

New Regulations for Cribs Used in Church Day Care Centers and Nurseries

Earlier this year, the Consumer Product Safety Commission (CPSC) issued new regulations concerning cribs that are used in churches and child care facilities providing fee-based care. The new regulations came about as a result of a large number of deaths and injuries reported to the CPSC over the past several years that were directly attributable to baby cribs.

The new regulations state that, as of June 28th, 2011, all cribs sold in the United States must meet certain requirements related to drop-side cribs, wood slats used in cribs, crib hardware utilized in building the crib and mattress supports. The regulations state that all cribs manufactured on or after June 28th must have a label attached that shows the date of manufacture. Also, any manufacturer, distributor or retail outlet should be able to provide a *Certificate of Compliance* on any crib purchased to prove a new crib is compliant with the new CPSC regulations.

A key date for churches that provide child care on a fee basis (e.g. day care or Mother's Day Out) is December 28th, 2011. By this date, cribs that meet the new standards **must** be in use. If noncompliant cribs are still in use after December 28th, churches will very likely face significant liability in the event of an injury or death to a child due to the continued use of a noncompliant crib.

What are the risks for churches under the new regulations? If noncompliant cribs continue to be used in a fee-based child care arrangement and a child is injured as a result of the crib, the church may face the following risks:

1. Compensatory damages in a civil lawsuit in the event that a child is killed or injured as a result of a defective and noncompliant crib.
2. Punitive damages from a civil lawsuit should a child be killed or injured as a result of a defective and noncompliant crib. (NOTE: Punitive damages can be substantial and are generally not covered by a church's general liability policy.)
3. Members of a church's governing board may face personal liability if noncompliant cribs continue to be used that result in the death or injury of a child.
4. A church's general liability policy may contain an exclusion barring coverage for claims resulting from injuries and deaths caused by a defective product, leaving the church without coverage it thinks it has. (Contact your insurance agent for clarification on this point.)
5. Finally, and perhaps most significantly, churches using noncompliant cribs for fee-based child care can be subject to a penalty of up to \$100,000 per

noncompliant crib in use under the Consumer Product Safety Act in addition to the other four risks enumerated above.

What about churches that don't have a day care program or don't offer a fee-based care program like a Mother's Day Out but only use its cribs to provide nursery care during Sunday, Wednesday and special service times with volunteers? The new regulations don't apply to such churches. However, is it prudent in today's litigious society for churches to continue to use noncompliant cribs that could lead to the injury or death of a child that could ultimately lead to a lawsuit for negligence in the care provided even though it is "free" to families? It is the opinion of church legal experts that churches should not assume this risk. The cost of new, compliant cribs pales in comparison to the financial impact a lawsuit could have on a church. Placing compliant cribs in your nurseries sends a message to your congregation and guests that you are looking to provide the best care possible to their children during services.

It should be noted that the CPSC regulations don't address churches who provide only nursery care by paid employees (rather than volunteers) during services. Again, church legal experts recommend that churches who pay nursery workers on Sundays and Wednesdays should not assume the potential liability of using noncompliant cribs. Their recommendation is to replace the cribs with new ones that comply with the regulations. Doing this demonstrates "due diligence" on the part of the church.

Finally, the new rules and regulations state that when churches get rid of their noncompliant cribs, the cribs should be made unusable by the churches and trashed. If a church chooses to sell or donate noncompliant cribs to another church or child care facility, an incident that occurs at that church or child care facility resulting in injury or death to a child could lead to the church being named/included in any lawsuit that might come out of the incident. To eliminate this potential liability, the CPSC recommends rendering noncompliant cribs useless.

The best practice for your church in this matter, whether you provide fee-based child care or not: If you have cribs that don't meet the new specifications required by the CPSC to be in place as of June 28th, 2011, buy cribs that are compliant and destroy your old ones no later than December 28th, 2012.