

Effective Board Leadership

A P R E G N A N C Y R E S O U R C E M A N U A L



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SECTION 4

The Board and Staff

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 - Evaluating Your Center Director



The team of board and director is the foundation of the ministry.

The Board and the Director

The relationship between the pregnancy center board and the director is a special one that requires careful consideration. The team of board and director is the foundation of the ministry. The board and director must work closely in all areas of the center ministry to ensure that clients receive the best possible services and consideration.

While the director works for the Board of Directors, this relationship is different from that of the typical employer/employee hierarchy. The pregnancy center board is the governing body of the ministry. The board has the authority and responsibility to set policy and ensure that the ministry follows its mission and maintains fiscal credibility. The director, on the other hand, is responsible for the execution and implementation of the policies adopted by the board and for management of the ministry on a daily basis.

The Board and Director Roles

It is helpful to state that boards govern and directors manage, but often the lines between their roles can become blurred.

This is particularly true when the board is in the process of transitioning from an organizing board to a governing board. As boards evolve there are growing pains. Listed below are some examples of the differences between the role of the board and that of the director:

- **Finances**

The pregnancy center board develops financial policies and approves the budget, but the director normally ensures bills are paid and handles day-to-day expenditures. The board approves major purchases (those in excess of \$500, for instance), but the director researches the prices and handles actual procurement. Small purchases are normally handled by the director without prior approval by the board.

The board approves the ministry budget salary ranges and general funding for staff salaries, but the director determines staff salaries within the set ranges and determines the amounts of raises other paid staff receive.

- **Long-Range Planning and Policies**

The board is responsible for developing the ministry's long-range (strategic) plan, but the director will implement the plan once it is completed.

The board sets broad personnel policies, but the director writes job descriptions and disciplines, promotes, and evaluates staffers.

- **What about the Gray Areas?**

To determine if the issue is policy-related, ask yourself the following questions!:

Will the decision help to determine procedures, activities, programs, or services for your center's ministries?

Is the decision required by law or regulatory agencies?

Is the issue something the director has requested your board to review?

A "yes" answer to any of these questions means that this decision or area needs to be handled by the board. To determine if the issue is management-related, ask yourself these questions:

Does the issue affect an individual staffer?

Does it relate to the efficiency and quality of service provided by a specific arm of the center's ministry?

Does the issue relate to an administrative area that is operational in nature or impact ministry programs or services?

A "yes" answer to any of these questions means that this area should be handled by your director.

- **Developing Your Own Guidelines**

Every pregnancy center must address how they are going to define the board/director relationship in their ministry. Each center is unique to the community in which it is located and in its maturity and stage of development. For this reason, it is recommended that every pregnancy center board adopt, in written form, a description of their specific duties as compared to those of the director. This not only serves as a guideline for future decisions, but also helps orient new board members.

The Director as a Member of the Board Team

The director is a vital member of the Board of Directors of the pregnancy center. The director is the person who works in the center every day. Usually, the director is the most valuable spokesperson for the center and the best public relations person for the ministry. He/she carries the mission and vision of the center and knows the staff and volunteers better than anyone else.

The board members need the expertise and perspective of their director as they make crucial decisions about the ministry. It is for these reasons that Care Net recommends the director to be an *ex officio*, non-voting

member of the center's Board of Directors. He/she is *ex officio*, there by the nature of the director's position, and non-voting because the director is an employee of the center and as such cannot have the voting privilege exercised by other members of the board. Even though the director does not vote, he/she should be viewed as a vital member of the board team and should be invited to participate fully in all board discussions and activities.

The board may want to hold an occasional executive session without the director, particularly when they are discussing personnel issues involving the director. However, there should not be many occasions when the board meets without the director. Closed door sessions do not promote confidence, and they do not create unity of ministry. They may also lead to a breakdown of trust between the board and the director.

Recruiting Your Director

Selecting the director is one of the most important board functions. Before beginning the search for a director, the board should take time to consider several issues:

- 1) What is the ministry environment? What type of person is best suited to work with the center?
- 2) Review the mission of the center. What are the current ministry priorities? What kind of leadership qualifications do you need to meet the goals for the ministry?
- 3) Choosing a new director is a good way to shape the ministry for the future. Are there changes your board wants to make at the center? What type of director would be most likely to encourage and accomplish those changes?

● The Search Committee

A board search committee is the best way to begin the process of recruiting a director. The committee can be appointed by the board chairman and composed of several board members. The chairman is usually a member of the search committee.

The search committee is charged with the responsibility of identifying and recommending to the full board one or more suitable candidates for Executive Director. They should work within a timetable of no more than three months.²

The search committee is responsible for:³

- 1) Identify the qualifications required of the Executive Director.
- 2) Identify potential candidates.

- 3) Determine which of these candidates should be interviewed on a face-to-face basis.
- 4) Interview and check references to identify the one or two final candidates who are to be recommended for the position.
- 5) Negotiate the terms of employment.

