



*Michael Silhavy*

# Pastoral Musicians AND THE Federal Fair Labor Standards Act



**SEVERAL YEARS AGO, CHANGES WERE MADE** to the US federal tax laws centering on the distinctions between employees and independent contractors. Parish musicians who had been accustomed to earning a \$125.00 stipend for playing or singing at a liturgy saw their nice-round-number check turn into something more like \$108.47 after taxes were taken out. The musician could no longer be designated as an independent contractor, and many regular and substitute musicians now were treated as employees.

This change—by no means universally followed in all parishes!—prompted some peculiar questions and confusions. Would a trumpeter hired for Easter need to show proof of insurance in their independent contractor status in the event there was an injury or incident at the church? Did the hired professional violinist who appeared four times throughout the year and was now considered an employee have to complete child protection training? There were a few bumpy years, but eventually parishes seemed to have figured all this out.

## **WHAT CHANGES HAVE HAPPENED?**

Then in 2019, new changes to tax law further complicated the way many church musicians were compensated. The Fair Labor Standards Act (FLSA) mandated that an individual needed to make more than \$684.00 a week, or \$35,568 a year, to be a salaried, exempt employee. It should be noted that several states have since created their own—usually higher—minimum salary requirements. One of the main points of this article is to argue that full-time and many part-time pastoral musicians need to be compensated in a way that allows them to be identified as salaried, exempt employees.

At the risk of oversimplifying, the salaried employee is exempt from working a minimum number of hours a week. They are also exempt from receiving overtime pay should they go over 40 hours a week or work on a holiday. The salaried, exempt employee takes as much time—or as little time—as needed to do the job well, receiving the same pay each week. Some weeks one works more, and some weeks one works less. (Sound familiar?)

One of the justifications for this minimum salary requirement is to ensure that a salaried (not hourly) employee making less than \$684.00 a week is not subjected regularly a 40+ hour work week. Those who do not earn more than the weekly and yearly rate found in the FLSA are to be paid on an hourly basis.

It so happens that the salary figure \$35,568 seems to come into play in a number of music director salary scenarios. For full-time music directors currently paid a salary less than the FLSA minimum, the parish may simply have to raise the salary to avoid paying the musician on an hourly basis. (Later in the article we'll talk about why an hourly rate is problematic.)

For others, it's possible their base salary is somewhere at or below this FLSA number, and weddings and funerals paid directly by the family raise the total salary. This additional income cannot be counted toward the minimum salary if it does not go through parish accounting. Musicians in the category would do well to ask for a salary above the FLSA number. Even a part-time musician may earn close to the FLSA salary requirement, and they too should avoid being compensated at an hourly rate.

It's not that hard for a full-time parish musician, or even a part-time musician in a busy place, to achieve the \$684.00 weekly minimum. One way to calculate a salary is to assign a dollar amount to each event likely to happen within a typical week (or pay period or month), and use that combined total to arrive at a salary.

EXAMPLES OF COMPENSATION

It is impossible to define fair stipends and salaries in a national publication like the *GIA Quarterly*. No matter what dollar amount is used as an example, some will find it high and some will find it low for their situation or part of the country. I offer the following numbers as an example, but the general concept may be applied universally. In this instance, I'll use \$125.00 for each item:

A	Weekend Masses—perhaps 2 or 3 a weekend	\$250 / \$375
B	Each evening event and rehearsal	\$125 / \$250 / \$350
C	Desk, computer, phone, email work for the week, no matter how many hours	\$125
D	Meetings and extra rehearsals	\$125
E	Presence (more about this below)	\$75
F	Practice time	\$125

As mentioned above, it's no problem getting to the minimum, and many will have a total far above the minimum. This calculation demands trust between employee and employer. Line B addresses evening rehearsals, but it's unlikely one will have a choir rehearsal each week of the year. But evening holy day Masses, retreat nights, sacramental celebrations, and other events will more than make up for the weeks with no rehearsals.

This system also fairly addresses vacation weekends. The stipended musician frequently receives no vacation pay. Line D accounts for not only staff meetings but professional association gatherings like chapter meetings and other events of, for example, the National Association of Pastoral Musicians or the American Guild of Organists.

I mention "presence" in line E; perhaps this line item is not needed in some cases; for others, it might be included to help get one above the minimum. Regardless, pastoral musicians, like any other parish pastoral minister, should be acknowledged for their willingness to be present any day or at any time. (They are still entitled to days off, vacation, retreat or development days, and comp time for working on holidays.) Whether it be a Sunday morning Mass, a Saturday afternoon wedding, a Tuesday morning funeral, a Wednesday evening holy day Mass, or a weekday afternoon staff meeting, the musician (along with pastoral ministers) is expected to be present. This willingness to be subject to a varying schedule must surely count for something.



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## THE MANY ROLES OF A PASTORAL MUSICIAN

One of the consequences of this minimum salary requirement is that some musicians are being told they must be paid an hourly rate. Not a stipended rate, but an hourly rate. The benefit of a salaried rate is the give and take it allows. Playing a one-hour Easter morning Mass should not have the same compensation as filing music and cleaning the music room for one hour after the Triduum. The musician needs to be compensated for their time and availability for events taking under an hour. Tasks like ordering music, accommodating cantor switches, responding to parishioners, reading the *GIA Quarterly*, or leafing through a choral packet are part of the job. How does one acknowledge time spent on the multiple five-minute tasks that need doing in the course of the day? How does one account for practice time?

In those instances when parish or diocesan leadership suggests or requires an hourly rate, it is possible two hourly rates may be used: one for playing liturgies (\$125.00) and one for all other administrative, pastoral, planning, and other tasks, perhaps \$25.00 an hour.

As with the salary/independent contractor clarification that arose about 20 years ago, I sense some of the recent issues related to the Fair Labor Standards Act will resolve themselves in time. In a similar way, some places will ignore these directives and other places will overzealously, if not erroneously, insist upon them.

I invite you to examine the way you are paid. Perhaps you have never considered practice time, presence, experience, and acknowledgment of talent as something that needs to be worked into your salary. In many parts of the country, it's an employee's market; parishes are having a hard time finding qualified and quality pastoral musicians. Salary is necessary, but so is acknowledgment; many musicians don't enjoy the support of the parish leadership and congregation. Fortunately, many do. I hope you are one of them. ■

The image is a composite. The top half shows the top portion of a 2016 U.S. Individual Income Tax Return (Form 1040A). The form is from the Department of the Treasury - Internal Revenue Service. It includes fields for the taxpayer's name, address, and filing status. The bottom half of the image shows a page of musical notation, likely a choral score, with various notes, rests, and dynamic markings like 'mf' and 'p'.

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