

CRITICAL LABOR CONSIDERATIONS FOR THE INDEPENDENT FILM MAKER

YOUR PRESENTER:



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PROGRAM OUTLINE

I. Obligations that apply to the film industry

A. Roadmap: union rates, workers' compensation, disability, unemployment and minimum wage and child labor.

B. This is a business and you are business men and women. To avoid potentially disastrous financial consequences, you should be aware of, and take steps to avoid, liability.

C. Presentation not designed to be all encompassing – merely an overview

II. Union rates

A. New York NOT a right to work state. Bound by contracts with unions, including Screen Actors Guild. These establish minimum salaries, diversity requirements, overtime premiums, pension and health contributions and other requirements

III. Workers' Comp

A. Under the statute, employer is person, partnership, corporation having one or more persons in employment

B. Employee also means person otherwise engaged in performing arts who performs services for a film production

C. NEW LEGISLATION effective this summer – employer costs supposedly reduced by 10 to 15 percent with savings to grow over time

CRITICAL LABOR CONSIDERATIONS FOR THE INDEPENDENT FILM MAKER

- D. Can either self-insure or pay for workers' compensation insurance from Board or carrier
- E. Must post a notice of workers' comp. coverage and employee rights – obtained from carrier or Board
 - 1. Failure to post – may result in fine of up to \$250 per violation
- F. Report accident to workers' comp board within ten (10) days of accident
 - 1. Failure to do so may result in penalty of up to \$2,500
- G. Report changes in pay or work status to Board on Form C-11 as soon as employment status changes
- H. Provide Board access to all books, records and payroll related to employees upon request

IV. Disability

- A. Difference from workers' comp – injuries on the job (comp) vs. off (disability)
- B. However, for both, must obtain coverage through Board or carrier
- C. For our purposes, same definitions of employer, employee and employment as workers' comp law
- D. Employee must have worked at least four consecutive weeks to be eligible

V. Unemployment

- A. Employer under Section 512 – includes any person, partnership, firm, domestic or foreign corporation
- B. Employment under Section 511 means any service under any contract of employment for hire, express or implied, written or oral, any service for an employer as a person otherwise engaged in the performing arts, and performing services for a film production
- C. Employee must work in at least two quarters in at least two of first four of last five before filing of claim, and have wages of at least \$1,600 in quarter with highest wages, or work in two of four prior calendar quarters. Two most common disqualifiers: misconduct and left job without good cause

CRITICAL LABOR CONSIDERATIONS FOR THE INDEPENDENT FILM MAKER

- D. Actors, people otherwise engaged in performing arts NOT independent contractors. Generally only directors and producers can legitimately assert IC status
- F. Upon registration, will receive poster that must be displayed on premises
- G. Report wages quarterly
 - 1. Failure to report: may be subjected to greater of \$1,000 penalty or \$50 times the number of employees shown on the last quarterly return, to a maximum of \$10,000
- H. One finding of liability may open can of worms. Department of Labor can go back up to seven years and assess penalties, with interest
- I. Upon termination of employment, either temporary or permanent, must provide IA 12.3 to former employee – enables application for benefits
- J. Keep records for current year and at least three preceding years. Name, SS, days worked and earnings for each day, all other compensation received

VI. Minimum wage: \$7.15/hr as of January 1, 2007

VII. Child labor

- A. Effective 3/28/04, Child Performer Education and Trust Act
- B. Applies to anyone under age 18 who renders creative or artistic services as a performer, if resident of NY or non-resident working in NY
- C. Parent or guardian obligations
 - 1. Obtain Child Performer Permit, renew 30 days prior to expiration
 - 2. Establish a child performer trust account within 15 days after the start of employment unless one already exists
 - 3. Notify employer of existence of trust account including any additional info. required to make transfers
 - 4. Notify employer if they wish to transfer more than 15% of gross earnings into account

CRITICAL LABOR CONSIDERATIONS FOR THE INDEPENDENT FILM MAKER

D. Employer obligations

1. Employer includes:
 - a. Any entity that employs a child performer to furnish artistic or creative services for a fee either directly or through a third party provider;
 - b. Any entity that has “control” over the child performer’s worksite. For example, any entity that sets the hours of work (rehearsal or performance); and
 - c. In cases where payroll services are being used to pay performers, the entity that contracts with the payroll service
2. Obtain a Certificate of Eligibility to Employ Child Performers (valid for three years) prior to employing any child performers
 - a. Fees for initial registration and renewal
 - b. Include completed LS-552 Verification of Workers’ Comp/Disability Insurance Coverage
 - c. Include proof of workers comp and disability insurance, obtained from carrier
3. Make sure all child performers employed have a valid Employment Permit for Child Performer
4. Keep copies of all relevant certificates and permits on file and available for inspection at the location of employment for at least three years, Department of Labor may go back as far as seven years
5. Obtain from the child performer’s parent/guardian or custodian the information required to make the transfers
6. Transfer the appropriate amounts for placement into the trust account
 - a. When the employment contract is for 30 days or less, transfer 15% of gross earnings within thirty (30) days following the final day of the child performer’s employment
 - b. When the employment contract is for longer than 30 days, transfer 15% of gross earnings at the end of each payroll period
7. If the child performer will be absent from school for more than two consecutive days due to their employment schedule, provide a teacher who either is certified or has credentials recognized by the State of New York, to provide required instruction whenever a child performer is not receiving instruction as required by New York State Education law due to his/her employment schedule

CRITICAL LABOR CONSIDERATIONS FOR THE INDEPENDENT FILM MAKER

8. The following civil penalties may be assessed for failure to comply:
 - a. Max. \$1,000 for first violation
 - b. Max. \$2,000 for second violation, and
 - c. Max. \$3,000 for subsequent
9. Hours – as per Department of Labor, follow Screen Actors Guild requirements.

Independent Contractor vs. Employee

- A. According to IRS, rule of thumb is:
 1. **Employee:** employer controls what will be done and how it will be done
 2. **Independent contractor:** employer only controls the result of the work, not the means and methods of accomplishing the result
- B. Example – grips, crewmembers employees
- C. Actors NOT independent contractors for unemployment purposes – generally only producers and directors considered such