A well-prepared job description (see the appendix for a sample job description) will help ensure that the right candidate is selected. The search committee can prepare such a description for the board's review and approval (if there is not already such a document available). This process helps clarify the committee's collective thinking about what kind of person is needed for the center at this time.

- **Identifying Potential Candidates**

Where do you go to find director candidates? Present and past board members can be helpful in recommending people they believe would be good candidates, as can senior volunteers and professionals in other Christian, nonprofit organizations. Identify and send a job description to those churches which support your pro-life position. Make a list of the Christian colleges and universities located close to your center and send a job description to the job placement director. Use your ministry newsletter to advertise the vacancy. Network with volunteers and ministry partners. Advertise in Christian community periodicals. The search may be extensive or limited depending upon whether a suitable internal candidate or a clear choice is available. You should avoid a selection which is too narrow, but do not allow yourself to be overwhelmed by a high volume of applications from inappropriate candidates.

- **Evaluating Candidates**

The search committee's work normally ends with the beginning of the interview process. The first cut should be based on an analysis of the applicants' qualifications in relation to the needs of the ministry. The interviewing and final selection of candidates must be based on a thorough review of qualifications, intensive reference checks, and a comparative review of each finalist's strengths and weaknesses.

Throughout this whole process, constant communication with God is a must, for in our own wisdom we may not choose the person of His intention. Keeping in mind that man looks at the outward appearance, but the Lord looks at the heart (*1 Samuel 16:7*), rely on Him to show you who is the one of His choosing.



The Lord does not look at the things man looks at. Man looks at the outward appearance, but the Lord looks at the heart.

1 Samuel 16:7

Evaluating Your Executive Director

● The Benefits of Annual Review

While the evaluation of your director may seem unnecessary and more trouble than it is worth, there are many reasons for this to be a priority. The ultimate purpose of an evaluation is to make sure that the ministry is achieving its goals and objectives in the most efficient and effective manner. More immediately, there are four important reasons why this evaluation should take place:⁴

- 1) To ascertain the effectiveness of the director's performance and consequently to strengthen and support his/her.
- 2) To nurture and encourage him/her. Talented and effective directors are not easy to find. It is important to capitalize on their strengths and address their weaknesses.
- 3) To provide feedback. The director needs to know how he/she is doing. If done properly, the evaluation will be a source of comfort and strength to the director, who will then know where he/she stands based on the expectations of the board.
- 4) To review the salary and benefits provided for the executive director.

● Conducting a Good Review

To conduct an effective evaluation, the board needs to give itself enough time to plan thoroughly. You should set a date, time, and place; select an *evaluation form*; hold a formal session with the executive director; and follow up with clear goals you would like him/her to accomplish in the upcoming year.

The evaluation meeting should be conducted by the board chairman or a designated committee, usually the personnel committee. When a board member other than the chairman conducts the review, that person should include the chairman's views in the final report.

● Evaluation Criteria

In evaluating your executive director, you will be measuring the ministry goals that were achieved during the preceding year, the skills and abilities exhibited by the director in carrying out his/her responsibilities (based on the current job description), and his/her job-related personality (how he/she relates to staff, volunteers, board, etc.).

In order to measure the goals that were achieved, it is assumed that ministry goals were set and that the director was aware of them. If this was not the case, the board would need to make setting these goals and objectives a priority so that the director may begin to work toward achieving them.



An evaluation form can be found in Care Net's Forms Manual.

Assuming the director has a job description, the evaluation should rate the abilities of the director against the duties and responsibilities outlined in that description. Since both the board and the director are then using the same description of responsibilities, a good sense of understanding can be gained by combining the two sets of comments and observations, particularly if the board is using the practice of self-evaluation.

● **Self-Evaluations**

There is great benefit to be gained from asking your director to participate in the evaluation process by completing a self-evaluation based on his/her job description. The evaluation should measure his/her effectiveness on bottom-line results such as:

- 1) The quality of the information and recommendations he/she gave the board.
- 2) The overall financial health of the center.
- 3) The extent of community support for the center.
- 4) Measurable progress toward the center's long range goals.
- 5) Success in achieving goals set forth in the previous evaluation.
- 6) Overall performance against the job description set forth by the board of directors.⁵

Encouraging Your Director

Everyone needs encouragement and appreciation for a job well done, and your director is no exception. Encouragement from board members, particularly the chairman of the board, lets the director know you appreciate his/her extra effort and commitment to the job. Pregnancy center ministry is a difficult, stressful job. Your thoughtful words and consideration will encourage your director to persevere and accomplish the goals God has called your ministry to fulfill. Listed below are some practical ways your board can say "thank you" to your director:

- 1) Make time to stop by the center to pray with the director and volunteer staff.
- 2) Arrange to take the director to lunch on a rotating basis.
- 3) Make a simple telephone call periodically to ask how things are going and how you can be praying for her/him.
- 4) Send a card on her/his birthday; remember the director's anniversary.
- 5) Send a note of thanks when he/she does something special.

