

LOW PAY/NO PAY WORK IN FILM & TELEVISION



YOUR RIGHTS AT WORK



Low Pay/No Pay Work in Film & Television

Note – *While every attempt has been made to ensure the accuracy of the contents of this leaflet, this is no substitute for taking advice from either a qualified legal source or Equity.*



Equity

INTRODUCTION

The pressures on performers, especially those at the start of their careers, to take any work, whatever the level of pay, can be intense. The pressure to get something, anything, on the *curriculum vitae* can be overwhelming and low paying and even no paying work can seem like the ideal opportunity to develop a showreel or establish a foothold in the industry.

Equity understands these pressures, but as a union our belief is that there are major potential pitfalls for members in taking such work. While many low/no pay production are bona fide, there is always the danger that members will be exploited by unscrupulous employers who make a profit from the good will of others in the profession. There is also the threat that such low/no pay work will devalue the work of others in the profession.

In addition, even on those low pay/no pay productions done with the best of intentions, producers and employees have a set of legal responsibilities that cannot simply be wished away. It is important that all those involved have the information available to ensure that they are working within the law.

In this document we seek to set out the legal framework that covers low and no pay work in the entertainment industry, to ensure that performers and others know their rights and entitlements. This guide covers the basics of employment law, what constitutes a contract and your relationship with an employer, it provides a guide to the basics of agreeing a contract and a guide to your rights around pay, working time, holidays and other issues. Finally it offers a guide to where you can find more help and information if you need it.

While every effort has been made to ensure the information and advice contained in this leaflet is accurate, members with questions shouldn't hesitate to seek advice from Equity officers.

EMPLOYMENT LAW

What is a contract? Essentially it consists of one party (i.e. the employer) making an offer which is accepted by another party (i.e. you). In basic terms, if you have agreed what you are going to do, where you are going to do it and when, and for what fee, then a contract is in place. A contract need not be in writing, although a verbal contract may be difficult to prove if challenged. In addition, if you begin working for a manager and accept wages, even if there is no written contract, then a court might well deem that an implicit contract is in place. It is important to understand that there may be an implied acceptance by you of the terms & conditions offered by an employer by virtue of you commencing work. Therefore, should you still be negotiating over certain terms of your employment (not an ideal situation but one that will occur), you need to make clear to your employer that by starting work you are not accepting those areas that are still subject to discussion.

Remember that it is very important to get everything clear before you enter into a contract because often the only solution to a contractual argument, on a non-Equity contract, is to consult with a solicitor.

Employment Status

There are now three categories of employment that you might fall under; employees, freelancers and workers. It is important to establish your employment status as certain employment rights mentioned below will only apply to employees and/or workers, not freelancers. The following legal rights apply to workers as well as employees; Working Time Regulations, National Minimum Wage Act, discrimination law and the law pertaining to discrimination against part-time workers.

Types of Contract

You could be offered one of the two following types of contract; a freelance contract or an employee contract. It is important to note that whether or not you are legally considered to be an employee is dependent on the facts of your employment, not necessarily what is stated in contract (i.e. a contract could state that you are to be considered self-employed when actually it is clear that you are an employee by virtue of the type of work undertaken).

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Employees

For you to be an employee, the following conditions should be met:

- There should be a mutual obligation between the employer and you, respectively, to provide and accept work.
- An obligation for the artist to do the work (i.e. the role) personally.
- Any equipment (for example, props but not necessarily items of wardrobe) required will be provided by the employer.
- You do not take a financial risk (i.e. you are not investing in the production).
- You will be paid sick pay & holiday pay (when appropriate) and there will be disciplinary & grievance procedures in place.

Freelancers.

You are likely to be considered to be a freelancer if any of the following conditions apply; you supply equipment or workers, you have flexibility over when you will undertake the work, you supply your services through a company or other business.

Workers

This covers those with self-employed status but gives them new protection. This will apply when a contract is in place to perform the work personally (i.e. not when the other party is a client or customer of your business) and where you are supplying personal services only. It is unlikely to apply if you are supplying equipment or workers for a job.

Human Rights Act 1998

Your rights under this act can only be enforced directly against public authorities, not companies or individuals. Therefore, unless you are employed by, for example, a local authority, it is unlikely that you could use this act. However, the act can be used in legal actions between non-public parties to interpret other areas of the law such as unfair dismissal, for example in relation to the right to privacy.

