



# RELIGIOUS EXPRESSION AND YOUR CHURCH

*A Practical Guide to Protect Your Ministry*

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Your congregation depends on you for guidance. As a church leader, you embody your church's beliefs, values and tenets — and you should be able to practice your faith freely without fear of retaliation from someone with different values.

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One of the most common risks associated with religious expression is mental or emotional liability claims. People who don't share your religion's values may deem them discriminatory and allege that your organization is responsible for causing them mental or emotional anguish. However, court decisions regarding these issues may leave questions unanswered, so it's important to protect your organization in the event of a lawsuit.

## SAME-SEX MARRIAGE

On June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that:

- + The Constitution requires a state to license a marriage between two people of the same sex.
- + The Constitution requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.

Though *Obergefell* addressed obligations to state government, the ruling left unanswered questions whether the ruling applies to your congregation's beliefs. For now, churches that are opposed on theological grounds to same-sex marriage may want to consider the following:

- + **Understand the laws in your state regarding religious exemptions to state civil rights laws.** While there has not been any change made to federal civil rights laws regarding same-sex marriage, many state laws address same-sex marriage and contain religious exemptions that allow religious organizations to discriminate on the basis of religious belief. Consult with your local legal advisor about the law in your state.
- + **Consider incorporating appropriate belief statements into the church's governing documents and/or operational policies.** Examples include facility usage and/or wedding policies, membership policy and employee handbook. Sample policy provisions are included in the following pages. Consult with your local legal advisor about the advisability of making such changes in your state.
- + **Consistently follow the provisions of your governing documents and operational policies.** Organizations can invite legal challenges by inconsistently or indiscriminately applying their governing or operational policy provisions.

- + **Exercise caution when publicly addressing sensitive issues relating to sexuality and same-sex marriage.** Publicly naming an individual or individuals, or a particular situation, can open up the church to claims for defamation or invasion of privacy.
- + **Discuss insurance coverage with your church's insurance agent.** You need to know what coverage may be available to your church in the event of a claim related to same-sex marriage. It is important to understand both the coverages and the exclusions that may apply to your church if a claim is brought.

The Supreme Court opinion in Obergefell recognized a fundamental right of same-sex couples to marry under the 14th Amendment of the Constitution. How this new fundamental right interacts with the First Amendment's guarantee of the free exercise of religion will be of interest to churches as those provisions are interpreted by the courts moving forward.

## SAMPLE POLICIES

The following are sample policies your organization may consider adding to your current belief statements and other church policies. Consult your local legal advisor about the advisability of making such a change at your organization and in your state.

### + Sample Church Bylaw Provision

*(Include within Articles of Faith or Statement of Faith)*

### + Statement on Marriage and Sexuality

We believe that God has ordained marriage and defined it as the covenant relationship between a man and a woman, and therefore <CHURCH NAME> will only recognize marriages between one biological man and one biological woman. <INSERT APPLICABLE SCRIPTURAL/BIBLICAL REFERENCES HERE>.

This Statement on Marriage and Sexuality specifically gives <CHURCH NAME> the right and authority to restrict the use of Church facilities and property to uses consistent with the Bible, with its Statement of Faith and Statement on Marriage and Sexuality, as solely determined by <CHURCH NAME>.

### + Sample Church Facility Usage Policy Provision

*(Consider including with Church's Facility Usage Policy)*

<CHURCH NAME>'s property and facilities may be used only for purposes consistent with the Church's doctrinal beliefs as reflected in the Bible and the Church's Statement of Faith, including its Statement on Marriage and Sexuality. Property and facility use will not be permitted to persons or groups holding, advancing, or advocating beliefs or practices that conflict with <CHURCH NAME>'s religious teachings as reflected in the Bible and the Church's Statement of Faith, including its Statement on Marriage and Sexuality. <CHURCH NAME>'s <CHURCH BOARD OR OTHER APPLICABLE AUTHORITY> shall be the final decision-making authority regarding whether any proposed facility/property use is in conformity to the Church's doctrinal beliefs.

#### + Sample Church Marriage Policy Provision

*(Consider including with the Church's Marriage Policy)*

Because God has ordained marriage and defined it as the covenant relationship between a man and a woman, <CHURCH NAME> will only recognize marriages between one biological man and one biological woman. <INSERT APPLICABLE SCRIPTURAL/BIBLICAL REFERENCES HERE>. Further, the ministers and staff of <CHURCH NAME> shall only participate in weddings and solemnize marriages between one man and one woman, and the facilities and property of <CHURCH NAME> shall only host weddings between one man and one woman.

#### + Sample Church Membership Covenant Provision

*(Consider including the Church's Membership Covenant)*

- I agree with <CHURCH NAME>'s Statement of Faith
- I agree with <CHURCH NAME>'s Statement on Marriage and Sexuality

#### + Sample Church Employment Handbook Provision

*(Consider including within the Church's Employment Handbook)*

#### + Employee Conduct

<CHURCH NAME> bases its teachings and guidelines for living and working on the Bible. We expect each employee's conduct, on the job as well as off the job, to be in line with the moral, spiritual and ethical teachings of the Bible as well as our Statement of Faith and Statement on Marriage and Sexuality. Conduct that is inconsistent with these standards may result in disciplinary action, up to and including termination of employment.

## RELIGIOUS EXPRESSION COVERAGE – CLAIMS SCENARIOS

The following are examples of claims that may be covered under GuideOne's Religious Expression Coverage\*. Coverage for actual claims will be based on applicable policy documents and applied to the individual facts of the actual claim.

#### + Example 1

A local church often rents its facilities for weddings to church members and the general public. When a same-sex couple contacts the church about renting the facility for their marriage ceremony and/or reception, the church declines the request due to religious beliefs on same-sex marriage.

The couple then brings a claim for discrimination and infliction of emotional distress over the church's decision to deny their request.

*\*The claims scenarios are general examples of how policy provisions may protect a policyholder. Each actual claim, however, is dependent on its facts and how they pertain to policy coverages.*

**+ Example 2**

A local church rents its facilities to the general public for non-church purposes, such as civic meetings, luncheons, celebrations and similar events. An organizer of a group that espouses life views that are at odds with the church's beliefs contacts the church about renting the facility for a meeting of their group. Because the group's beliefs are contrary to the church's religious beliefs and teachings, the church denies the request.

The organizer of the group then brings a discrimination claim against the church due to emotional injury and distress sustained.

**+ Example 3**

A pastor performs baptisms for church members and their families as part of his job description. Two longtime members of the church approached the pastor about baptizing their grandchild, who has same-sex parents. Because the church objects to same-sex marriage, the pastor denies the request.

The parents of the child then bring a discrimination claim against the church and the pastor for emotional distress suffered.

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While churches and ministries across the country may question how they can protect themselves from expressing their religious beliefs, you can worship with confidence, knowing that Religious Expression Coverage is offered so you can stay true to your deeply held spiritual or religious beliefs.

▶ [Want to learn more? Visit GuideOne.com/Church](https://www.GuideOne.com/Church) for more information today.

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CM 18165 (04/18)