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**Memo from Jack Hammel to
Pastors, Principals and Agency Heads
(01/07/02)
re Wrongful Termination of
Employment/Insurance Coverage**



THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

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MEMORANDUM

TO: Pastors, Principals and Agency Heads covered by
The Ordinary Mutual Insurance (T.O.M.) Policy

FROM: Jack M. Hammel, Legal Counsel *JMH*

DATE: January 7, 2002

RE: **IMPORTANT NOTICE:**
**WRONGFUL TERMINATION OF EMPLOYMENT AND/OR
DISCRIMINATION CLAIMS/INSURANCE COVERAGE**
*** * * PLEASE READ CAREFULLY AND RETAIN * * ***

The Chancery was recently informed by The Ordinary Mutual (T.O.M.) that they would be invoking a previously unasserted insurance policy exclusion pertaining to wrongful termination and discrimination (including harassment) claims.

Specifically, the T.O.M. policy provides for \$2,000,000 in coverage for "Employment Related Practices", defined as "Discrimination, Employment Harassment and/or Wrongful Termination".

However, the Exclusions section of the policy states as follows:

...this Policy does not provide coverage for loss resulting from: salary, wages or any related employee benefits, whether past or future, arising out of unlawful discrimination, gender based or other employment harassment, wrongful termination or violation of civil rights of any employee or official of a covered party.

The T.O.M. Board apparently added this exclusion because it was worried about parishes, schools, agencies, etc., terminating employment relationships (particularly written agreements) without legal cause and then, in effect, looking to T.O.M. to subsidize the resultant salary and benefit claims.

In view of these T.O.M. exclusions, we have begun exploring permanent insurance alternatives for the above-referenced claims. **In the interim, the Archdiocese will cover these T.O.M. exclusions via the Archdiocese's self-insurance fund, subject to the following two conditions:**

1. No tender of a claim for wrongful termination and/or discrimination shall be covered by the Archdiocesan self-insurance fund unless accompanied by a letter from the Archdiocesan Legal Counsel certifying that the appropriate office of the Chancery was contacted prior to the termination and, in consultation with the Archdiocesan Counsel, it was determined that legal cause existed for the termination.
2. If, subsequent to the acceptance of such tender, the Chancery determines that a material misrepresentation and/or omission of fact concerning the matter has been made by the parish, school, or agency involved, the coverage shall be rescinded.

JMH/jn