

United States of America

THE POSITION OF THE ARTIST IN SOCIETY

Actual situation

In general, some artists need to resort to another form of gainful employment. Not only is this due to the job market conditions for artists; it is also due to overall unemployment rates in the U.S. When asked by the Current Population Survey why they moonlight, artists most frequently indicated that they did so to meet regular household expenses. Actors' Equity notes that 14.4% of all Equity union members are employed in an average week, and that the median earnings are less than \$7000 a year.¹ The vast majority of stage managers and actors, therefore, need to resort to other forms of gainful employment.

In 2003, the multiple jobholding rate for artists was more than twice the rate measured for all civilian workers; 280,000 people held second jobs as artists. The most common type of second job held by artists was a job in the professional and technical occupations, including that of artist.

The role of the State in improving the conditions of artists

The United States Government supports the arts through a range of arts and cultural programs. First, the federal government subsidizes the arts and the employment of artists by making cultural contributions tax deductible. (Private tax deductions for giving to the arts and culture are currently estimated at \$5.4 billion.)² The National Endowment for the Arts (NEA) is a federal public agency dedicated to:

- § supporting excellence in the arts, both new and established;
- § bringing the arts to all Americans;
- § providing leadership in arts education (See: <http://www.nea.gov>).

The NEA has published a number of research reports on artists of all disciplines including for instance:; “Artists in the Workforce: Employment and Earnings, 1970-1990”; “More Than Once in A Blue Moon: Multiple Jobholdings by American Artists”; or “Trends in Artist Occupations: 1970-1990” (<http://www.nea.gov/pub/ResearchReports.html>).

State and local governments also contribute (sometimes even more significantly) to the welfare of artists. Detailed information on programs can be found through State and local Arts Agencies. For a listing of State Arts Agencies see: www.nasaa-arts.org/aoa/aoa_contents.shtml

- Public funding in the field of culture

About 10 %of arts support in the U.S. comes from the government, and only about 2% from the federal government, of which slightly less than 1% comes from the National Endowment for the Arts.³ (The figures on government support exclude the important indirect subsidy the federal government provides by making cultural contributions tax deductible.)

¹ Actors' Equity Association 2004-2005 Annual Report www.actorsequity.org

² How the United States Funds the Arts: National Endowment for the Arts, Research Division <http://www.nea.gov/pub/index.php>

³ How the United States Funds the Arts: National Endowment for the Arts, Research Division <http://www.nea.gov/pub/index.php>

The NEA awards total more than \$100 million annually. 40% of the Arts Endowment's funds go to 56 state and jurisdictional arts agencies and six regional arts organizations in support of arts projects in thousands of communities across the country. State arts appropriations are dependent upon state tax revenues, which are tied to the economic conditions in the state. In 2003, state-level expenditures were at \$354.5 million, falling to \$273.7 million in 2004. Americans for the Arts estimated total arts expenditures at the city and local level at \$770 million in 2003.⁴

LEGAL FRAMEWORK

In the USA, artists are seldom public sector functionaries. As a rule, they are “salaried workers” with a work contract or “independent workers”. They do not have a specific status.

Generally, full-time employees of U.S. theatre arts organizations are the administrative staffs who are salaried employees. Actors are hired as temporary employees for the duration of rehearsals and performances, as specified in their contracts. Directors and designers are often hired as independent contractors, but can also be hired as temporary or full-time employees. There have not been any significant changes in the numbers of salaried versus non-salaried workers in the U.S. theatre industry.

Laws governing this legal framework

Employment legislation is in the jurisdiction of both federal and state governments; these legal frameworks are not specific to cultural workers.

The primary legislation for all workers is the Fair Labor Standards Act of 1938 found in the U.S. Code (Title 29, Chapter 8). Fair Labor Standards Act of 1938 is the comprehensive federal law governing employee wages, permitted hours of work, and basic employee record keeping.⁵

Applicable federal laws prohibiting job discrimination are:⁶

- Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; Title I and Title V of the Americans with Disabilities Act of 1990, which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- The Equal Pay Act of 1963, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.
- Section 1981 of the Reconstruction Era Civil Rights Act of 1866, which prohibits racial or national origin discrimination in the making and enforcement of contracts.