Intellectual Property Rights.

There are a series of Intellectual Property rights that may apply to your work. These include; Performers' Rights, Moral Rights, Rental Rights, Making Available Right, Lending Right.

There is also the Copyright, Designs & Patents Act 1988. However, despite extensive lobbying by Equity, there is currently no copyright in a performance.

These rights are complex and subject to change, you should therefore refer to Equity for further advice on them.

THE CONTRACT

Your agreement with the employer

It is essential that you try and get a written agreement with the employer before you start work. Whenever you make a verbal agreement with an employer, confirm it in writing immediately. You should fax the details of what you believe has been agreed and keep a copy of the fax transmission report. (A transmission report shows that the employer's fax-machine has received your document. It is rather more difficult to show that an e-mail has been received and thus faxes are better evidence.)

Questions you should ask of your contract.

- How much are you being paid? When will you be paid, i.e. at the end of each week, each month, the end of the contract, etc...
- What are the dates on which you will be working?
- What role have you got?
- Where will you be working and at what time (i.e. will you be able to get there & back on public transport)?
- What rights to your work is the employer buying? For example, will the production be shown only in cinemas or will it also appear on TV? If your work is for TV, how many transmissions is the employer buying, i.e. one transmission only, unlimited transmissions etc.... Will there be a DVD or video?
- How will you be credited?
- If you will be receiving a DVD/Video/MP3 - what format is it to be in?
- Will you be expected to supply your own costumes? Will you be paid for attending wardrobe calls?
- Will there be catering provided? If not, will the shoot take place where reasonably priced food is readily available?

WORKING TIME & HOLIDAY

Hours of work

Under the Working Time Regulations (WTR) and subsequent amendments, you should not work more than 48 hours in a week but this is averaged over a minimum period of 17 weeks or the length of your employment, whichever is the shorter. The employer can ask you to opt-out of this arrangement, provided that you are given the right to terminate your opt-out. A period of notice for you to withdraw your agreement will be specified in any such opt-out document, which is subject to a maximum period of three months.

Rest breaks

You are entitled under the WTR to the following breaks:

- 11 hours rest in each 24 hours,
- 24 hours rest in each week of seven days or 48 hours rest every fourteen days
- 20 minutes rest after each six hours of work.

Note that these breaks are from when you leave work to when you return, not from when you arrive or leave home.

These breaks can be varied where there is a need for a continuity of service/production but this is unlikely to apply to most work that would be undertaken by Equity members.

Holiday pay

Your employer is obliged to give you holiday pay at the rate of 4.8 weeks per year (rising to 5.6 weeks from 1 April 2009), which is pro-rated for work that is less than one year long. Because of the way the WTR has been implemented, you can only insist on taking leave in the final four weeks of each year of your employment. Thus, for most Equity members, you will not effectively have a right to take holiday but only to receive payment in lieu. Your employer can require that you take holiday while you are working, providing that he/she gives a period of notice equivalent to the holiday period. For example, if your employer wants you to take a one day holiday, then they must give you one day's notice, if they want you to take a two week holiday then they must give you two week's notice etc.... Holiday pay must be shown as a separate item of your pay.

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Cancellations

If the employer cancels your work then you are still owed your full contractual fee, unless the contract has other provisions covering cancellations, this also being subject to mitigation (see below). It is always be advisable to seek advice from Equity in relation to cancellations.

Mitigation

You are obliged under general contract law to mitigate your loss – this means that you must try and find work to replace the job that has been cancelled. Clearly, if the cancellation is a matter of days before you are due to start work, then it will be almost impossible to replace that job. Conversely, if the job is cancelled months in advance then you should be able to find replacement work and, if you do, the employer may not owe you anything. It is always be advisable to seek advice from Equity in relation to cancellations.

Hazardous work

Regardless of the size of the budget of a production, Health & Safety regulations remain in force. Health & Safety law applies to everyone, not just employers, and everyone in a production has some responsibility for their own health and safety. Therefore, you should under no circumstances undertake work of a hazardous nature unless you are trained to do so. Any hazardous work should be undertaken under the supervision of a properly qualified stunt co-ordinator (who should be registered with the Joint Industry Stunt Committee). You may be held partially or fully liable for any accident to yourself or others if you do not take every reasonable step to ensure proper Health & Safety procedures are complied with. Contact Equity immediately if you are concerned about any aspect of Health & Safety at your workplace. (Also note that you are only allowed to work a maximum of eight hours per night if engaged on hazardous work – this is not subject to averaging of hours, it is an absolute limit per night.) For further information, see the Equity Health & Safety Booklet.