- 6) Compliment them at a board function or meeting.
- 7) Send flowers following a special effort of hers on behalf of the ministry, such as a banquet, important presentation, or training.
- 8) Give a cash bonus for a job well done or at a special time of the year.
- 9) Arrange to give her/him a day off.
- 10) Make the annual Care Net Pregnancy Center Conference a priority and give time at the board meeting for a summary of what he/she learned. Be excited for him/her.
- 11) Encourage him/her to take a quarterly or semi-annual one or two day prayer retreat at ministry expense for rest and rejuvenation.
- 12) Arrange for them to have their own room at Care Net's National Pregnancy Center Conference or your local retreat.
- 13) Use your own imagination...

How the Board Relates to Other Staff

In practice, the board has only one employee, the director. Remembering the basic rule (boards govern and directors manage), we know it is the director who is responsible for all other center staff. This includes the Director of Development, Client Services Director, Administrative Assistant, Volunteer Coordinator, or any other paid staff person within the ministry, as well as the volunteer base.

The board hires the executive director to be the ministry's expert in all management areas, including personnel. The director should be responsible for hiring and firing staff and has authority for supervising, evaluating, rewarding, and disciplining them. Paid staff must clearly know who gives the orders, who is accountable to whom, and who has responsibility for what. The following positions and functions illustrate the recommended center chain of command:⁶

Board Chair: Manages the board.

Board: Manages the executive director.

Executive Director: Manages the pregnancy center staff.

Client Services Director (or other designee): Manages the volunteers.

Volunteers: Service the clients.

It is not uncommon for a staff person to take a concern or complaint directly to the board or to individual board members. When this occurs, however, it is the board member's responsibility to clearly remind the staff person about the chain of command. You will want to urge the

person to take the issue up with the immediate supervisor and to follow the internal grievance procedure as necessary.

Pregnancy Center Organizational Charts

Another way to help the board, staff and volunteers understand the lines of authority and accountability is to establish an organizational chart for your ministry. Organizational charts change over time and should be updated with every staff addition and change in job description. They are necessary for training new volunteers and orienting new board members. They are helpful in communicating the proper channels for grievances and getting decisions made. Organizational charts do not solve all misunderstandings or miscommunications, but they certainly help the ministry function more smoothly.

Board of Directors and Staff Relationships

Working within the ministry chain of command or chart does not mean that a wall is placed between the board and center staff. The board and all staff are on the same team. There are three primary ways that staff people (other than the director) and board members work together.⁷

- 1) *On committees:* Pregnancy center staff can provide important background information and bring expertise about the ministry to some board committees, such as planning and program development. Staff people should understand that they serve on committees to offer their insight, not to bring up staff issues.
- 2) *By giving reports:* The director may invite other staff to make presentations at board meetings. An excellent way to keep the board updated and informed about programs and projects is to rotate key staff personnel at board meetings on a yearly or semi-annual basis. At the same time, it gives staff members an opportunity for positive interaction with the board.
- 3) *Social occasions:* Board and staff members should have the opportunity to meet at social gatherings. A board/staff dinner or reception is a great way to build relationships and promote good will between the board and staff.

Staff Job Descriptions

All staff members need to know what is expected of them in their jobs. Accurate position titles and written job descriptions are essential tools for finding the best person for the job. An effective job description should contain the following information.⁸

- 1) A clear, easily understood job title and the objectives of the position.

- 2) A brief summary of the functions of this position.
- 3) Direct Supervisor. A supervisory or administrative position should also indicate what job titles (or volunteers) are supervised by the individual and the extent of the supervisor's authority with respect to such people.
- 4) Typical tasks required to be performed, in some detail, including the degree of autonomy in decision-making; reporting duties; methods of supervision and evaluation of or by others; budgetary responsibilities.
- 5) Required experience or qualifications.

The following are staff positions typically found in a pregnancy center. These positions are not exhaustive, but represent a sampling of how centers are utilizing their people resources. Not every center will fill every position. As your center grows, however, this listing of positions may help you handle your center's growth.

- **Executive Director**

The Executive Director has full responsibility for the pregnancy center, which includes the implementation of the policies and procedures approved by the Board of Directors within the parameters of the pregnancy center's budget. The primary areas of responsibility will be administrative, development, and community relations.

- **Director of Center Development**

This person, in conjunction with the Executive Director, plans, implements, and coordinates fundraising efforts and community activities that will encourage, maintain, and increase philanthropic support to meet the short and long-term needs of the pregnancy center.

- **Center Director**

In pregnancy centers where there is no Executive Director, the same job description applies to this position but with the board conducting more of the fundraising aspects of the job. If your center has multiple sites, the Center Director is the person responsible for the day-to-day operation of a particular site.

- **Client Services Director**

The Client Services Director supervises all client services. This usually includes planning and administering advanced volunteer training and evaluative feedback. All ministry programs and services to clients (including post-abortion ministry) come under the responsibility of this position.

