

Do we need to track hours for pieceworkers?

Q. We are doing an internal review of our recordkeeping, and we realized that we track hours for our on-site transcriptionists but we have not been tracking the hours for our transcriptionists who work from home. The on-site employees are nonexempt and we pay them an hourly wage. However, the remote employees are paid piece rates—a certain rate for the number of words transcribed from dictation. Do we have to keep track of their hours?

A. Employers of pieceworkers must pay those employees minimum wage and overtime pay for work in excess of 40 hours a week. You must also keep accurate records of the employee's piece-rate earnings. You must also keep records of the conditions and practices of employment for these employees.

Should the Department of Labor investigate your wage or overtime pay policies, you will need those records.

To determine whether a pieceworker has been paid minimum wage, you must determine the regular rate of pay. This may be computed in two ways for pieceworkers, but the most straightforward way is to divide the total weekly earnings by total weekly hours worked. If the employee worked hours in excess of 40 hours in a given week, you must compensate that individual at one and a half times the rate of the regular pay.

For example, if a pieceworker worked 50 hours and received \$500 for his piecework that week, the regular rate of pay would be \$10 an hour. Since the employer has already paid that individual the regular rate of pay, the employer need only pay the worker the additional half regular rate of pay for the 10 overtime hours. Therefore, the employer owes the employee an additional \$50.

Regardless of how the regular rate of pay is calculated, the regulations are clear that the employee's average hourly earnings for a workweek must not be less than the minimum hourly wage. You cannot pay a regular hourly wage below the minimum hourly wage and combine it with overtime pay to meet the minimum wage requirements.

To be safe, some employers provide their pieceworkers with a minimum hourly guarantee, such that if the pieceworker failed to receive minimum wage for the hours worked in a given workweek, the employer would pay that individual minimum wage for the hours worked. When the employee receives the minimum wage guarantee in a given week, the regular rate of pay for that week would be the minimum hourly guarantee, not the piece-rate basis.