

Establishing the Employment Relationship



CAL-PAC LEARNING LAB

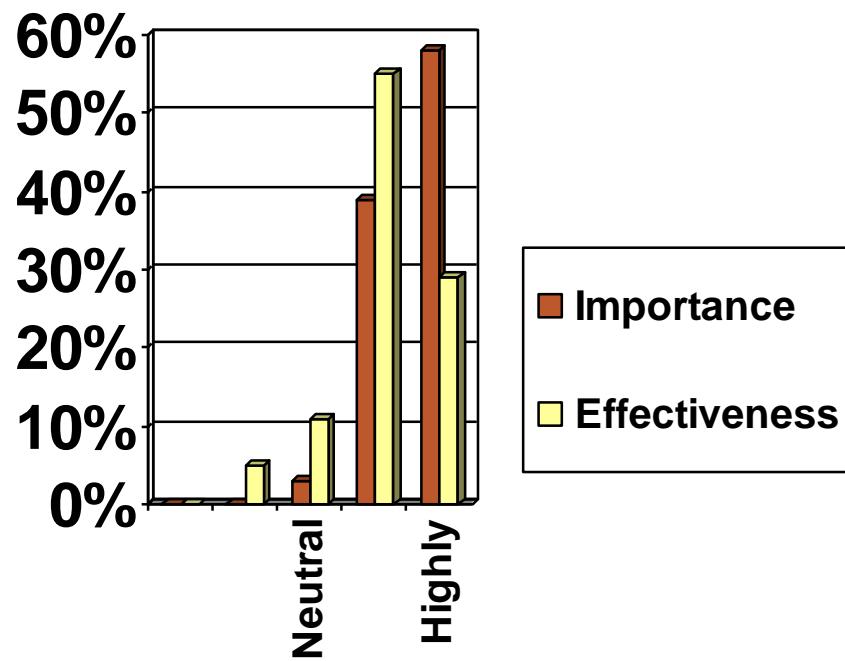
SEPTEMBER 10, 2024

Prologue...

