

MINISTRY / CHURCHES · BUILDING SAFER MINISTRIES

Building Safer Ministries

A steward's brief for senior pastors, executive pastors, denominational leaders, and elders, the theological and legal framing for protecting the vulnerable, with the Five-Pillar framework translated into ministry language.

MINISTRY / CHURCHES

SAFEGUARDING

DUTY OF CARE

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About Building Safer Ministries. Building Safer Ministries (BSM) is empathiHR's practice for the faith sector. This brief carries the same compliance rigor empathiHR brings to every client, translated into the language of stewardship, eldership, and the care of a congregation. It is written for leaders, not lawyers, and it is educational, not legal advice.

01 • Stewardship

The call to stewardship

A church is entrusted with people, staff, volunteers, children, and the vulnerable who walk through its doors seeking safety and grace. Protecting them is first a moral and spiritual duty. It is also, in the eyes of the law, a duty of care the courts will hold a ministry to.

Many faithful leaders assume that a church's religious character places it largely outside employment and safeguarding law. The truth is more nuanced, and getting the nuance wrong has cost ministries dearly, in both their witness and their finances. This brief lays out what actually applies, where genuine protections exist for churches, and how a serious safeguarding program honors both the congregation and the law.

The stewardship principle. Good stewardship is not fear of liability, it is faithful care exercised with diligence. A ministry that screens its workers, trains its people, listens to concerns, and responds with integrity is protecting the flock *and* building the very record that protects the ministry. The two goals are one.

O2 · Protection

The ministerial exception

The most important legal protection a church holds is the "ministerial exception", a First-Amendment doctrine that keeps courts out of a church's decisions about who will minister to the faithful.

Hosanna-Tabor v. EEOC (2012)

In a unanimous decision, the Supreme Court first recognized the ministerial exception, holding that the Religion Clauses bar employment-discrimination suits by a "minister" against her church over the church's decision to remove her. The purpose, the Court explained, is to ensure that "the authority to select and control who will minister to the faithful ... is the church's alone." A church need not even show the decision was made for a religious reason.

Our Lady of Guadalupe School v. Morrissey-Berru (2020)

The Court then broadened who counts as a "minister." It held the exception applied to two Catholic-school teachers who did not carry the title "minister" and lacked formal religious credentials, because they performed **vital religious functions** (teaching the faith, praying with students). The decisive question is *function*, not title.

A real but limited shield. The ministerial exception is powerful but bounded. It is an **affirmative defense** that must be raised, not an automatic bar. It covers those who perform key religious functions; it does not cover purely secular staff (custodial, clerical, maintenance). And whether it reaches harassment / hostile-work-environment claims by ministers is genuinely unsettled, courts are split, with no Supreme Court ruling.

O3 · Precision

Two doctrines, kept distinct

Two different legal protections are constantly confused, even by counsel. Keeping them separate is essential to understanding what a church can and cannot do.

Ministerial exception	Title VII §702 exemption
Constitutional (First Amendment)	Statutory carve-out
Who it covers. Employees who perform key religious functions ("ministers"), by function, not title (Our Lady of Guadalupe).	What it allows. Religious orgs may prefer members of their own faith in employment.
What it does. Bars discrimination suits by ministers over selection, discipline, removal. An affirmative defense, must be raised.	What it does NOT allow. Discrimination by race, color, sex, or national origin against non-ministerial staff, those protections still apply.

The **ministerial exception** is constitutional and concerns *ministers*. The **Title VII §702 exemption** is a statute that lets a religious organization prefer members of its own faith in hiring, a religious-preference right. Neither doctrine removes Title VII's protections against race, color, sex, and national-origin discrimination for **non-ministerial employees**, and harassment and retaliation protections generally apply to them as well.

The practical bottom line. A church may hire for faith. It may make its own decisions about its ministers. But for its non-ministerial staff, the bookkeeper, the facilities team, the administrative assistant, it carries essentially the same anti-harassment and anti-discrimination obligations as any employer with 15 or more employees.

O4 · Who Is Who

Employee, volunteer, or minister?

A ministry's workforce blends paid staff, ordained leaders, and volunteers, and the legal category of each worker changes the obligations that attach. Misjudging the category is a common and costly error.

The three categories

Ministers: those performing key religious functions; largely shielded by the ministerial exception.

Non-ministerial employees: paid staff in secular roles; covered by employment law. **Volunteers:** generally not "employees," but the church still owes them and those they serve a duty of care.

Volunteer status is not a loophole. A "volunteer" who receives a housing allowance, stipend, or substantial benefits may be reclassified as an employee. And volunteer status does **not** shield a church from liability for negligent selection or supervision, the duty to screen and supervise anyone working with children or vulnerable people attaches regardless of whether they are paid.

Elder-board checkpoint. For every role that works with minors or vulnerable adults, paid or volunteer, is there a background check, a defined supervisor, and a boundaries policy on file?

05 • Responsibility

The duty of care

Like any organization, a church owes a duty of reasonable care in how it selects, retains, and supervises its workers. Most ministry liability flows through three related failures.

Negligent hiring

Placing someone in a role without reasonable screening when a check would have revealed a risk, e.g., skipping background checks for children's-ministry workers.