⁴ Americans for the Arts www.artsusa.org

⁵ U.S. Department of Labor: <http://www.dol.gov/compliance/laws/>

⁶ U.S. Equal Employment Opportunity Commission www.eeoc.gov

The Immigration and Nationality Act sets forth the conditions for the temporary and permanent employment of aliens in the United States and includes provisions that address employment eligibility and employment verification.⁷

The Family and Medical Leave Act of 1993 provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible, covered employees.

Health Insurance Portability and Accountability Act, enacted in 1996, was designed to protect individuals' health care information.

Wage payment statutes in each state provide that employers must establish regular pay periods; establish and inform employees of basic salary or hourly wage rates; provide gross earning statements and identify authorized deductions for each pay period; and provide advance notice of any changes.⁸

Federal and state laws require employers to pay a payroll tax on their employees' wages and to withhold income taxes from their paychecks. This is not the case for independent contractors, who are responsible for paying their own taxes. A general rule is that anyone who performs services for a business is its employee if the business can control what will be done and how it will be done. What matters is whether or not the employer has the right to control the details of how the services are performed.

For additional information on the different types of employees and information on independent contractors, refer to Independent Contractors vs Employee on the IRS website (<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>)⁹

State workers' compensation statutes provide employees injured on the job with certain financial and medical benefits.¹⁰

Effects of the legal framework applied

(a) In the event of breach of contract or dismissal

Equal employment opportunity laws prohibit specific types of employment discrimination. Collectively, these laws prohibit discrimination in most workplaces on the basis of race, color, religion, sex, age, national origin, and status as an individual with a disability or a protected veteran. In general, if the reason for termination is not because of discrimination on these bases, or because of the employee's protected status as a whistleblower, or because they were involved in a complaint filed under one of the laws enforced by the U.S. Department of Labor (see Whistleblower and Non-Retaliation Protections), then the termination is subject only to any private contract between the employer and employee or a labor contract between the employer and those covered by the labor contract.

Workers who are unemployed through no fault of their own (as determined under state law), and meet other eligibility requirements, may be eligible to receive unemployment benefits. Unemployment insurance payments (benefits) are intended to provide temporary financial assistance to unemployed workers who meet the requirements of state law. Under the Federal-State Unemployment Insurance

⁷ U.S. Department of Labor www.dol.gov/compliance/laws

⁸ The Nonprofit Legal Landscape © 2005 BoardSource

⁹ United States Department of the Treasury www.irs.gov

¹⁰ The Nonprofit Legal Landscape © 2005 BoardSource

Program, each state administers a separate unemployment insurance program within guidelines established by federal law.¹¹

(b) On the right to combine a permanent post as artist with another job

There is no law prohibiting an employee of any status from combining their artistic work with any other work.

(c) On social welfare.

An employer is not required by law to provide any benefits to its employees, aside from salary or wages. However, in order to maintain employees, many organizations provide benefits. In addition, in order to employ members of the theatrical unions, employers must entitle employees and independent contractors the benefits specified in their contracts. Non-union casual and freelance workers are not usually subject to an employment award or agreement and are thus not entitled to social welfare benefits, unless specified by contract.

The U.S. Department of Labor administers a variety of laws and regulations concerning employment benefits.¹² These include:

- Retirement Benefits governed by the Employment Retirement Income Security Act;
- Health Benefits related to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and other federal laws affecting group health plans;
- Leave under the Family and Medical Leave Act;
- Benefits under Federal Contracts governed by the McNamara-O'Hara Service Contract Act and the Davis-Bacon and Related Acts; and
- Other Leave Benefits.

In addition, the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who become unemployed through no fault of their own, and the Office of Workers' Compensation Programs administers four major disability compensation programs.

The Occupational Safety and Health Act of 1970¹³ was enacted to assure safe and healthful working conditions for working men and women.

