



STATUS, PAY AND CLASSIFICATION OF MUSICIANS

For many years administrators and pastors have struggled with determining the appropriate employment status, compensation and classification of parish musicians. It is not an easy task to decide if a parish musician should be considered exempt or non-exempt; paid a fee or a salary or classified as an employee or an independent contractor. The intent of this communication is to address these key issues, set standards and guidelines for pastors and administrators to follow and avoid IRS penalties and legal risk by inappropriately classifying employees as independent contractors.

Sometimes, pay practices for parish musicians have been “assigned” for years or have been handled in certain ways as a matter of long and unquestioned condition. These new guidelines for determining the employment status and compensation for parish musicians should be forthrightly explained to each parish musician. Some non-exempt parish musicians may question why they are being asked to record time worked when they are accustomed to getting a fee or a stipend for their work. Parish musicians must know what the basis for their pay is, and the best way to avoid misunderstanding and later disputes, is to put it in writing.

EXEMPT

Parish musicians who are employed in leadership positions such as a Director of Liturgy and Music and other professional parish musicians whose work requires exercise of discretion and judgment and advanced knowledge acquired through specialized instruction, are considered exempt and may be paid a salary rather than on a fee or hourly basis. A parish musician’s salary must meet the minimum requirements of the Fair Labor Standards Act (FLSA) of \$684.00 per week (\$35,568.00 per year). If the parish musician’s salary falls below the minimum standard, the parish musician loses their exempt status.

NON-EXEMPT

If a parish musician’s job duties, responsibilities and salary are below the (FLSA) standards for an Executive, Administrative or Professional exemption, then the parish musician must be paid on an hourly basis. Many parish music positions such as cantors and part-time organists are considered to be non-exempt and must be paid for each hour worked as well as overtime if they exceed 40 hours per week. Remember, the classification of any job depends on its substance, not on its title.

If you are not sure which category a parish musician (or any other employee) falls into, the safe course and rule of thumb is that unless clearly exempt, an employee should be considered non-exempt.

FEE BASIS

Non-exempt parish musicians are sometimes paid on a fee basis for their work (i.e., \$75.00 per Mass). If a non-exempt parish musician is paid a fee, it must include compensation for time spent at obligations such as choir rehearsals and staff meetings since the employee is reimbursed on an hourly basis. In that case, the fee must be greater than the minimum federal and state wage requirements when divided by the actual number of hours worked. Parish musicians should be compensated fairly when one considers the specialized knowledge required to fulfill the job. Non-exempt parish musicians must fill out a time sheet like other hourly employees. All compensation paid, flat fee or otherwise, is subject to withholdings, payroll tax, and leave accrual (if benefits eligible).



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Regardless of the type of function at which the parish musician performs (weddings, funerals, prayer services, etc.), the work is part of that employee's parish employment; all money received by the employee for all these services should be paid by the parish and reported as income to the IRS with appropriate deductions. All income paid to a parish musician must be included in the parish records with the appropriate deductions taken.

EXCEPTION

An exception to the above guidelines would be when an outside party engages the use of the parish church but is free to hire any outside musician they want. If the outside party chooses an individual who is an employee at another parish in the archdiocese, then the outside party may pay whatever fee is agreed upon directly to the musician, and the parish need not report it as income. This "moonlighting" income would not be run through the parish payroll.

EMPLOYEE OR INDEPENDENT CONTRACTOR

A recent ruling by the IRS indicated that parish musicians who are paid to perform at weekly services are generally considered employees of the church and not as an independent contractor. The IRS noted several conditions that, when answered in the affirmative, influenced their decision on the status of parish musicians as employees.

1. If the worker is required to comply with another person's instructions about when, where, and how he or she is to do the work.
2. If the worker's services are integrated into the business operations.
3. If there is a continuing relationship between the worker and the person for whom the services are performed.
4. If set hours are established, or, if the nature of the work makes fixed hours impractical, workers are required to be at the job at certain times.
5. If the work is performed on the premises of the person for whom the services are performed.
6. If payment is made by the hour, week, or month. A guaranteed minimum salary also indicates an employee.
7. If the person for whom services are performed furnishes significant tools, materials and other equipment.

Our legal counsel has recommended that parishes should classify parish musicians as employees. This recommendation is based on the recent rulings by the IRS, the guidelines listed above and the employment arrangements of our parish musicians. Parish musicians may ask you to classify them as independent contractors. It is the parish that carries most of the risk if an employee is misclassified as an independent contractor. If a parish musician is misclassified, the IRS can assess severe penalties on a parish for failure to pay and failure to file and withhold mandated federal and state taxes. Parishes should



be aware that the risk for wrongly classifying an employee as an independent contractor belongs to the parish.

If you need further assistance in interpreting the above guidelines and information presented, please contact [Rob Reid](#) [513/263-6611] in the Department of Human Resources, [Charlotte Carpenter](#) [513/263-3352] or [Tom Jennings](#) [513/263-6607] in the Department of Financial Services.