

An uninsured risk for many churches

WORKERS COMPENSATION

Merva v. Workers' Compensation Appeal Board, 784 A.2d 222 (Pa. App. 2001)

▲ **Background.** Workers compensation laws have been enacted in all fifty states. These laws provide compensation to employees as a result job-related injuries and illnesses. The amount of compensation is determined by law and generally is based on the nature and extent of the employee's disability. In exchange for such benefits, employees give up the right to sue an employer directly. Fault is irrelevant under workers compensation laws. The only issues are (1) did an employment relationship exist; (2) did the injury occur during the course of employment; and (3) what are the nature and extent of the injuries?

Church employees are covered by workers compensation laws in most states. However, there are exceptions. A few states exempt churches and non-profit organizations from workers compensation coverage, and some states exempt employers having less than a specified number of employees.

◆ **Caution.** If a church is not exempt from workers compensation law, what is the effect of its failure to obtain workers compensation insurance? Most workers compensation laws are compulsory. The employer cannot elect to remain outside the system. In a "compulsory" state, a covered employer that fails to obtain workers compensation insurance will ordinarily be subject to a lawsuit by an injured employee, or may be treated as a "self-insurer" and be liable for the damages specified by the workers compensation law. A few states permit employers to elect coverage under workers compensation law. To persuade employers into electing coverage, these states impose various penalties upon employers that do not elect coverage.

▲ **A recent case.** A Pennsylvania court ruled that the widow of a man who suffered a heart attack as a result of stress he experienced while working at a church was entitled to workers compensation benefits. The worker suffered the heart attack while performing repairs at a church, and the heart attack eventually led to his death. The deceased worker's widow filed a claim for workers compensation, in which she requested compensation for her

husband's death plus an additional \$256,000 to reimburse Medicare for monies it expended for medical care of the worker following the accident. A workers compensation judge ruled that the widow had proven that her husband's activities at work substantially contributed to his heart attack, and therefore she was entitled to benefits.

■ **Key point.** *This case demonstrates an important principle. While most church leaders continue to believe that churches are "exempt" from state workers compensation laws, the opposite is often the case. Failure to purchase workers compensation insurance can result in a significant uninsured risk, as this case illustrates. In the case of a fatality, the damages can be in the hundreds of thousands of dollars.*

▲ **Significance to church treasurers.** What is the significance of this case to church treasurers? Consider the following points:

1. **Are we subject to workers compensation?** Church treasurers should know whether their church is subject to state workers compensation law. If you are not sure if your church is covered, consider one or more of the following steps: (1) ask a local attorney; (2) ask your church insurance agent; or (3) call the agency in your state that administers the workers compensation program.

2. **The risk of being uninsured.** Employers that are covered by workers compensation law generally pay insurance premiums to cover the cost of benefits paid to injured workers. However, many churches have failed to obtain workers compensation insurance, often because of a false assumption that they are "exempt" from workers compensation law. This can expose a church to significant liability, for two reasons. First, an injured employee may be able to sue the church for damages in a civil lawsuit. Unlike workers compensation benefits, there is no limit on the amount a court can award in a civil lawsuit. Second, the damages a court awards in a civil lawsuit will not be covered under most church insurance policies. Often, general liability policies exclude employee injuries on the assumption that they are covered under a workers compensation policy.

This can create a dangerous gap in coverage.

3. **Do we have workers compensation insurance?** If your church is subject to workers compensation law, then be sure you have obtained workers compensation insurance. If in doubt, ask your church insurance agent.

4. **Employees.** Workers compensation laws only cover injuries and illnesses suffered by employees on the job, but the term *employee* is defined very broadly to further the objectives of workers compensation laws. As a result, the fact that a church treats a worker as self-employed for income tax reporting purposes does not mean that the worker is self-employed for purposes of workers compensation. The case reviewed in this article is a good example. The employee status of the worker was not questioned, even though he was hired to work only for a limited period of time by the church.

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grossly negligent as a result of their disregard of the NHTSA safety advisory and its recommendations. A finding of gross negligence is a very serious risk since it would expose the church to "punitive damages" that are not covered under its liability insurance policy. In addition, the members of the church board can be personally liable for their gross negligence. While state and federal laws provide uncompensated board members of nonprofit organizations with limited immunity from liability, these laws do not protect against gross negligence.

☞ **Need more information?** We have prepared a Special Report addressing the legal issues associated with the use of church vans. These concerns include the safety issues addressed in this article along with the use of church vans as "school buses" and the use of vans across state lines. Every church should have this vital information. To order call 1-800-222-1840 between 8 AM and 4:30 PM ET. Ask for the Special Report on church vans. Price: \$7.95.