

Threats to Religious Liberty: *Risk Management for Churches*

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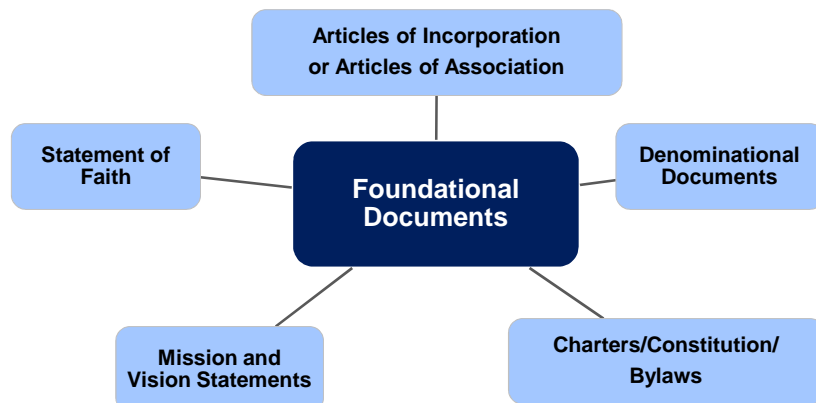
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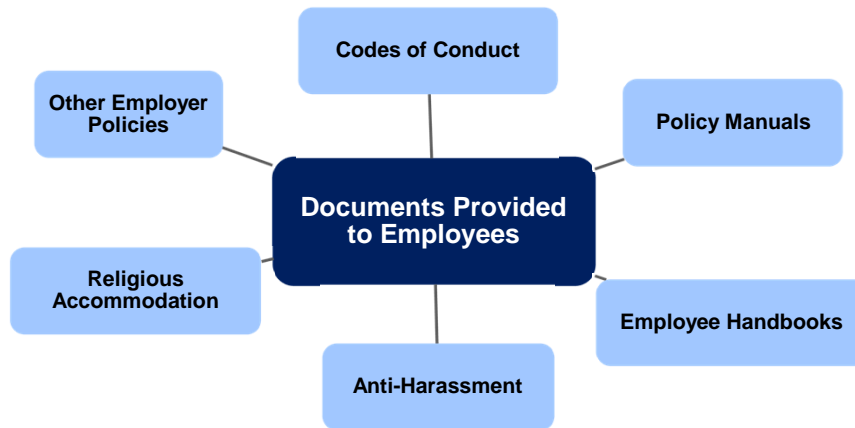
Tip #1:
*Clearly articulate your religious identity
in organizational documents.*



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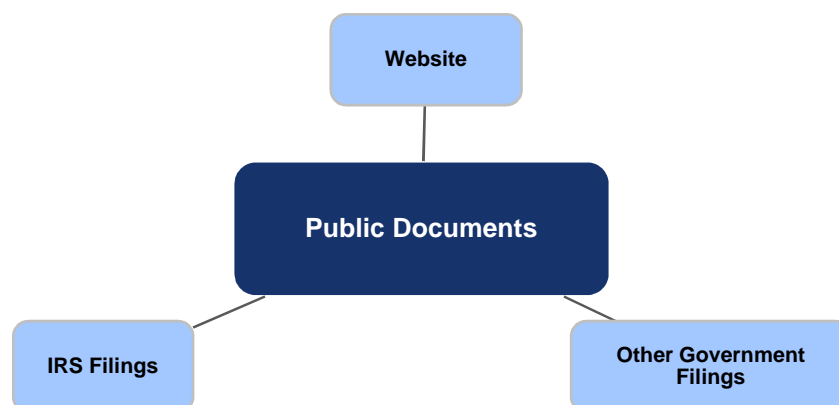
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Tip #1:
*Clearly articulate your religious identity
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Purpose of Revising Documents:

- Defenses under Religion Clause of First Amendment, state constitutions, and federal and state RFRAs (if available)
- Section 702 religious entity exemption from prohibition on discrimination in employment (Title VII of Civil Rights Act of 1964)
 - Broad entity-wide exemption for religious employment decisions by religious organizations
 - Exemption for religious and secular activities
 - “Religion” broadly defined

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Tip #2:
*Recognize advantages and disadvantages
of how your ministry is organized.*

- Tip #2: Recognize the advantages and disadvantages of how your organization is organized as a legal entity under state law and recognized as tax-exempt under federal law
- Issue of state law
 - VA: One nonprofit, nonstock corporation
 - CA: Religious, charitable, and public benefit corporations
- Carefully weigh options available and know risks

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Tip #2:

Recognize advantages and disadvantages of how your ministry is organized.

