

Model Contract Provisions For Church/Temple Musicians

*Approved by the AGO National Council, June 7, 2005
Updated Through August 29, 2005*

PREAMBLE

The American Guild of Organists (AGO) encourages the establishment of written contractual arrangements between church and temple musicians and their employers because employees' rights can be severely limited when they are serving purely "at will."

AGO members should be aware that the nature of the musician's work usually results in musicians being classified as employees and not as independent contractors. Regardless of a written agreement to the contrary, governmental agencies are likely to find that a church or temple musician is an employee because of industry practice, facilities used, work venues, an ongoing employment relationship, and the employer's right to supervise the musician.

The tax and accounting burden is greater for independent contractors. Therefore, if the institution tends to treat the musician as an employee for purposes of supervision and control, it should make the appropriate FICA/Medicare/Unemployment/Workers Compensation contributions from which the musician may benefit as an employee.

The content of the provisions that follow is organized primarily by topic. The provisions should be selected and/or revised to fit specific contractual needs. Many provisions are alternative in nature and the use of one may preclude the use of others. Also, specific provisions may conflict with local law and/or may become outdated.

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Committee on Career Development

Donna B. Wernz, MBA, SPC, Director

Edwina T. Beard, MM, AAGO

Barbara J. Gulick, MED, FAGO, CHM

Roy Roberts, BA

Councillor for Professional Development

W. James Owen, JD, BA

Executive Director

James E. Thomashower, BA, CAE

(Date)

Effective from (Date) until termination (or (Expiration Date)),
(Name), hereinafter referred to as “Employee,” shall act as (Title of
Position) at (Name of Employer), hereinafter referred to as “Employer,”
in (Name of City and State).

GENERAL UNDERSTANDINGS AND COVENANTS

1. Music is an integral part of the life of this [parish/congregation]. Under the leadership of the clergy, the Employee exercises an important ministry that reaches out to the staff, choir members, members of the congregation, and the community.
2. The Employee agrees to recognize and facilitate the pastoral dimension of this position.
3. The music ministry will involve the Employee as a pastor, educator, and principal musician of this [parish/congregation]. The Employee’s pastoral concern for and counsel to all members of the choir and the [parish/congregation] are to exemplify the [religious] spirit of this place. As an educator, the Employee will teach music and explain [worship/liturgical] concepts. As a musician, the Employee will be diligent in preparation and performance, and will cooperate with others to provide and enable the highest possible standard of worship in this [parish/congregation].
4. The Employee and the Employer agree to meet regularly to facilitate collegiality in the music ministry.
5. It is understood that a variety of traditions and styles in [organ and choral] music [is/may be] appropriate for the services, and that the use of a variety of instruments [is/may be] expected.

EMPLOYEE'S RESPONSIBILITIES

Choose one or more of 6, 7, 8, and 9

The Employee shall:

6. Provide organ music and direct the choir(s) at the _____ service(s) regularly scheduled on (Sunday morning) and shall select appropriate organ and choral music for each service.
7. Provide organ music and direct the choir(s) at all services, as directed by the Employee's supervisor.
8. Provide organ and choral music for the following additional services during the year:
_____.
9. Subject to the Employee's availability, provide organ and choral music for services not listed above. Payment for such services and attendant rehearsals shall be: \$ _____ per service; \$ _____ per rehearsal (or per hour or fraction thereof). The budget in fiscal year (Year) for this expense is \$ _____.
10. If not available assist in the hiring of substitute musicians. The fees for the substitute musician are payable by the Employer. The budget in Fiscal Year (Year) for this expense is \$ _____.
11. Subject to the Employee's availability, take part in extra rehearsals for regularly scheduled services that require additional preparation. Payment for such rehearsals shall be: \$ _____ per rehearsal (or per hour or fraction thereof).
12. Be responsible for the leadership of the following choirs/ensembles:

Rehearse once weekly (or as otherwise specified) with each of the choirs. During the summer months the choir schedule shall be: _____.
13. Rehearse once weekly (or as otherwise specified) with each of the choirs, from the _____ week of (Month) through the _____ week of (Month). During the summer months, music shall be provided as follows:
_____.
14. Cooperate with the Employer in the area of general planning and leadership of the music program. The Employee shall be directly responsible to (Name of committee or title of person).
15. Function under the direct supervision of (Name of committee or title of person), and in the absence of same, (Name of committee or title of person).