Payment & the minimum wage

The National Minimum Wage Act 1998 requires that all workers over twenty two years of age are paid at least £5.73 per hour from October 2008. The only exceptions to the minimum wage are for people doing voluntary work for registered charities, something

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unlikely to apply to the work Equity members undertake. If you believe that you are being asked to work for less than the minimum wage, contact Equity immediately.

NO PAY FILMS

These breach the National Minimum Wage Act 1998, see above.

EMPLOYERS' LIABILITY INSURANCE

Employers' Liability Insurance is a requirement of any employer that has people working for them. Claiming on this would require showing that an employer was in some way negligent.

DEFERRED PAYMENT

This is not allowed under the National Minimum Wage Act 1998. Of course, an employer is legally entitled to pay you the national minimum wage and then defer any further sums. However, it is very difficult to construct a deferred payment contract that is legally enforceable. Therefore Equity recommends that under no circumstances should you agree to one.

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Provided that the employer pays at least the national minimum wage, then any sums over this must be negotiated by you.

Remedies for breach of contract

For breach of contract cases, you need to apply to a Small Claims Court. For breaches of employment legislation you would need to apply to an Employment Tribunal.

For applications to Small Claims Courts, see the Equity advice leaflet on Small Claims.

For advice on applications to Employment Tribunals, seek advice from Equity.

Enforceability of contracts

Time limits for Legal Action – For breach of contract cases, a claim must be made within six years of the breach. For employment law cases, the claim must be made within three months of the breach.

INJUNCTIONS

Judges are very reluctant to apply injunctions unless it can be shown that damages are not a sufficient remedy for the alleged

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breach of contract. Thus an injunction might be given in a case where libel is alleged, as allowing the libel to be repeated would add to the injury. It is very unlikely to be given where the breach of contract is in relation to monies owed. In addition, if an injunction is given to a claimant and the claimant subsequently loses the case, the defendant can claim from the claimant any losses that have resulted from the injunction.

RESOURCES: PLACES TO GO FOR ADVICE/HELP

Equity

We're your union – use us! We can provide advice on most of the issues mentioned in this leaflet and can recommend solicitors where such specialist advice is necessary. Call 0207 379 6000 or find the direct line of the Equity organisers in your area on our website (www.equity.org.uk) or in the Equity magazine or you Equity diary.

Low Pay Commission

The body created by government to oversee the introduction of the national minimum wage. Issues advice on the application of the law Phone number – 0845 6000 678.

Citizens Advice Bureau

The CAB helps people resolve their legal, financial and other problems by providing free information and advice. Local offices are listed in Yellow Pages or equivalent.

Community Legal Service Direct

This service only applies to England & Wales. It has a variety of free legal information leaflets, although none is particularly helpful to those in the entertainment business. Legal aid is available to those in receipt of Income Support, Income Based Job Seeker's Allowance and Guarantee State Pension Credit. (www.clsdirect.org/index.jsp)

If you are in Scotland you need to contact the Scottish Legal Aid Board or in Northern Ireland, the Northern Ireland Legal Services Commission.

Legal Pulse

This service is not free but offers comparatively cheap legal advice. Specific advice on various legal topics is available in leaflet form, from around £20 per leaflet.

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Home contents insurance provider

In some cases but not most, your insurer will be able to provide a civil litigator to help make claims for you, under the provisions for help with goods & services in your insurance cover.

National Mediation Helpline

On 0845 6030 809 or by visit the website www.nationalmediationhelpline.com

Lexicon

Look at the Equity Lexicon of Common Industry Terms in Film & TV for explanation of common terms used within the film and television industry.

LOW PAY/NO PAY WORK IN FILM AND TELEVISION

The pressure on Equity members to work for low or no wages can be intense, but working for nothing can have important implications both for the individual and for the profession as a whole. This booklet seeks to give you the information you need to make informed decisions.

This guide includes:

- a basic introduction to employment law;
- simple guidance to the questions you should ask about the contents of their contract;
- information on your rights and responsibilities as employees; and
- resources you can turn to if they need help

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