- Basis for federal tax-exempt status
 - Church
 - Convention or association of churches
 - Integrated auxiliary of a convention or association of churches
- Advantages
 - Automatic tax-exempt status
 - Exempt from filing IRS Form 1023 and IRS Form 990
 - More likely to recognize religious liberty rights

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Tip #3:

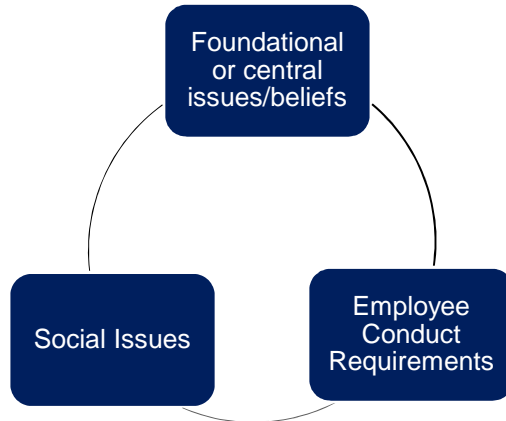
Articulate religious character of and basis for positions on foundational issues.

- Tip #3: Clearly articulate specific religious character of organization's positions on foundational and other important issues
- Explicitly base these positions on Scripture and other expressly religious norms
- Make direct connection between
 - Commitment to beliefs AND
 - Accomplishment of ministry's specific tax-exempt purposes

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Tip #3:
Articulate Religious Positions



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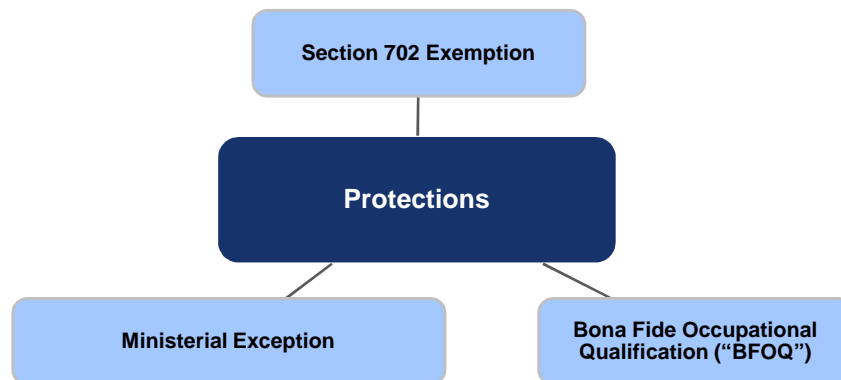
Tip #4:
Articulate religious character of all activities.

- Secular activities, such as rescue missions, soup kitchens, and other aid related ministries, can be seen as non-religious and not entitled to protection

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Tip #5:
Articulate specific religious character and requirements of employment positions.



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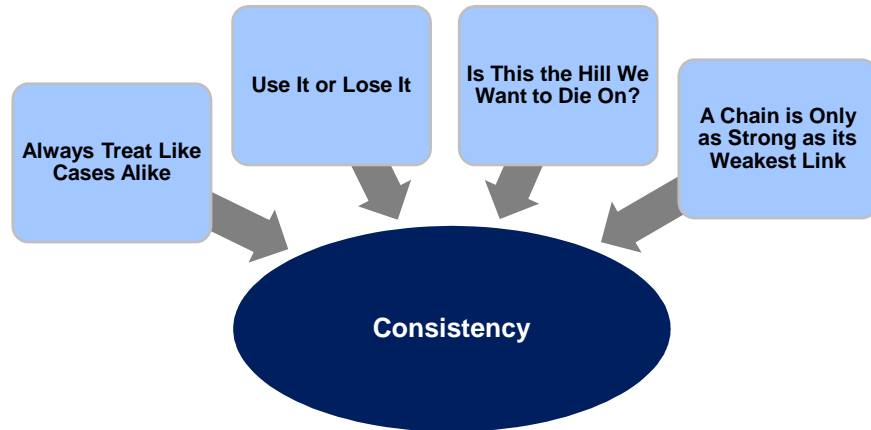
Tip #5:
Articulate specific religious character and requirements of employment positions.

- How?
 - Job descriptions and other relevant documents
 - Don't overreach
 - Be consistent

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Tip #6:
Apply standards with ruthless consistency.



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Tip #7:
Adopt a GOOD Anti-Harassment Policy.

BAD Anti-Harassment Policy

- × Treats religion just like everything else
- × One size fits all
- × Waiver or relinquishment of legal rights

GOOD Anti-Harassment Policy

- ✓ Articulates basis for full respect of ALL religious rights, including those of organization and employees

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Tip #7:
Adopt a GOOD Anti-Harassment Policy.

Bases for Treating Religion Differently

- Religion Clause of First Amendment to US Constitution
- Free Speech Clause of First Amendment to US Constitution
- Federal Religious Freedom Restoration Act
- Section 702 Exemption Under Title VII

Claim Legal Rights

Articulate How Religion is Different from Other Suspect Classes

Define Harassment Carefully

- Ensure evangelism is not considered harassment by expressly stating it constitutes free exercise of religion and does not create hostile working environment

Respond quickly and wisely to all claims of harassment

Encourage employees to be polite and respectful

Golden rule

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Tip #8:
Be careful with gracious use of facilities.