25. In the event that the Employer's job requirements change, the Employee in exchange for being considered for additional, new and/or different duties and responsibilities agrees to pursue, at the Employer's additional expense, training and professional development in order to meet the demands of the new duties and responsibilities.
26. Provide ninety (90) days' advance, written notice to the Employer if the Employee wishes to terminate employment or not renew this contract.

EMPLOYER'S RESPONSIBILITIES

The Employer shall:

27. Provide a salary of \$_____ per year, payable (Pay schedule) . This salary shall be reviewed annually at the time of preparation of the budget in (Month in which budget is prepared) . [The *Salary Guide for Musicians Employed by Religious Institutions* is available from AGO National Headquarters and on the Web at www.agohq.org/profession.]
28. Provide a vacation (with full salary) of _____ weeks annually. (The Employee will assist the Employer in obtaining a substitute.) The fee for the substitute musician will be: \$_____ per service; \$_____ per rehearsal. [If length of vacation is based on length of employment, AGO guidelines should be noted here.]
29. Grant up to _____ days sick leave during the year. Sick leave shall be granted to the Employee, upon approval of the Employer which approval shall not unreasonably be denied, for the following reasons: illness, injury or pregnancy-related conditions of the Employee. For male employees, in addition to sick leave for illness and injury, the Employee shall be granted leave for care of the Employee's wife/family during any postnatal period. Said leave shall be granted, without deduction from pay, for a maximum of _____ days per calendar year. Beyond said number of days, said leave shall be granted, without pay, for a maximum of _____ days per calendar year. In such cases the Employer shall pay for the services of a substitute organist and/or director. In case of extended illness the Employer will consider the granting of additional sick leave.
30. Grant up to _____ days of personal leave during the year. In such cases the Employer shall pay for the services of a substitute organist and/or director.
31. Provide the following benefits for the Employee [and his/her family/partner]: health and dental insurance, Social Security, pension plan, life insurance, paid and non-paid maternity/paternity leave. These benefits shall take into account the Employee's needs and be commensurate with the benefits received by other employees. (If the position is part-time and, by mutual agreement health and pension benefits are not provided, additional compensation shall be given to allow the Employee to provide individually for his/her needs.)

Choose 32 or 33

32. Provide an annual allowance for continuing education in the amount of \$_____, and provide reasonable time for the pursuit of continuing education. Funds not used in any fiscal year will accrue to the next year. "Continuing education" may include, but not necessarily be limited to, instrumental study, choral conducting and vocal study, trends in worship, and administrative skills.
33. Provide an annual allowance (comparable to other professionals) for continuing education, professional dues, and for books, periodicals, and other publications (which shall remain the property of the Employee) in the amount of \$_____ per year. "Continuing education" may include, but not necessarily be limited to, instrumental study, choral conducting and vocal study, trends in worship, and administrative skills.
34. Provide for Employee's sabbatical leave as follows: _____

[A suggested basis for sabbatical leave is three months for each five years of full-time employment.]
35. Permit the Employee to use the Employer's facilities (organ, piano) for private teaching. Times of lessons and use of facilities will be scheduled in advance so as not to conflict with the Employer's program needs. The Employee shall be solely responsible for all taxation and accounting obligations resulting from self-employment income received from private teaching, including, but not limited to, quarterly estimates and payments of all appropriate taxes and FICA/Medicare contributions.

Choose 36 or 37

36. Provide the Employee with _____ hours of secretarial assistance weekly.
37. Furnish secretarial assistance (including computer and software) to the Employee to reasonably enable the Employee to discharge the duties enumerated herein.
38. Guarantee that guest musicians shall not be permitted to use the Employer's musical instruments without prior approval by the Employee.
39. Provide ninety (90) days' advance, written notice to the Employee if the Employer wishes to terminate employment or not renew this contract.

