

Table 10-1

WHY SEXUAL MISCONDUCT IS ONE OF THE GREATEST LEGAL RISKS FACING CHURCHES TODAY

Church liability for the sexual misconduct of employees and volunteers is one of the most significant legal risks facing churches today for a number of reasons, including the following:

1. *Many opportunities.* There ordinarily are many opportunities within the church for persons to engage in sexual misconduct with adults or children. Churches have many children involved in a variety of programs, and many pastors engage in extensive counseling.
2. *Trust.* Churches are institutions of trust, and many members and leaders cannot conceive of acts of sexual misconduct occurring on their premises. As a result, they do not see a need to institute procedures and policies that will reduce the risk of such behavior.
3. *Money damages.* The amount of money damages that courts award in such cases can be substantial.
4. *Limited insurance coverage.* Most church insurance policies either exclude sexual misconduct claims, or significantly reduce the amount of coverage. This means that many churches face a potentially large and underinsured risk.
5. *Other damages.* The damage that such claims cause to victims, victims' families, offenders, congregations, and church leaders is considerable.
6. *Board liability.* Board members face personal liability in such cases if they refused to take steps to address this risk or ignored danger signals, and their conduct amounts to "gross negligence."
7. *Punitive damages.* Churches face the possibility of being assessed punitive damages if church leaders willfully refused to address this risk or ignored danger signals. Punitive damages are designed to "punish" wrongdoers for reckless or grossly negligent conduct. They are not covered by church insurance policies.
8. *Polarization.* Congregations often are polarized in the aftermath of an incident of sexual misconduct. Some members insist that the offender be forgiven, while others focus on issues of justice, accountability, and protection.

* See § 6-08, *supra*.