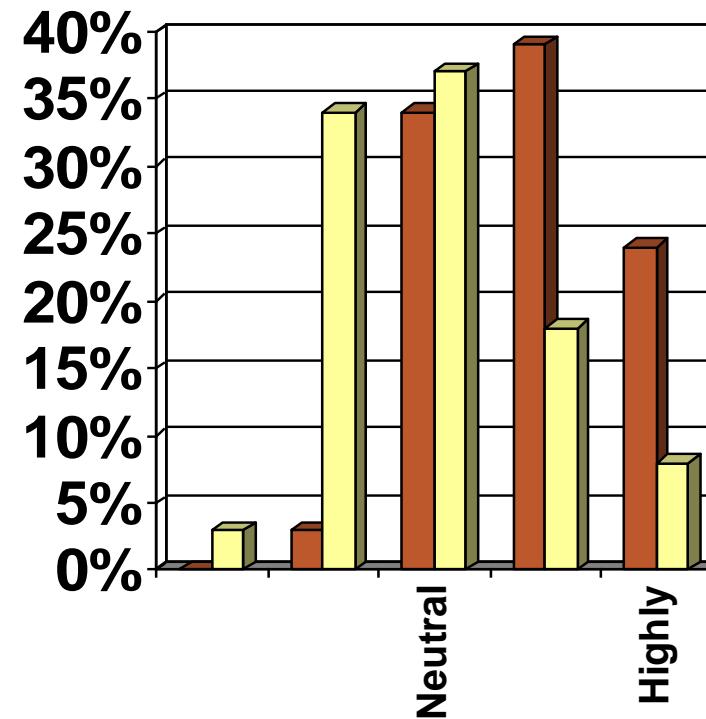
The Ministry of
Administration

Management Skills

Coaching & Counseling

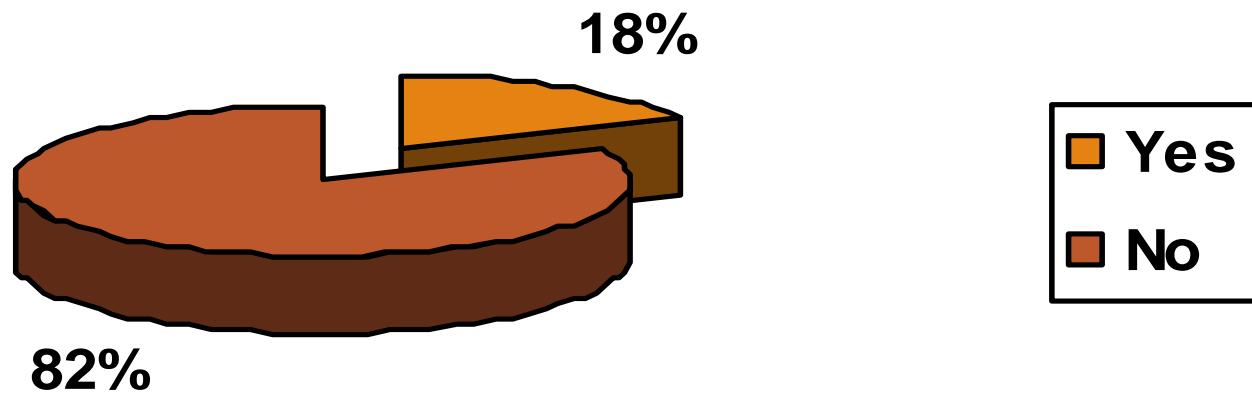


Employment Laws



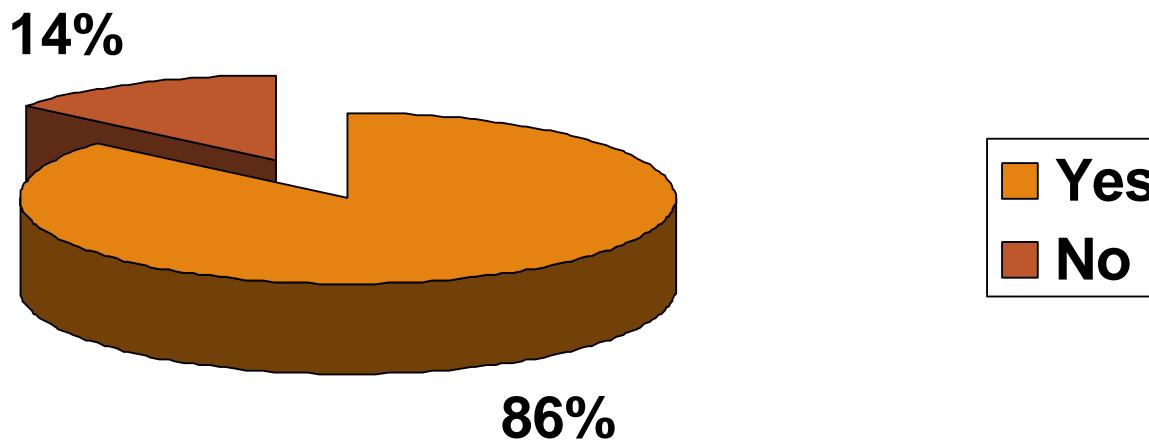
Education & Training

Did your seminary education prepare you for church administration?



Organizational Structure & Support

Do you feel a pastor should have strong management skills to be completely effective in his/her position?



Agenda

- Laws and Regulations
- Classification of Workers
- Payment of Wages
- Non-Exempt Employee Regulations

Regulations Impacting Churches



WHAT'S NEW...AND
NOT SO NEW?

Federal Law

Wage & Hour

- **Fair Labor Standards Act (FLSA)**
- Requires minimum wage and overtime to be paid to non-exempt employees

State Law

Wage Payment & Working Conditions

- **Industrial Welfare Commission (IWC) Wage Orders**
 - Wage Order 4-2001 (churches, including preschools)

Wage Orders

- Hours and days of work
- Minimum wages
- Overtime
- Reporting time pay
- Record retention
- Meal periods
- Rest periods
- Change rooms and resting facilities
- Temperature and seats

State Law

- **Salary Information Law (AB 168)**
- **Effective January 1, 2018**
- **Applies to all employers in California**
- **No questions about prior salary**
 - Can't ask applicants about salary history, compensation or benefits
 - **If disclosed without prompting, can't be used in pay determination**
 - **Can't rely on salary history when determining how much to pay**
 - **Must provide applicants with a pay scale upon reasonable request**

State Law

- **Pay Transparency Law (SB 1162); Labor Code 432.3**
 - **Effective January 1, 2023**
 - **Applies to employers with 15 or more employees**
 - All job postings must contain pay scale information directly in the job posting
 - Must be the scale that the employer would “reasonably expect to pay”
 - If there is a set rate for the position, the rate must be posted

State Laws

- **California Fair Chance Act (Ban-the-Box) Law (AB 1008)**
 - Effective January 1, 2018
 - Prohibits employers with 5+ employees from asking about criminal history on applications or any time before conditional offer.
 - Applies to both felonies and misdemeanors.
 - After conditional offer, employer may ask about criminal history, including conducting a background check.

Offer Letters

- Written offer contingent on a satisfactory background check and contains the date of the offer
- Give or email to selected candidate
- Candidate signs, dates and returns
- Initiate background check

SB 553: Preventing Workplace Violence

■ <https://www.calpacumc.org/resource/workplace-violence-prevention-training-resources/>

■ Effective July 1, 2024

■ Requires all employers that are open to the public to:

■ Maintain a Violent Incident Log

■ Conduct post-incident investigations

■ Require staff to know how to obtain help

■ Lay out procedures for responding to violent emergencies

(Not an inclusive list.)

Classification of Workers



Classifications

Employee

Independent contractor

Volunteer

Volunteer

- determined by the intent of the individual
- for religious or humanitarian objectives
- no contemplation or expectation of pay



Employee or Contractor?

Who decides



Independent Contractor

THEN

Who had the right to control
the manner and means of
accomplishing the work?

NOW

New law, new test

Contractor vs Employee

New California Law (AB5)

Formalized ruling establishing a test into law...

