

# Workers' Compensation

## Introduction

In most church and school settings, pastors and administrators face a variety of issues concerning child safety. These issues cover a broad range of responsibilities and include areas of concern such as playground equipment, trip supervision, and incidents of physical or emotional abuse.

On the other hand, children are not the only people who can be injured on your premises. When discussing safety issues, pastors and administrators should consider another important area of potential liability - injuries to employees.

In particular, an employee who is injured while working at a church or school may be entitled to workers' compensation benefits. If your ministry has purchased workers' compensation insurance, then the insurance carrier should make any payments that are due to the employee. Conversely, if your ministry does not have workers' compensation insurance, then the employee may get stuck paying his own medical bills, or worse, may decide to file a lawsuit against the ministry.

In connection with this issue, your ministry should ask the following questions: Does our state require churches and Christian schools to carry workers' compensation insurance for their employees? If so, does our ministry have adequate workers' compensation coverage under our current insurance policy? Or, if our state does not require us to carry workers' compensation insurance and we do not have this coverage, how will we respond to an employee who is injured at work and is forced to miss time from work as a result of this injury?

In this Legal Report we will address these and other questions related to workers' compensation coverage. After reading this Report you should reach the conclusion that, if your ministry has not purchased workers' compensation insurance coverage in the past, it may want to consider doing so in the future.

## Discussion

First Christian School in Broken Limb, Wyoming, held a very successful production of *A Man Without A Country*. Following the last night of the production, the school clean-up crew— (known as the Eager Beaver Service Club)—began taking down props and restoring the school gymnasium to its original state. One of the members of the Service Club was an employee named Mr. Crutcher, who taught fine arts at the school. As Mr. Crutcher was climbing the school ladder to dismantle the stage lighting, he carelessly failed to check his footing, tumbled off the ladder, and severely fractured his leg. Unfortunately, Mr. Crutcher was forced to miss a month of work because of his broken leg.

Does Mr. Crutcher have a claim against the school? If so, what type of claim does he have? If not, how will the school respond to Mr. Crutcher's plight?

**Question # 1: What is a workers' compensation claim?**

A workers' compensation claim is a demand for the payment of certain benefits, which an employee may be able to assert against his employer if the employee is injured at work. In most states, workers' compensation is a "no fault" system. Under a "no fault" system, the main issue that must be decided is whether the employee was injured during the course of his employment—not whether the employer, or another employee, was responsible for the injury. In other words, and in connection with the example above, even though Mr. Crutcher's injury was caused primarily by his own negligence (i.e., he "carelessly failed to check his footing"), in most states he would be allowed to assert a workers' compensation claim against the school.

Nevertheless, because workers' compensation is a "no fault" system, an employee cannot collect workers' compensation payments and sue his employer as a result of the injury. In the example above, even if First Christian School had been negligent in allowing Mr. Crutcher to use a faulty ladder, Mr. Crutcher's only claim against the school would be for workers' compensation benefits. This is the advantage of a "no fault" system. It allows Mr. Crutcher to receive workers' compensation benefits even if he was at fault, but it restricts Mr. Crutcher to the remedy of workers' compensation payments if the school was at fault.

It is important to note that the workers' compensation system was established primarily as a way of protecting employers from lawsuits brought by employees. In that regard, workers' compensation benefits are far more limited in scope than the money damages an employee could pursue in a lawsuit against a church or school. In particular, in connection with a workers' compensation claim, the employee may be entitled to recover only his lost wages and medical expenses. (If, however, the employee has suffered a partial or permanent disability, he may be entitled to certain payments for the disability. In addition, if the employee dies, then his estate can recover death benefits and burial expenses.)

On the other hand, an employee cannot recover damages for "pain and suffering;" and further, he may not recover punitive damages in connection with a workers' compensation claim. This factor is significant because damages for "pain and suffering" and/or punitive damages can comprise the majority of a jury's verdict if an employee wins a personal injury lawsuit against a church or school.

In sum, in the majority of states, the workers' compensation system allows an employee who is injured at work to recover medical expenses and lost wages, but it prohibits the employee from suing his employer for a work-related injury.

