

Workman's Compensation & Churches

The basic truth is simple: Almost every KBC church must have Workman's Compensation coverage. *This has been an issue brought to focus in recent years as several churches have been fined for not having this coverage. Fines have been as high as \$ 15,000.*

All states have workman's compensation laws requiring employers (with a very few limited exceptions) to have workman's comp insurance on employees. A few states exempt church employees from those laws and some states exempt activities not carried on for monetary gain or they exempt employers having fewer than a specified number of employees. Kentucky provides none of these exceptions. There is **no exception** in Kentucky that exempts churches. Workman's comp coverage should be included as part of a church's property and casualty coverage.

Some insurance agents erroneously focus on ministers being self-employed for social security. They ignore the IRS position that most ministers should be treated as an employee for income tax purposes (dual tax status). In small churches with no other employees, they assume a pastor is self-employed and therefore assume workman's comp coverage is not required. Even if that pastor is treated as self-employed for tax purposes, the term "employee" is generally defined more broadly when it comes to workman's comp.

Where could this become a really difficult issue? Obviously, chances of a pastor being injured on the job is relatively small compared to many professions. But, if the pastor were to be injured (including a car accident while out visiting) there could be problems. If he needs medical services, his regular medical insurance provider would likely take the position of denying medical insurance coverage because as a job related injury workman's comp should cover the medical expense instead. There have been cases where an employer did not have workman's comp, an employee was injured on the job, the employee's medical insurance refused to pay and the employer was deemed to be responsible for all medical costs since it was a job related injury. This can also apply when a church has other non-ministerial employees classified as "contract workers". For example, if a custodian were injured on the job, the same issues could surface and a church could be liable for any medical costs. That's the primary purpose of workman's comp coverage -- to protect an employer (church) from being liable for medical costs due to a job-related injury.

In 1981 there was a court case where a church challenged workman's comp laws as being unconstitutional when applied to churches. The federal appeals court ruled against the church. In another case a church employee suffered a heart attack while on the job. In court it was ruled that job stress contributed to his heart attack and his widow was awarded payments of \$ 256,000 from workman's comp -- imagine if the church had been responsible.

Finally, here's a quote from Pastor, Church & Law by Richard Hammar (An attorney and CPA who specializes in church legal and tax issues and is one of the leading authorities on these issues in the country):

"While many church leaders continue to believe that churches are exempt from state worker's compensation laws, the opposite is often the case. Failure to purchase worker's compensation insurance can result in a significant uninsured risk. In the case of a fatality, the risks can be in the hundreds of thousands of dollars."

For other questions and for further guidance on the issue consult with the church's property and casualty provider and/or legal counsel from an attorney who has expertise in employment law.