- **Post-Abortion Director**

The Post-Abortion Director has the responsibility for management of the post-abortion program, including training and management of all post abortion volunteers.

- **Abstinence Director**

This individual has the responsibility for the overall development, implementation, and operation of the abstinence education program of the pregnancy center. This includes the training and management of all abstinence education volunteers and the implementation of necessary programs to facilitate the abstinence education program in schools, churches, and organizations.

- **Receptionist**

Promotes a positive first impression of the ministry and assists persons calling as well as entering the pregnancy center.

Board Personnel Policies and Procedures

The *Board of Directors* plays a key role in personnel management. In addition to its role of relating to the director, it is also responsible for approving and monitoring the policies that govern the staff of the ministry.


The board does not directly “manage” the staff. The board’s influence is felt through setting and monitoring the policies under which the administration will operate. This role is an important one for the pregnancy center board since the director may not be familiar with or have the time to develop adequate personnel policies. From a legal standpoint, effective and well documented personnel policies are essential for your center.

The board, usually through the board personnel committee, should recommend, oversee, and approve compensation, as well as monitor other personnel issues such as employee hiring, hours of work, and performance evaluations. For samples, see the *Care Net Policies & Procedures Manual*.

The Personnel Committee

The first step toward developing and monitoring personnel policies is to establish a board personnel committee. The responsibilities of the personnel committee are:⁹

- Develop written personnel policies for the center.
- Monitor and evaluate administration of the center’s personnel policies.



Care Net's Policies & Procedures Manual contains a CD complete with templates to use in personalizing your center's policies and procedures.

- Develop compensation packages for the center’s staff.
- Develop job descriptions and salary ranges for the center’s staff.
- Review the performance of the center’s director, if necessary.
- Develop an employee grievance procedure.

The personnel committee is usually composed of several board members and the director of the center. The committee can be appointed by the board chairman, who is an ex officio member of the committee. As with other board committees, the board may want to invite others from the community to serve on this committee. A person skilled in personnel matters may be a great asset to this committee, even as a consultant.

Developing Personnel Policies

- **Review the Current Personnel Policies**

The first task of the personnel committee is to review the current personnel practices of the center. How have personnel matters been handled in the past? How has compensation been handled? What has happened when staff disagreed with decisions made by the director? What has been the policy on vacations and sick leave? These are some of the questions the committee should ask as they develop personnel policies for the center.


Another important step is to solicit staff input in making policy decisions. What benefits and policies are most important to the staff? Be sure the staff has input into all the personnel policies the committee develops.

- **Criteria for Personnel Policies**

Written policies, administered equally, provide all employees with a consistent standard. The broad policy statements adopted by the board usually give the “why”, the reason for the action. It is the role of the director or other staff to clarify the “when” and the “how” by developing specific procedures. For example, the rationale behind vacations and the amount of vacation time would be specified in the policy written by the board, but the procedure for determining when vacations may be taken, and the amount of advance notice required, would be spelled out in the policy manual, compiled by the director.

When writing personnel policies, the board should be sure they meet these criteria:¹⁰ A policy...

- 1) Must be an expression of belief or intent, the underlying principles governing what the ministry does or hopes to do.
- 2) Should be stated in the broadest possible terms.



*Consult the Care
Net Legal Manual
before adopting
personnel policies.*

- 3) Should be developed through the active participation of top staff.
- 4) Must be approved by the pregnancy center board of directors.
- 5) Must apply to all employees at all times.
- 6) Must be stated in writing.

Drafting and implementing personnel policies is one of the more complicated endeavors for the board of a pregnancy center. Although sound, well-drafted, closely followed policies provide legal protection in the event of personnel problems, poor policies are a potential liability. In fact, it is better not to have personnel policies than to have written policies that are not followed. This section offers you a solid overview of what should be included in your personnel policies.

However, you should not attempt to adopt policies without first consulting the Care Net Legal Manual, a personnel expert, and perhaps a local attorney who is well versed in employment law matters. A little extra effort here can help prevent costly and time-consuming disputes later.

- **Issues to Address with Policy**

The following checklist will help the center board understand those areas which should be considered when developing policies. A personnel policy manual should open with a philosophical statement about the importance the board places on the role of staff and volunteers. It should also include the vision and mission statement and, if used as an employee handbook, contain some background information about the ministry.¹¹

Policy statements may be grouped alphabetically or by major subject, under such headings as:¹²

Staffing and Hiring: Includes a statement of non-discrimination, for orientation of new employees, staff recruiting and interviewing, procedures and job descriptions.

Hours of Work and Employee Status: Defines the total hours of work in a regular work week, states specific expectations regarding work schedules, and includes a definition of full-time, part-time, temporary and contract employment, if applicable; clarifies eligibility for benefits. (Some of these issues are determined by the Fair Labor Standards Act. Your board should consult an attorney when making these policies.)

Employment Standards: Provides for the existence and updating of job descriptions with controls built into a continuing program of performance appraisal.