PERFORMANCE REVIEW

40. The parties shall review this document annually to ensure that it accurately reflects the position, the music budget, and merit increases for the Employee. This review shall include an evaluation of working relationships and job performance.
41. The salary review shall include the consideration of a cost of living adjustment in accordance with prevailing rates. If no such review occurs, there will be an automatic cost of living adjustment in accordance with prevailing current rates.
42. In the event that the Employer's job requirements change, the Employee will be considered for additional, new and/or different duties and responsibilities, subject to contract renegotiation. Compensation to the Employee for increases in workload pertaining to these changes and/or additions shall be in accordance with AGO Salary Guidelines. The Employer will support the Employee, financially and otherwise, in acquiring additional training and professional development in order to meet the demands of new duties and responsibilities.

WEDDINGS AND FUNERALS

Choose 43 and/or 44 or 45

43. The Employee will provide music at all weddings requiring organ music held within the Employer's premises. If the Employee does not play, he/she will receive his/her normal fee. The services of other organists may be used only with the permission of the Employee.
44. The Employer has adopted wedding music guidelines, attached hereto, and made a part hereof. The Employee shall supervise all music presented at all weddings, whether or not the Employee performs personally at said weddings.
45. The Employer will adopt wedding music guidelines on or before (Date) , in full consultation with the Employee who shall, in any event, supervise all music presented at weddings, whether or not the Employee performs personally at said weddings.
46. The Employee shall receive the fee of \$ for a short program of music preceding the wedding ceremony and for performing during the wedding ceremony. For attendance at the wedding rehearsal(s), the Employee shall receive \$ per rehearsal (or per hour or fraction thereof). Additional remuneration shall be made if special music, and/or rehearsal and performance with additional musicians, is required. If the Employee is not available, he/she shall assist in the hiring of substitute musicians. It shall be the obligation of the Employer to secure said fee.
47. The Employee shall provide music for funeral services held within the Employer's premises if available at the time of the funeral. The fee for such a service shall be \$. Additional remuneration shall be made if special music, and/or rehearsal and performance with additional musicians, is required. If the Employee is not available, he/she shall assist in the hiring of substitute musicians. It shall be the obligation of the Employer to secure said fee.
48. The Employee shall be solely responsible for all taxation and accounting obligations resulting from self-employment income received from third parties for weddings and funerals, including but not limited to, quarterly estimates and payments of all appropriate taxes and FICA/Medicare contributions.

TERMINATION

49. Either party may terminate this contract by giving the other party ninety (90) days' written advance notice.

50. This Agreement may be terminated as follows:

I. Upon the expiration of this Agreement without its renewal by the parties. If either the Employer or the Employee does not desire to renew this Agreement at the time it expires, notice of non-renewal shall be given in writing by the party not wishing to renew the Agreement not less than ninety (90) days prior to its expiration. This period of time may be increased or decreased by the mutual agreement, in writing, of the parties. It is agreed that the Employer may substitute ninety (90) days' compensation for the agreed-upon notice. If either party shall give written notice of non-renewal at a time less than ninety (90) days prior to the expiration of this Agreement, this Agreement shall remain in force and effect as to all parties for a period of ninety (90) days after the giving of such notice of non-renewal, subject to the stipulations in regard to non-renewal set out above.

OR

II. With the mutual consent and agreement of all parties in writing.

OR

III. For cause. Cause is defined as conviction of the Employee of an offense involving moral turpitude, gross dereliction of duty by the Employee after due warning of same, chronic insubordination to authority by the Employee after due warning of same, or a willful failure of the Employee to perform in good faith the obligations and covenants of this Agreement. Termination of this Agreement for cause shall not occur until:

A. Notice has been given to the Employee in writing of the charges against the Employee along with notice that termination of this Agreement for cause is to be sought by the Employer.

AND

B. The Employee has had an opportunity to be heard by the Employer and to present whatever defense may be appropriate. This hearing may be waived by the Employee in writing, at the Employee's sole discretion.

AND

- C. The existence of cause has been determined and findings of same have been reduced to writing, with a copy provided to the Employee. This determination of cause shall not take place before the hearing described in subparagraph (B) above has taken place or has been waived in writing by the Employee.

51. Termination of this contract, or any non-renewal thereof for any reason, shall entitle the Employee to:

- A. Uninterrupted medical/dental/disability insurance for a period of _____ months from the final date of employment, the cost of which shall be borne by the Employer.