- Problem: providing unlimited or ad hoc availability of organization's facilities
 - Public accommodation
 - Reduce right to deny use
- Solution: Facilities Use Policy
 - Religious nature and purposes of facility
 - Invokes religious rights
 - Imposes religious requirements for use
 - Clear and reasonable approval process



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Tip #9:

Beware of governments bearing gifts.

- Before accepting funds from a governmental entity, have legal counsel carefully review for:
 - Statutes under which funds are being provided
 - Regulations regarding receipt/provision of funds
 - Relevant Executive Orders
 - Government contracts regarding grant/activity including attachments to contract
 - Other applicable laws
 - Origin of funds and any related laws and regulations

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Tip #9:

Beware of governments bearing gifts.

- After receive funds, comply with all requirements
 - Separately track and account for all such funds and their use
 - Segregate public funds for use only for program's recognized secular good
 - Consider establishing separate legal entity to receive, hold, administer, and account for funds

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Tips #10:
Recognize how rights are impacted.

- Tip #10: Recognize how not only your religious liberty rights but also your other constitutional and legal rights are impacted
- Hybrid constitutional claims
 - Free Speech
 - Free Press
 - Free Association
 - Equal Protection
- In articulating religious freedom rights, include others that may apply

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Tip #11:
Identify burdens on free exercise.

- Tip #11: Carefully identify, articulate, and document all of the “burdens” on your free religious exercise that result from the government’s actions.
- “Complicity” claims and “dignitary” claims
- Identify full and true nature of specific harms

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Tip #12:

Use RFRA but be aware of its limitations.

- *Hobby Lobby* was a RFRA Decision
- RFRA applies only to governmental burdens and actions, not private actions
- May be amended by legislature at any time



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Tip #13:

Be vigilant and guard your flanks.

- Watch for efforts to pass or amend federal laws and regulations
- Watch for attempts to promulgate new agency regulations or guidance
- Guard supply lines
 - Tax reform; tax exemption
- Watch efforts at state level
- Preserve attorney-client privilege
- Support work of “watchmen on the walls”

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Living Faithfully and Fruitfully

- From Jerusalem to Babylon
- Daniel as our guide
 - Equipping, not Evacuating
 - Engaging, not Escaping
 - Creative, Constructive, Communicative
 - Faith, not Fear
 - Hope, not Fear
 - Love, not Fear

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Threats to Religious Liberty: The Now and the Not-Yet

- Where are the front lines?
 - Public education before Pulpit
 - Students in Colleges
 - Students in High Schools & even Elementary Schools
 - Public ministries before Pulpit
 - Private education before Pulpit – Christian Colleges
 - Public officials before Pulpit
 - Pew before Pulpit
 - Small businesses
 - Workers in large secular companies
 - Pulpit

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Threats to Religious Liberty: Front Lines: Public Schools and Students

- Student Education – develop a deep understanding of:
 - Your religious faith and its implications for truth, conduct, life
 - Religious liberty and its foundational principles
- Parental Engagement – develop strong relationships with:
 - Your own students
 - Their teachers
 - School Administration and ultimately School Boards
 - “Eternal vigilance” – changes can happen suddenly and without warning
- Church Equipping – facilitate conversations and connections:
 - Among parents in your congregation(s)
 - Between parents and teachers in your congregation
- Use QUESTIONS!
- Legal Preparations:
 - *Religious Expression in the Public Schools* guidance
 - Make connections BEFORE conflicts arise

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Threats to Religious Liberty: Front Lines: Public Schools and Students

- U.S. Department of Education Guidelines (1995) define two basic obligations of public school officials:
 - 1. Schools may not forbid students who are acting on their own from expressing their personal religious views or beliefs solely because their actions are of a religious nature
 - 2. Schools may not discriminate against private religious expression by students and must, instead, give students the same right to engage in religious activity and discussion as they have to engage in other comparable activity.

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Threats to Religious Liberty: Front Lines: Small Private Business

- Be a Daniel.
 - Deeply understand religious liberty and its foundations in principles of justice, equality, and your religious faith.
 - Pick battles wisely – Often better to let them come to you.
 - Realize the main battlefield may not be legal.
 - Media (social media); Community; Customers
 - Be prepared to communicate winsomely.
- Legal Preparations:
 - Be very familiar with *Hobby Lobby*.
 - E.g., religious exercise can occur in for-profit business.
 - Consider religious for-profit status.
 - Get your house (documents) in order.

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Threats to Religious Liberty: Front Lines: Believers in Secular Workplace

- Be a Daniel
 - Deeply understand religious liberty and its foundations in principles of justice, equality, and religious truth.
 - Don't be in the wrong place at the wrong time. (Dan. 5)
 - Pursue quiet, consistent, faithful obedience. (Dan. 6:10)
 - Build relationships.
 - Use QUESTIONS!
 - Propose creative solutions.
- Legal Preparations:
 - Review company policies and handbooks, especially:
 - Religious accommodation
 - Harassment
 - Review EEOC guidelines on workplace religious discrimination.

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