Indirect Compensation: Fringe benefits are a significant part of an employee's remuneration. It is important to explain all the benefits offered, including mandated benefits such as social security and unemployment compensation. Benefit statements should include all time off with pay provisions, including vacation, holidays, funeral leave, personal days, sick leave, jury duty, etc. Non-mandated benefits include tuition reimbursement, opportunities to attend conferences, special trainings, and development opportunities.

Employee Discipline: While it is important to communicate to employees that the purpose of discipline is to convey standards and to assist employees in meeting those standards, it is also essential to express the consequences of failure to improve performance or to change unacceptable behavior. Furthermore, supervisory staff must understand the importance of documenting both the standards and those incidents which demonstrate a failure to achieve standards.

Conflict of Interest: Includes limitations on outside work, possible conflicting relationships (such as a nepotism involving board and staff members), and acceptance of gifts from clients, etc.

Records: It is expected that organizations will keep records as required by law. In addition, it is recommended that centers keep volunteer service records.

Termination of Employment: Includes causes of termination such as layoffs due to lack of funding resources and resignations. Describes eligibility for severance pay, if any, and expected notice periods. Generally speaking, employment can be terminated at any time for any reason by either the employer or the employee. Immediate dismissal is in order for the following reasons: use of drugs in the work place, sexual harassment, embezzlement or other illegal activity.

Grievance/Conflict Resolution Procedures: While there is no way to avoid all of the many possible mistakes in dealing with center staff, a written grievance procedure, faithfully and fairly executed, is an important safeguard.

- **Measuring the Effectiveness of the Center's Personnel Policies**
The board personnel committee carries out an important function by monitoring the effectiveness of the center's personnel policies. The committee needs to ask if the personnel policies are effective in helping fulfill the ministry's mission and goals. The effectiveness of the management of staff and volunteer resources can be measured by such indicators as percentage of turnover and absenteeism, and by well conducted exit interviews, surveys of client satisfaction, and audits of the center personnel program.

Salary and Benefit Packages

The compensation of your ministry staff deserves special consideration. While it is important that the board encourage, motivate, and support their staff spiritually and emotionally, it is equally important that the board make every effort to adequately compensate them for their hard work and abilities. The board must be committed to providing a fair and just wage to all their staff. Even if finances are scarce, the board needs to be committed in principle to paying fairly for the talents and hard work of its employees. When funds become available, the board should make staff salaries a high priority.

● **Salary Comparisons**

Each pregnancy center will need to set its own salary ranges for employees. While looking at national averages can be helpful, the board may find it necessary to do some informal research into what other area pregnancy centers pay their staff. Important considerations to remember are:

- 1) The size of your organization.
- 2) The job responsibilities of the individual.
- 3) The community in which your center is located.
- 4) The experience and education of the individual.

If your board carefully considers these issues and makes it their goal to compensate the staff as fairly as possible, you will attract and retain the highest quality people for the positions.

● **Benefit Packages**

The make-up of the benefit packages is a policy decision, dependent upon funding. Health insurance, paid sick leave, vacation and compensation time, as well as disability and workmen's compensation insurance are key considerations for many employees. Check within your area for a state nonprofit wage and benefit survey for helpful information.

Providing attractive and competitive salary and benefits packages for your center staff is important. When evaluating this portion of your personnel policies, you may realize that you need to do even more for your staff. If so, make it a point to work toward some specific goal or goals. Incorporate into next year's budget some of the salary increases that you would like to make. Plan to add additional vacation or personal time for senior staff or consider extending medical and disability insurance to the top executive. Over a period of years, this area will be strengthened and the ministry will be better for it.



The first person to present his case seems right, till another comes forward and questions him.

Proverbs 18:17

Staff Grievances

There may be times when the board personnel committee is called upon to be “the court of appeal” when an employee has a complaint against his/her supervisor. Grievance procedures need to be handled objectively and fairly by the board. A written employee grievance policy should be part of the center’s personnel policies and procedures. As the personnel committee prepares to address the employee’s complaint, these pre-requisites should be met:¹³

- 1) Personnel policies should be stated as clearly as possible.
- 2) Supervisory staff, including the executive director, should receive training in the rights and responsibilities of a supervisor.
- 3) Performance appraisals, honestly and fairly administered, should become standard operating practice. These evaluations must be properly documented.
- 4) An attempt to resolve all grievances by appropriate supervisory and management personnel should have been made.
- 5) A grievance that is accepted for appeal must be in writing and include clearly delineated statements of the facts. They should be compiled and prepared by both the dissatisfied employee and appropriate managerial staff. The executive director should add any applicable precedents or extenuating circumstances.

If the committee is going to address the grievance at a meeting, the committee members should receive a package, in advance of the meeting, that includes the following:¹⁴

- 1) A statement by the employee that describes the grievance and all relevant facts.
- 2) A statement by the supervisor and/or any appropriate management staff describing relevant facts.
- 3) Any relevant personnel policies and any other background material prepared by the executive director.
- 4) A statement by the director adding any applicable precedents or extenuating circumstances which do not appear in the other material.