**Question # 2: Does our state require our ministry to carry workers' compensation insurance coverage?**

Most states require all employers to carry workers' compensation insurance. Nevertheless, even in those states where workers' compensation coverage is mandatory, certain exemptions may exist. For example, in Georgia, only those employers with 3 or more employees are required to provide workers' compensation insurance for their

employees. In addition, some states exempt churches from the workers' compensation requirement, and other states exempt all nonprofit employers.

If you have questions about whether your ministry is required to provide workers' compensation coverage, please check with a local attorney to determine the applicability of the workers' compensation laws in your state.

**Question # 3: Should our ministry carry workers' compensation coverage even if such coverage is not mandated by our state?**

Workers' compensation insurance coverage is a good idea even if your ministry is not required to provide such coverage under state law. For example, if workers' compensation coverage is "elective" in your state but your ministry chooses not to provide such coverage, then your ministry may "waive" certain defenses in connection with a lawsuit filed by an employee. Even if your ministry does not "waive" its defenses by "opting out" of coverage, a lawsuit itself could be costly for the ministry. (In fact, one lawsuit could cost more in litigation fees than several years of premiums.) Again, the possibility that an injured employee will file a lawsuit becomes very remote if your ministry has workers' compensation coverage in place.

In addition, even if the church or school is not at fault, or the injured employee decides not to sue, the ministry may want to assist the employee financially. For example, if Mr. Crutcher was the sole wage earner for his family and he was unable to work for a month following his accident, the school may want to pay his medical bills and lost wages. As noted above, if the school was carrying workers' compensation coverage, then the insurance carrier would pay these bills and wages on behalf of the school, thereby helping the school with this financial burden.

**Question # 4: Will the ministry's group health insurance plan cover an employee's injury if the ministry does not have workers' compensation coverage?**

Probably not. Most group health plans have a specific exclusion for injuries suffered by employees at work. In other words, if the injury should have been covered under a state's mandatory workers' compensation system, then the group health plan will deny the employee's claim. Such a denial could leave the individual employee responsible for all of his medical bills (quite a sum for Mr. Crutcher who was in traction for a week after his fall!). In addition, even if the group health plan pays certain medical bills in the beginning, the group provider may seek to recoup these payments from the employee once the provider discovers that the injury should have been covered by workers' compensation insurance.

**Question # 5: Who is covered by workers' compensation insurance?**

Generally speaking, an "employee" whose injury occurs "during the course of his employment" will be covered.

In most states, the definition of "employee" is fairly broad, covering permanent, part-time, and even occasional workers. Nevertheless, many states do not include "volunteers" within the definition of "employee." Please note, however, that even though

a ministry may call a person a "volunteer," the state workers' compensation system may not reach the same conclusion.

For example, if a parent has a regular job of cleaning up after school functions and receives a discount on his child's tuition payments in exchange for his work, then the parent may be considered an "employee" of the school. Conversely, in the example above, if Mr. Crutcher's father - who was visiting from out of town was injured while cleaning up the gymnasium, he probably would not be considered an "employee" of the school for purposes of workers' compensation coverage.

In addition to being an "employee," the individual must have been injured "during the course of his employment." "During the course of one's employment" generally means that the injury occurred within the time period of employment, and at a place where the employee was reasonably expected to be performing his duties. In the example above, as the fine arts teacher at the school, Mr. Crutcher was injured "during the course of his employment" because he was performing his duties while cleaning-up the school gymnasium after the play.

In sum, almost any employee who is injured at work, or who contracts an illness due to conditions at work, will be covered under a state's workers' compensation system.

### **Conclusion**

Children are not the only ones who can be injured at a church or school. Employees run the risk of injury every day they come to work, even if they are not climbing ladders to remove stage lights. For this reason, churches and Christian schools should consider purchasing workers' compensation insurance coverage for their employees. In most states, this insurance coverage can be purchased at a reasonable price, and it can provide an added level of protection for the ministry and for the employees of the ministry.