AND

- B. Severance pay equal to (One month's salary) for each complete 12-month period of service, payable in a lump sum within 30 days from the final date of employment.

DISPUTE RESOLUTION

52. Disputes arising under this contract will be settled under the law of the State/Commonwealth of _____.

Choose 53 or 54

53. At the Employee's discretion, disputes arising from the parties' employment relationship may be mediated and/or arbitrated through a mediation service such as the Federal Mediation and Conciliation Service, Washington, D. C.

54. If a dispute arises or relates to this contract, any demands, claims, or controversies hereto arising out of or relating to this contract or the breach thereof, shall be settled through mediation as the parties may agree or, if they cannot agree within thirty days of receipt by one party from the other party of a demand to mediate, through ADR Systems of America. First, the parties shall attempt a voluntary settlement through non-binding mediation of their own choice or at ADR Systems of America, before resorting to the filing of a lawsuit. Either party may commence the mediation process called for in this agreement by filing a written demand for mediation with the other party (or thereafter through ADR Systems of America). The parties will select a mediator themselves or, if they cannot agree, from ADR Systems of America's panel of neutrals. The parties covenant that they shall participate in the mediation in good faith and that they will share equally in the costs. The mediator will be disqualified as a witness, consultant, or expert for either Party; the mediator will treat the offers, promises, conduct and statements made in the course of the non-binding mediation (including pre-mediation and post-mediation submissions to the mediator) as confidential and will refrain from disclosing such information except to the Parties. Any Court of competent jurisdiction may enforce the provisions of this Paragraph, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

Caveat: The use of the foregoing paragraph might be helpful, but it also might delay or preclude the use of other procedures, including the AGO Grievance Procedures, arbitration, and litigation.

55. Any problems regarding termination of employment herein shall, at the option of the Employee, follow the specified *Procedures for Dealing with Complaints about Termination* ("Grievance Procedures") available from AGO National Headquarters and on the Web at www.agohq.org/profession.

EXECUTION

This Agreement, and attached addenda (listed below), constitute the entire Agreement between the Employer and the Employee.*

ADDENDA: _____

IN WITNESS WHEREOF the undersigned Parties have hereunto placed their hands (and seals) this _____ day of _____, 20____, at _____ (City) _____, _____ (State) _____.

Signature and Title of
Employer Representative

Signature of Employee

*May include, but not be limited to, Employer's personnel policies, a position description, or a separate document regarding compensation and benefits.

ADDENDUM A

Compensation matters are alternatively listed in Addendum A for ease in annual renegotiation.

COMPENSATION

The Employer shall:

1. Provide a salary of \$_____ per year, payable (pay schedule) . This salary shall be reviewed annually at the time of the preparation of the church budget in (month in which budget is prepared) .
2. Provide the following benefits for the Employee [and his/her family/partner]: health and dental insurance, social security, pension plan, life insurance, paid and non-paid maternity/paternity leave. These benefits shall take into account the Employee's needs and shall be commensurate with the benefits received by other employees. [If the position is part-time and, by mutual agreement health and pension benefits are not provided, additional compensation shall be given to allow the Employee to provide individually for his/her needs.]

Weddings and Funerals

3. For a short program of music preceding a wedding ceremony and performing at the wedding ceremony the fee shall be \$ _____. For attendance at the wedding rehearsal(s) the fee shall be \$ _____ per rehearsal (or per hour or fraction thereof). Additional remuneration shall be made if special music, and/or rehearsal and performance with additional musicians is required. If the Employee is not available, he/she shall assist in the hiring of substitute musicians. It shall be the obligation of the Employer to secure said fee.
4. The fee for a funeral service shall be \$ _____. Additional remuneration shall be made if special music, and/or rehearsal and performance with additional musicians, is required. If the Employee is not available, he/she shall assist in the hiring of substitute musicians. It shall be the obligation of the Employer to secure said fee.

Additional Services and Rehearsals

5. The reimbursement for services and rehearsals not listed in the Agreement shall be: \$ _____ per service; \$ _____ per rehearsal (or per hour or fraction thereof).
6. The reimbursement for extra rehearsals for regularly scheduled services that require additional preparation shall be \$ _____ per rehearsal (or per hour or fraction thereof).