Discipline and Termination

It is crucial for the board to follow consistent, specific guidelines when disciplining or terminating a director. All actions must be kept confidential. The director should be given sufficient notice of problems, how problems can be solved and what will happen if they are not solved. The chairman of the board and the chairman of the board

personnel committee should handle all disciplinary actions with the director.

If termination is necessary, the director should be released in a private meeting with the board chairman and one other board member (such as the personnel committee chairman or the board vice chairman).

Centers may want to pay terminated employees severance pay. If so, procedures should be established and applied equitably. Unemployment insurance should be offset by severance pay. Also, the center may ask a terminated employee to sign a waiver at the exit interview.

In return for \$_____ severance pay, I agree not to sue (pregnancy center) and waive any claims I may have arising out of my employment and its termination.

Termination of a director, even if all these guidelines are followed, may still subject the center to liability for wrongful termination. Therefore it is important to consult with a local attorney in difficult situations.

Centers should also consider establishing a policy on references. At the very least, center staff and board members must understand that offering opinions as a reference may expose the center to liability, particularly if they are negative opinions. (It is wise to make only verifiable statements when providing references. Care Net recommends that centers consider adopting policies and procedures that allow for the disclosure of substantive reference information, but which simultaneously safeguard against legal exposure.)

Conclusion

Personnel issues are essential board responsibilities. The time your board invests in recruiting, encouraging, and evaluating your director will reap many benefits for the entire ministry. A committed, smooth-functioning board personnel committee can help ensure that all staff work with clear, consistent personnel policies and procedures.

Employees or Independent Contractors?

by Kurt Entsminger

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established.

Romans 13:1.

A number of years ago, Microsoft Corporation began hiring freelance workers to save on labor costs. Microsoft required each of these workers to sign a contract acknowledging that they were not employees and that they were responsible for providing their own insurance and benefits. By classifying these freelance workers as independent contractors, Microsoft avoided paying FICA taxes, overtime, and benefits that were offered to regular employees.

However, an IRS investigation turned Microsoft's cost savings scheme into a financial and legal nightmare. It cost Microsoft nearly \$100 million and eight years of litigation to fix its mistake. The IRS determined that Microsoft had misclassified approximately 12,000 "freelancers" as independent contractors. According to the IRS, these workers were legally entitled to be treated as employees. Microsoft was ordered to pay FICA taxes and to comply with other employment laws including overtime pay requirements. On top of this, in the case of *Vizcaino v. Microsoft*, 120 F. 3d 1006 (9th Cir. 1997)(en banc) the freelancers successfully sued Microsoft obtaining various benefits such as stock options that were offered to other employees.

Pregnancy centers must be sensitive to the same legal concerns that eventually ensnared Microsoft. In the past, some pregnancy centers have opted to classify their workers as independent contractors. This has often been done to avoid various administrative and monetary burdens that are associated with an employee payroll. Most notably, independent contractors can be paid without withholding income taxes or paying FICA taxes. However, as Microsoft learned, just because your workers are classified as independent contractors does not mean that they are.

There is no bright line test that can be applied to make the determination of whether an individual worker should be legally viewed as an employee or an independent contractor. This determination depends upon the specific facts involved in each situation. However, several legal standards have been developed to aid in making this determination.

The National Labor Relations Board and the courts generally apply the "right to control" test. Under this test, the greater the control that the employer exercises over the details of the individual's work, the greater the chance that the individual will be found to constitute an employee and not an independent contractor. In relation to the "right to control" test, the IRS has established a list of 20 factors that can be used in analyzing whether a particular arrangement constitutes employment or an independent contract. A summary of the IRS factors is as follows:

- 1) Whether the individual is required to follow the instructions of the employer. An employee ordinarily takes specific instructions from the employer whereas an independent contractor is responsible for supervising his or her own work.
- 2) Whether the employer offers training related to the specific job. An employee ordinarily receives training from an employer whereas an independent contractor is responsible for his or her own training.
- 3) Whether the individual's services are integrated into the employer's business. An employee's services are ordinarily integrated into the employer's business whereas an independent contractor's services are not.
- 4) Whether the services are to be rendered personally by the individual. Services rendered personally by the employee are presumed to be of interest to the employer whereas this is not necessarily the case with an independent contractor.

