

Overtime violations assessed against employer that pays piece rate

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The Fair Labor Standards Act (FLSA) requires all employers to pay overtime to nonexempt employees for all hours worked over 40 in a workweek. Employers that pay piece-rate compensation to employees are, likewise, required to comply with the overtime requirements under federal law. This means piece-rate employees must still track their hours worked and be compensated at a special overtime rate for all hours over 40. What steps should employers take to ensure they aren't found to be in violation of the FLSA's overtime requirements?

Renewal by Anderson, an Arizona window installation company, recently learned the hard way after the U.S. Department of Labor (DOL) investigated its piece-rate practices, resulting in the company paying \$577,997 to 109 employees for FLSA overtime violations.

What is piece rate?

Piece rate is a compensation system by which a worker is paid on a per-unit basis. This means the worker is paid by the output no matter how long it takes. This is typically found in the construction industry.

For example, a drywall worker may be paid by the square foot of dry wall installed. Many mechanics are also paid on a piece-rate basis, the "piece" being the type of repair to a vehicle. In that situation, the amount a mechanic is paid is determined up front by the type of repair.

What are the benefits of implementing a piece-rate system?

Under a piece-rate compensation system, an employee's pay is linked to output (i.e., productivity). The higher the productivity, the more the worker makes. Employees generally put in more effort to increase productivity and efficiency because the effort causes their wages to go up.

A payment system based on productivity reduces the required supervision. Employees are incentivized to work irrespective of supervision because their compensation is on the line. Greater efficiency also means better certainty in quantity of production. This means better planning and control is possible.

What is the downside to a piece-rate system?

Unfortunately, many employers fail to understand the need to compensate piece-rate employees for overtime hours worked, resulting in a failure to track the hours worked. This is what happened to Renewal by Anderson. When that occurs, the DOL has to guess, often after interviewing employees, how much overtime (if any) was worked. The lack of records could result in an employer paying employees back wages that may not be due because it has no way of proving all compensation was properly paid.

Even if employers track hours, they often fail to properly calculate the regular rate, resulting in an incorrect overtime rate being paid to employees. This error will likewise result in a back-pay assessment by the DOL.

How do I compensate for overtime hours under a piece-rate system?

In calculating the overtime rate, you must first figure out the regular pay rate. It's important to understand the piece rate isn't the regular pay rate. Rather, the piece rate and total hours worked in the workweek are used to determine the regular rate.

To calculate the regular rate, start by taking the total compensation for the week and dividing it by the total number of hours worked. Let's say a drywall installer earned \$810 for piece-rate work he completed in 45 hours. The regular pay rate for the week equals \$18 (\$810 divided by 45). In addition to the straight-time pay of \$810, he is entitled to receive \$9 per hour more for five hours or \$45 for the five overtime hours. His total compensation for the week is \$855.

Best practices

Employers that want to pay employees by piece rate can do so, but they must first understand what goes into FLSA compliance. Piece-rate employees must still track hours worked and pay overtime (calculated using the regular rate) for all hours over 40. Remaining vigilant is necessary to ensure a DOL audit won't result in a back-wage assessment.

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