Case: Dynamex Operations West, Inc. v. Superior Court CA

- Delivery drivers: originally employees, converted to independent contractors...sued alleging they were still employees.

“ABC” Test

A worker is an **EMPLOYEE** unless all three of the following apply:

- A. The worker is free from the control and direction of the hirer in connection with the performance of the work, and
- B. The worker performs work that is outside the usual course of the hiring entity's business, and
- C. The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

Contractor vs Employee

California law presumes all workers are employees.

If a staffing agency is used for contract labor, employer is still responsible for ensuring that the worker is receiving minimum wage and is authorized to work in the U.S. The employer could be jointly liable with the agency for violations.

Employers must now defend their classification of workers as independent contractors or risk fines, penalties, back wages, overtime and meal break penalties....

Exempt v. Non-Exempt

Exempt

- those who are exempt from state & federal law that require payment of overtime

Non-exempt employees

- those who must be compensated at overtime rates for all hours worked in excess of 8 hours in single work day or 40 hours in a single week

Exempt Employees

- Paid on a salary basis
- Perform duties that allow them to be classified as:
 - Professional
 - Executive
 - Administrative

Executive Exemption

Duties & responsibilities involving management of the enterprise or department

Directs the work of two or more employees

Has authority to hire or discharge employees

Customarily exercises discretionary powers

Earns a monthly salary equivalent to no less than two times the state minimum.

Administrative Exemption

Performance of office or non-manual work directly related to management policies

Regularly exercises discretion and independent judgment

Directly assists a proprietor

Performs under only general supervision

Earns a monthly salary equivalent to no less than two times the state minimum.

Exempt Employees

Based on 2024 Minimum Wage

- Earn a minimum of \$5,547 per month
(\$66,560 per year)

Calculated from \$16.00 per hour in 2024

$\$16.00 \times 2080 \text{ hours} = \$33,280 \text{ times two} = \$66,560/\text{year}$

Applies to ALL employers, regardless of size

2025: \$16.50 x 2080 hours = \$34, 320 times two = \$68,640

Payment of Wages



Rate of Pay

- Must be paid for all hours actually worked

- Minimum wage:

2024

\$16.00/hour

2025

16.50/hour



Frequency of Payment

Must be paid twice a month

Employer must post pay day
notice



Must provide itemized wage statement to employee (exempt & non-exempt)

- Gross wages earned by employee
- Total hours worked by employee (except for exempt employee)
- Separate listing of all deductions
- Net wages earned
- Date of pay period began & ended
- Name of employee and last four digits of social security number
- Employer's name & address
- All applicable hourly rates and corresponding number of hours worked at each rate

Work Day and Work Week

Must define work day and work week

- **Work Day:** Any consecutive 24-hour period starting at the same time each calendar day.
- **Work Week:** Any seven consecutive 24-hour periods, starting on the same calendar day each week.

Overtime

Must pay time and $\frac{1}{2}$ for all hours worked in excess of 8 hours in a single work day and 1st 8 hours worked on 7th consecutive work day

Must pay double time for all hours in excess of 12 or after 8 on 7th consecutive day.

Final Wages--Timing

- Quits with more than 72 hours notice = payment on last day of work
- Quits with less than 72 hours notice = payment 72 hours from time of quitting
- Discharged = payment at time and place of discharge

Final Wages

- **Method of Payment**

- In-person delivery
- Direct deposit
- Mail

- **Payment of Vacation**

- All accrued, unused vacation paid at termination

- **Waiting Time Penalties**

Non-Exempt Employee Regulations



Rest Breaks

Not less than 10 minutes for each four hours worked

Can't be combined with other rest breaks or meal breaks

Paid ("on the clock")

Penalty for failing to "authorize and permit": one additional hour of pay at regular rate

Meal Breaks

- At least one half-hour for every work period of more than five hours
- Unpaid if
 - at least 30 minutes long
 - employee relieved of all duty and
 - employee free to leave the premises
- **Must take**; can only be waived if six hours will complete the day's work
- Sign in and out
- Penalty for failure to provide: one additional hour of pay at regular rate

Pay for Meetings

- If meeting or training is mandatory, employee must be paid
- Hours spent in meeting or training count as hours worked in calculation of overtime

Make-Up Time

There is NO comp time

Make-up time is allowed:

- At employer's discretion
- No more than 11 hours on another day of work, and no more than 40 hours per week
- Must be in the same work week
- Must be supported by a signed request

Resources

- California Labor Law Digest: www.calchamber.com
- Labor Commissioner/Division of Labor Standards Enforcement (DLSE)
www.dir.ca.gov/dlse
- Industrial Welfare Commission: www.dir.ca.gov/iwc/wageorderindustries.htm
- Wespath Website: www.wespath.org
- Documents and Forms: <http://www.calpacumc.org/localchurch/>
>Staff & Volunteers
- Sexual Harassment Prevention Training <https://www.dfeh.ca.gov/shpt/>

Resources

- **PHLYGateway.com**

Policy number: **PHPK278687**

- No limit to the number of calls or time allocated per consultation

- **Musick, Peeler & Garrett LLP**

- Elaine Vukadinovich, Partner
One Wilshire Blvd., Suite 2000
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