Negligent retention

Keeping someone on, or quietly reassigning them, after the church knew or should have known they posed a risk. Concealment is the aggravating factor.

Negligent supervision

Failing to supervise workers during church activities. In some states this duty exists even without prior notice about the specific worker.

Foreseeability is the hinge. Courts ask whether the harm was a reasonably foreseeable result of the church's failure to exercise care. Ignored complaints, skipped background checks, and reassigning rather than removing an accused person are the facts that make harm foreseeable, and liability follow.

O6 · Obligation

Mandatory reporting

Protecting children is both a sacred trust and, in every U.S. state, a legal obligation. Clergy are mandatory reporters of suspected child abuse, but the details vary, and the differences matter.

All fifty states, D.C., and Guam require clergy to report suspected child abuse, whether through clergy-specific statutes or "any person" reporting laws. Many states carve out an exception for information learned in a confessional or penitential communication, but a number do not, and this area is actively changing through legislation. Because the rules differ by state and are in flux, every ministry should confirm its specific obligations with local counsel.

Do not investigate first and report later. When abuse of a minor is suspected, mandatory-reporting duties generally require prompt reporting to civil authorities, *before* and independent of any internal inquiry. An internal investigation does not substitute for a report. When in doubt, report, and involve counsel immediately.

Immediate resources: local law enforcement or child protective services; the Childhelp National Child Abuse Hotline at 1-800-422-4453 (1-800-4-A-CHILD). This brief describes a general framework only and is not legal advice; verify your state's reporting law and timelines with qualified counsel.

07 • Integrity

Faith-based investigations

When a concern arises about staff or volunteer misconduct, a ministry faces a tension: the pastoral instinct toward grace and confidentiality, and the duty to conduct a fair, documented, defensible inquiry. Both matter, and neutrality is non-negotiable.

Faith settings carry unique sensitivities: pastoral relationships, spiritual authority, expectations of confidence, and often trauma. But those sensitivities do not lower the standard for the investigation itself. A defensible inquiry is impartial, independent of the people being examined, and documented, stating the scope, who was interviewed, what was reviewed, the credibility assessments, and the findings.

When to bring in an independent investigator. Where leadership is implicated, where a conflict of interest exists, or where the credibility of the outcome itself is at stake, an independent third-party investigator protects both the vulnerable and the ministry. Independence is what makes the finding believable to a congregation, and defensible later.

O8 · The Framework

The Five Pillars, in ministry language

empathiHR's Five-Pillar program translates directly into the work of a safe, well-governed ministry. The same structure that builds a legal defense builds a culture of protection.

1. Policies & covenants

Clear codes of conduct, boundaries policies, and safeguarding standards, the written commitments a congregation makes to protect its people, distributed and acknowledged.

2. Formation & training

Recurring abuse-awareness, boundaries, and reporting training for all staff and volunteers, equipping your people to recognize, prevent, and respond.

3. A trusted reporting channel

A neutral, confidential way to raise a concern that does not depend on reporting to the very leader involved, so no one is silenced by proximity to authority.

4. Investigations with integrity

Prompt, impartial, documented inquiries, independent where leadership is implicated, that honor both the vulnerable and due process.

5. Governance & oversight

Ongoing counsel to elders and leadership: screening, corrective action, mandatory-reporting compliance, and keeping the program current as the law changes.

09 · Act

A safeguarding action plan

Faithful stewardship is practical. These are the concrete safeguards a well-run ministry puts in place, each one both a protection for the flock and a record that protects the ministry.

- Adopt a written safeguarding and code-of-conduct policy; have every worker acknowledge it.
- Run criminal background checks and reference checks on all staff and volunteers who work with minors or vulnerable adults; re-screen periodically.
- Follow a two-adult rule, never one screened adult alone with a child in an enclosed space or vehicle.
- Provide a confidential reporting channel that bypasses the person a concern might be about.
- Train the whole team on recognizing abuse, boundaries, and mandatory-reporting duties.
- Investigate concerns promptly, impartially, and in writing, independently when leadership is involved.
- Know and follow your state's mandatory-reporting law; report suspected child abuse to authorities first.
- Review the program with the elder board and counsel at least annually.

Steward it well, with a partner. Building Safer Ministries brings empathiHR's full program to churches and ministries, policies, training, a trusted reporting channel, and investigations with integrity, in the language of stewardship. Schedule a confidential assessment for your ministry.

Schedule a confidential assessment · 866.240.6618 · empathihr.com

Important

About this guide

Educational information, not legal advice. This guide is provided by empathiHR for general educational purposes. It is not legal advice and does not create an attorney–client or consultant–client relationship. Employment law changes frequently and varies by jurisdiction, industry, and the specific facts of each situation.

Religious–employment and safeguarding law is nuanced, varies significantly by state, and includes unsettled questions (such as whether the ministerial exception bars harassment claims). Mandatory child–abuse reporting duties in particular differ by jurisdiction and are changing. Confirm your ministry's specific obligations with qualified counsel. Before acting on anything in this guide, review your policies, programs, and specific circumstances with qualified employment counsel. empathiHR works alongside your legal counsel to build and maintain the operational program described here.

Case citations, statutes, and figures were current as of the update date on the cover and should be re–verified against primary sources before you rely on them. Where the law is unsettled or a figure is not fixed by statute, this guide says so.



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