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- 5) Whether the employer or the individual is ultimately responsible for hiring, paying, and supervising the assistants who help the individual. Employees generally do not hire, pay, or supervise assistants whereas independent contractors do.
- 6) Whether the relationship is continuing or is for a definite period. Employees are ordinarily hired for a continuing period of time whereas independent contractors are not.
- 7) Whether there is an established set of job hours for the individual. Employees ordinarily work in accordance with an established set of hours whereas independent contractors do not.
- 8) Whether the individual is required to devote substantially full-time hours. Employees are ordinarily hired on a full-time basis whereas independent contractors are not.
- 9) Whether the individual performs work on the employer's premises. Employees ordinarily perform their work on the employer's premises whereas an independent contractor may or may not.
- 10) Whether the individual works according to a sequence set by the employer. An employee ordinarily works according to a sequence established by the employer whereas an independent contractor ordinarily establishes his or her own sequence of work.
- 11) Whether the individual is required to submit regular reports to the employer. Employees are more likely to be required to provide regular oral or written reports concerning job progress.
- 12) Whether the individual is paid based on the amount of time worked as opposed to the completion of a project. Employees are ordinarily paid based upon time worked whereas independent contractors are ordinarily paid per project.
- 13) Whether the individual is reimbursed for travel and other incidental expenses. Employees are ordinarily reimbursed for incidental expenses whereas independent contractors are not.
- 14) Whether the employer or the individual is responsible for supplying tools, equipment or materials necessary for completion of the individual's work. Employees ordinarily do not supply their own tools, equipment and materials whereas independent contractors do.
- 15) Whether the employer has incurred significant investment in hiring the individual. An employee is more likely to be the recipient of significant investment by an employer.
- 16) Whether the individual is able to realize a profit or loss from the employment situation. Employees do not ordinarily realize profits or losses whereas independent contractors may.
- 17) Whether the individual works for more than one employer at a time. Employees ordinarily work for only one employer at a time whereas independent contractors may simultaneously work for multiple employers.
- 18) Whether the individual makes his or her services available to the general public. Employees ordinarily do not make their services available to the general public whereas independent contractors may.
- 19) Whether the employer has the right to discharge the individual. An employee is ordinarily subject to immediate discharge by an employer whereas discharge of an independent contractor may result in a breach of contract claim.
- 20) Whether the individual has the right to terminate the relationship at will. An employee ordinarily has the right to terminate the relationship with the employer at any time whereas an independent contractor may be subject to a breach of contract claim for failure to complete a contemplated project.

An analysis of these factors readily shows that the use of the independent contractor classification for personnel working in pregnancy centers must be very limited. For example, any attempt to classify as

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independent contractors center directors, administrative assistants or other personnel who regularly work at the center will almost certainly run afoul of IRS and Department of Labor regulations. Again, as demonstrated in the Microsoft case, merely because the employer and the individual mutually declare the relationship to be an independent contract situation is not legally determinative.

On the other hand, individuals who perform discreet projects or less regular work for a pregnancy center may be properly classified as independent contractors. For example, an outside bookkeeper that is hired from time to time and is paid a fixed fee to complete certain accounting functions may be treated as an independent contractor. Similarly, outside consultants who are paid a fixed amount to assist in conducting periodic training for the center may also be treated as independent contractors.

More difficult situations arise when the indicia of both an independent contractor and employment status are present. For example, assume that a pregnancy center hires a person to make abstinence presentations within the public schools and agrees to pay a fixed fee for each completed presentation. Under this arrangement, the individual receives several weeks of training on how to present the center's abstinence curriculum. After this training is completed, the individual assumes sole responsibility for scheduling and conducting the abstinence presentations.

There are numerous factors in this situation that point to an independent contractor relationship. The individual performs work outside the center; the individual schedules the work; the individual receives no direct supervision during the performance of the work; and the individual is paid a fixed fee for each completed project. However, at the same time, there are also factors that tend to point to an employment situation. Most notably, the individual is required to receive significant initial training and to make presentations in accordance with the center's own curriculum.

In conclusion, any pregnancy center that is considering classifying certain workers as independent contractors should be extremely cautious. It is the essence of the work relationship and not the characterization of the relationship that will ultimately govern its legal status. It is therefore important that each pregnancy center ensure that its classification of workers is in compliance with IRS and Labor Department standards. Failure to meet these standards can result in the payment of substantial legal penalties, including back taxes, interest, overtime pay and retroactive benefits. Further, it must be remembered that any employer who erroneously classifies as independent contractors workers who should be legally treated as employees is depriving those workers of benefits, such as FICA payments, to which they are entitled under law. Therefore, pregnancy centers that currently rely or plan to rely on independent contractor relationships should have these arrangements closely reviewed by an employment lawyer or other expert.

Evaluating Your Center Director

by Kurt Entsminger

"... but only what is helpful for building others up according to their needs." Ephesians 4:29 NIV

Your director's performance is vital to your ministry. The proper management of your center depends upon the director effectively implementing the decisions and policies of your board. Ministry goals can only be met if the director carries out the necessary steps to achieve them. Therefore, every pregnancy center should have procedures for conducting annual evaluations of its director.

An evaluation of your director serves several important functions. It provides a measurement of your director's performance. It provides an opportunity to share positive feedback as well as concerns. And, it provides a foundation for establishing new ministry goals and equipping your director to meet them.

