



CHURCH INSURANCE

Religious Expression and Your Church

A Practical Guide to Protect Your Ministry



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Same Gender Marriage

On June 26, 2015, the United States Supreme Court issued its ruling in the case of *Obergefell v. Hodges*, which involved two questions regarding same gender marriage: (1) Does the Constitution require a state to license a marriage between two people of the same sex; and (2) Does the Constitution require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.

In *Obergefell*, the Court answered the first question in the affirmative and recognized for the first time a constitutionally protected right of same gender individuals to marry. This ruling has the effect of overturning the laws of those states that define marriage as the union of one man and one woman. In response to the second question, the Court held that states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.

It should be noted that the Supreme Court's ruling is limited and provides that the state may not deprive same-sex couples of their right to marry, and though the *Obergefell* case did acknowledge religious freedom under the First Amendment:

“Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faith, and to their own deep aspirations to continue the family structure they have long revered.”

Questions have arisen about the impact of the Court's ruling on houses of worship and, specifically, what is required of churches that are opposed on theological grounds to same gender marriage?

The case did not answer questions of importance to churches including:

- (1) Will a clergy member who is opposed to same gender marriage on religious grounds be required to participate in a marriage ceremony?

- (2) Will a church that opens up its building for weddings to the general public be required to allow same sex marriages to be held at its facilities?

These questions will be addressed by future court decisions as the issues are brought before them. For now, churches who are opposed on theological grounds to same gender marriage may want to consider the following:

- (1) 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 gender marriage, many states' laws address same gender 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.

- (2) Consider whether to incorporate appropriate belief statements into the church's governing documents and/or operational policies such as 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.

- (3) 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.

(4) Exercise caution when publicly addressing sensitive issues relating to sexuality and same gender marriage. Publicly naming an individual or individuals, or a particular situation, can open up the church to claims for defamation or invasion of privacy.

(5) Discuss with your church's insurance agent the insurance coverage that may be available to your church in the event a claim is brought relating to same sex marriage, particularly if your church declines to solemnize such weddings. 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 gender 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 houses of worship 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 By-Law 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

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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.

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Religious Expression Coverage – Claims Scenarios

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

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Example 1

A local church has a beautiful chapel and often rents its facilities for weddings to both church members and the general public. Recently, a couple of the same gender contacted the church about renting its facility for their marriage ceremony and/or reception. The church objects based on their religious beliefs to same gender marriage and therefore declines the couple’s request.

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

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Example 2

A local church allows its facilities to be rented out to the general public for purposes unrelated to the church, such as civic meetings, luncheons, celebrations and similar events.

Recently, an organizer of a group that espouses views on life, which is at odds with the church’s beliefs, contacts the church about renting their facility for a meeting of their group and its supporters. 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 because of the emotional injury and distress sustained.

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Example 3

As a part of his job responsibilities, a pastor often performs baptisms of church members and their families.

Recently, two longtime members of the church approached the pastor about baptizing their grandchild whose parents are of the same gender. Because the church objects to same gender marriage, the pastor denies their request.

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

* This information is only a general description of the available coverages and is not a contract. In an effort to keep your policy coverage affordable, the actual policy contains certain limitations and exclusions. Please refer to your insurance policy for the pertinent contract language and coverages. Some coverages or discounts are not available in all states.

As one of America's leading insurers of churches, GuideOne Insurance provides your congregation with the industry's finest lineup of coverages and services.

- ✓ Property and liability coverage
- ✓ Free risk management resources
- ✓ Value-added services
- ✓ Competitive rates



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