This contract may be automatically terminated prior to its expiration, or not renewed, for reasons relating to improprieties regarding [Church] teachings or laws, unsatisfactory performance, inattention to duties, incompetency, irregular attendance, insubordination, failure to follow church policies and procedures, or for any other justifiable reason, provided that, if the contract is terminated or not renewed, the [employee/volunteer] shall have, as the sole means of recourse, an opportunity to be heard in accordance with appropriate [designated authority]. An [employee/volunteer] will not be discharged on account of disability if able to perform, with or without reasonable accommodations, the essential functions of the position. Acknowledging and accepting the religious and moral nature of the [Church’s] purpose and mission, the undersigned agrees to conduct herself or himself at all times, professionally and personally, in accordance with the [Church’s] teaching authority, law and internal governance. Charges of immoral behavior, or of conduct violative of

<sup>40</sup> See Catholic San Francisco Online Edition, “Archdiocese Releases Statement on Church Teaching, Practice in High Schools,” available at [http://catholicWsf.org/printer\\_friendly.php?id=63175](http://catholicWsf.org/printer_friendly.php?id=63175).

<sup>41</sup> See *Little*, 929 F.2d at 945-46.

<sup>42</sup> See *Herx v. Diocese of Fort Wayne-South Bend Inc.*, 2014 U.S. Dist. LEXIS 122456, 5 (N.D. Ind. Sept. 3, 2014).

<sup>43</sup> See *Little*, 929 F.2d at 949.

<sup>44</sup> See *Herx*, 2014 U.S. Dist. LEXIS at 5.



*the Statements of Faith or Standards of Moral Conduct or other written policies incorporated herein shall ultimately be resolved exclusively by \_\_\_\_\_ (designated authority), or his/her designee, as provided in the [Church] Bylaws/Constitution.”<sup>45</sup>*

- Signature block.

Finally, renew these Contracts annually by resubmitting them to all employees and volunteers for signature. This will effectively ensure compliance with as well as notice of [Church's] policies.

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<sup>45</sup> See *Herx*, 2014 U.S. Dist. LEXIS at 5.