The ability of any board to conduct effective evaluations first depends on adopting a constructive view of the evaluation process. Some employers tend to view evaluations as mere time consuming formalities. Sadly, other employers believe that the only practical purpose of an evaluation is to lay the groundwork for future disciplinary actions. Instead, the evaluation process should be seen as a positive and potent tool for equipping and encouraging your director.

Who Evaluates?

Each board member of a nonprofit corporation shares the legal responsibility for supervising the performance of the organization's chief executive officer. Ordinarily, the responsibility for performing a periodic evaluation of the organization's chief executive is delegated by the board to the board chair or to an appropriate committee. Input from all board members should be elicited as part of the evaluation process. The board chair or a member of the committee should be assigned the responsibility to prepare a written evaluation report. In turn, the board chair or persons from the committee should be assigned to conduct the evaluation meeting with the director.

What is Evaluated?

Your director's performance should be measured using objective performance standards. Ordinarily, a written evaluation includes several general areas of job assessment. For example, an evaluation may call for the director to be rated in each of the following categories: (1) Technical ability, (2) Productivity, (3) Dependability, (4) Initiative, (5) Decision-making, (6) Relations with staff, and (7) Leadership. The evaluation must also be based upon an assessment of how well the director has met the specific performance standards that are tied to her particular position. These standards come from two main sources: (1) the director's written job description, and (2) the specific ministry goals established by the board.

The development of these performance standards should be a collaborative effort. If feasible, your director should have significant involvement in identifying the duties and responsibilities to be included in her job description. Similarly, as an ex officio member of your board, your director should also have significant input in determining both the short-term and long-term goals of the ministry. The greater the involvement of your director in establishing these standards and goals, the greater the likelihood that she will successfully implement the steps necessary to meet them.

The role that staff feedback should play in a director's evaluation is a somewhat delicate issue. An assessment of your director's leadership and relational skills depends upon some measurement of the morale and motivation of your staff. Nevertheless, your board should avoid eliciting direct input from the center's employees and volunteers when conducting your director's evaluation. Inviting such direct criticism from subordinates creates the potential for serious problems and may significantly undermine your director's authority. Therefore, it is recommended that these assessments be made through other indirect means, such

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as a general staff survey conducted at a different time of the year. Further, if employees or volunteers have serious concerns about the manner in which your director is performing her responsibilities, these concerns should be properly raised through the center's grievance procedure.

How is the Evaluation Conducted?

The board chair or committee performing the evaluation should carefully prepare for the evaluation meeting. The evaluation meeting should be scheduled in advance, and those conducting the meeting should have a clear understanding of the areas and points that will be addressed.

The evaluation meeting should not be viewed as a one-sided conversation. Those conducting the evaluation should come prepared to listen and to consider the director's input and concerns. In this respect, your director should be encouraged to prepare a self-assessment in advance of the evaluation meeting. This will usually help to foster a constructive dialogue and to diffuse some of the tension when areas of concern are addressed.

When a director is performing her job well without any identifiable problems, conducting the evaluation is a relatively easy chore. However, one of the most common errors that employers make is in failing to honestly address recognized areas of job deficiency. Often this practice is rationalized with the refrain: "We didn't want to hurt her feelings". However, when you ignore or gloss over your director's weaknesses, you are being unfair both to your director and your ministry. In fairness, a struggling director cannot be expected to improve her performance until the underlying problems have been forthrightly identified and addressed.

Of course, when providing a candid assessment of an employee's job deficiencies, every reasonable effort must still be made to minimize the potential for hurt feelings and unnecessary confrontation. "A gentle answer turns away wrath, but a harsh word stirs up anger". Prov. 15:1. Sometimes, the words that are necessary "for building others up" are gentle words of constructive criticism.

Two important rules should be followed when addressing problems or concerns with your director. First, no evaluation should be entirely negative. Always share any positive feedback and praise that is appropriate. And second, negative feedback should never take the form of personal attacks nor presumptuous opinions. Limit your negative comments to specific identifiable and objective behaviors that are reasonably related to the director's job performance. For example, it is appropriate to say, "You missed 25 days of work last year". It is inappropriate to say, "You have a very bad attitude about showing up for work".

What Comes Next?

In all evaluations, specific goals should be established for the upcoming year. These goals should be expressed in objective and measurable terms. Avoid describing goals in vague or subjective terms that are difficult to measure. For example, instead of stating, "Seek to build better relations with churches," a desired goal might be more appropriately stated, "Schedule presentations or meetings with at least 15 churches in the area". This allows for a definite future determination of whether the goal has been met.

If specific job deficiencies are identified in the evaluation process, the board and director should mutually identify appropriate corrective steps. A specific improvement plan should be developed. The board should recognize that it has an affirmative obligation to offer the director reasonable assistance in this process. This requires more than just reiterating job expectations and demanding improvement. Your board should be prepared to offer additional training opportunities or whatever other practical assistance may be reasonably required to help achieve the desired job improvement. If serious job deficiencies are being addressed, the board chair should schedule additional interim evaluation meetings with the director to monitor progress and to explore further corrective measures, as necessary.