

GUIDELINES FOR PAYING A FLAT OR “PIECE” RATE TO EMPLOYEES

Locations sometimes wish to pay a flat or “piece” rate to staff members such as musicians, wedding coordinators, coaches, youth ministers, who perform services for a set number of hours or days.

Flat rates or piece rates are allowed in California. However, the calculation and payment of these rates under state law is quite complicated and governmental agencies may impose stiff penalties on employers who make these payments incorrectly. In addition, California courts have imposed serious limitations on how a piece rate compensation method may work in this state. The primary issue is that employers must pay for all hours an employee works or “is suffered to work” and that includes paid rest breaks. Moreover, even though the employee is paid a flat or piece rate, employers must track the employee’s hours worked and provide the mandatory unpaid meal breaks, if the employee works more than five consecutive hours.

According to the courts, if an employer pays only for a task – e.g., repairing an automobile, packing a crate, singing during Mass – and the time it takes to perform that task is longer than 3.5 hours, the employer is required to provide a paid 10-minute rest break. In other words, if a location has decided to pay a flat/piece rate, the employee must receive the flat rate plus 10 minutes’ worth of pay at the calculated hourly rate, which is based on the flat rate. In addition, if the employee spends time changing into mechanics’ overalls, picking up decorations from the parish storage facility, or distributing and collecting music scores for members of the choir at rehearsals, and that time is not included in the performance of the task, this additional time must also be paid at the regular hourly rate.

SAMPLE SCENARIOS

Q: Myrna, the cantor, is not an independent contractor and she is paid a flat \$500 every month (\$250 per pay period). Sometimes she sings at four Masses a month, sometimes she sings at five. The Masses, with the time it takes to arrive and leave, last approximately 1.5 hours. The location does not calculate a per Mass amount. She does not participate in rehearsals and does no preparation before she arrives for her scheduled Mass. She does not fill out a timesheet. Is this OK?

A: Yes and no. The location’s amount of payment and manner of payment are fine, because Myna performs no “outside of Mass” work. If she were required to attend rehearsals or prepare at home for her performance at Mass, those activities would have to be paid in addition to the flat rate, at a regular rate of pay which could be at the minimum wage or more. However, the location is required to keep a timesheet for Myrna because she is non-exempt and is subject to the regulations that apply to hourly workers.

Q: Daniel, the organist, is not an independent contractor, and is paid a flat \$500 every month (\$250 per pay period). He plays at the 9:30 a.m. and the noon Masses twice a month; in between the Masses, he rehearses with the noon choir. The Masses, with the time it takes him to set up and close down the organ, last approximately 4.5 hours. He does not fill out a timesheet. Is this OK?

A: No. First, Daniel must fill out a timesheet. Next, although Daniel’s flat rate is adequate to compensate him for his time playing the organ for the Masses and the rehearsal because on a per-hour basis it is above the minimum wage, he has worked more than 4 hours in a row and is entitled to a paid 10 minute rest break in addition to the flat rate.



According to statute, the amount he is owed for the rest break is “determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods, by the total hours worked during the workweek.” Because the location pays twice a month, the amount will vary depending on how many Sundays fall in the pay period.

If a pay period has two “workweeks” of two Sundays, Daniel’s flat rate is \$125 per workweek. If a pay period has three “workweeks” of three Sundays, his flat rate is \$83.33 per workweek. Thus, the rest break pay rate for the first pay period is $\$150 \div 4$ hours and 20 minutes (the rest break time must be subtracted from the total hours worked) = \$34.88 per hour. The rest break pay is \$5.81. The total amount the organist is owed for the first pay period is \$250 (flat rate) plus $2 \times \$5.81$ for the rest breaks on the two Sundays he worked. The paycheck should be issued in the amount of \$255.81.

The rest break pay for the second pay period must be calculated in the same way. \$83.33 flat rate \div by 4 hours and 20 minutes = \$19.37 per hour. The rest break pay is \$3.23 per Sunday. Thus, the paycheck for the second pay period should be issued in the amount of \$259.69.

Q: Shoshona, the wedding coordinator, is paid \$350 per wedding. She does not have an independent wedding coordinator business; therefore, she is an employee. She meets with the couple once or twice to inform them of the church’s requirements and learn about their wishes. She discusses the couple’s music selections with the church’s musicians. She directs the wedding rehearsal. Finally, she is present throughout the wedding ceremony and afterwards during the post-wedding photography session on the church grounds. She keeps track of her time. Is this OK?

A. Maybe. If Shoshona never works more than 3.5 hours in a row, she is not owed any rest break. If the total time she works on this wedding is 20 hours or less, then the flat rate of \$350 meets the current state minimum wage of \$16 and of the cities with different rates. On the other hand, if the couple and their families need extra hand-holding and she spends 24 hours with them, the flat rate of \$350 results in a regular hourly rate of \$14.58, which is below the current minimum wage and is illegal.

Q. Timothy, a youth ministry coordinator, is paid \$400 a month to lead the youth on monthly activities such as feeding the homeless, visiting the elderly in nursing homes, or playing basketball with inner city youth. He also participates in two annual weekend retreats in months when he does not lead any other activity. He keeps a timesheet. Is this OK?

A. It depends. If all the activities that Timothy leads last 3.5 hours or less, he is not entitled to a rest break. On the other hand, if one or more of the activities he leads last more than 5 hours in a day, he must be provided both a 10 minute rest break and an unpaid meal break of 30 minutes. If the activities last less than 6 hours in one day he may voluntarily request a meal break waiver. If the total time he works during a month is more than 25 hours, he is not being paid the current state minimum wage.

As these examples demonstrate, the calculations and proper payment of employees who are paid a flat or piece rate become quite complicated; therefore, it is best to pay these employees an hourly rate instead of a flat rate, have them fill out a timesheet to account for all their time worked and pay accordingly.