The Family and Medical Leave Act of 1993¹⁴ provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible, covered employees for the following reasons: 1) birth and care of the eligible employee's child, or placement for adoption or foster care of a child with the employee; 2) care of an immediate family member (spouse, child, parent) who has a serious health condition; or 3) care of the employee's own serious health condition. It also requires that employee's group health benefits be maintained during the leave.

The Employee Retirement Income Security Act of 1974¹⁵ is a federal law that sets minimum standards for pension plans in private industry.

Upon termination of employment, some workers and their families (who might otherwise lose their health benefits) have the right to choose to continue group health benefits provided by their group health plan for limited periods of time. Employers may also be required to provide notices to their employees under the Consolidated

¹¹ U.S. Department of Labor <http://www.dol.gov/compliance/topics/termination-issues.htm>

¹² U.S. Department of Labor <http://www.dol.gov/compliance/topics/benefits.htm>

¹³ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-osh.htm>

¹⁴ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-fmla.htm>

¹⁵ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-erisa.htm>

Omnibus Budget Reconciliation Act and the Health Insurance Portability and Accountability Act (HIPAA).¹⁶

(d) On intellectual property rights.

When a theatre company wishes to use intellectual property belonging to another, it must go through a rights clearance.

In most instances the owner of the copyright is its actual owner. However, when an employee creates a copyrightable work within the scope of his employment, the author of the work is considered to be the company or employer. If a freelance worker creates work during a theatrical engagement and no written agreement addresses copyright ownership, those rights are given to the author of the work.¹⁷ (See Copyright Act of 1976 and all subsequent amendments to copyright law: <http://www.copyright.gov/title17/>)

To register musical work, dramatic work, pantomime, choreography, motion picture, or other audiovisual work see <http://www.copyright.gov/register/performing.html>

(e) On the right to form or join a trade union.

Equal employment opportunity laws prohibit unfair dismissals and unlawful terminations on discriminatory grounds. This includes trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours.¹⁸

The Labor-Management Reporting and Disclosure Act of 1959 covers unions, officers and employees of unions, union members, employees who work under collective bargaining agreements (even if they are not union members), employers, labor relations consultants, surety companies, trusts in which a union is interested, and other "persons" as defined in the LMRDA who may be covered by particular provisions of the Act. Title VII amends the Labor-Management Reporting and Disclosure Act of 1959, otherwise known as the Taft-Hartley Act, concerning strikes, boycotts, and picketing.¹⁹

Recruitment of artists

Most union artists use an agent or manager to promote their work, but it is not mandatory to work with representation in order to procure work in the theatre.

Many of the theatre artists' unions provide advice and assistance to their members but are not employment agencies. Actors' Equity offers an online resource called Casting Call (<http://www.actorsequity.org/CastingCall/castingcallhome.asp>)

There are trade journals, which also post audition information including BackStage's online resource (<http://www.backstage.com/bsc/casting/index.jsp>)

For job listings that cover administrative as well as artistic personnel positions, there are arts information services including ARTSEARCH (<http://www.tcg.org/artsearch/>) which provides online and print content for subscribers, and New York Foundation for the Arts' NYFA Classifieds, which provides free online job postings on "Jobs in the Arts, Opportunities & Services for Artists, and Event Listings". A link for NYFA Classifieds can be found on www.nyfa.org (section FOR ARTISTS).

Status of intermediaries

Agents and managers are usually small to medium business.

¹⁶ U.S. Department of Labor <http://www.dol.gov/compliance/topics/termination-issues.htm>

¹⁷ The Nonprofit Legal Landscape © 2005 BoardSource

¹⁸ The Nonprofit Legal Landscape © 2005 BoardSource

¹⁹ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-lmrda.htm>

Theatre unions were formed with the primary purpose of serving as Collective Bargaining Agents. Actors' Equity Association²⁰ represents more than 45,000 Actors and Stage Managers in the United States and seeks to advance, promote and foster the art of live theatre as an essential component of our society. AEA is a member of the AFL-CIO and is affiliated with FIA, an international organization of performing arts unions.

BackStage is a commercial enterprise, supported by individual and subscriptions sales as well as advertising revenue.

New York Foundation for the Arts is a private foundation that gives support to artists, the arts community, donors, and the broader public by supporting programs in five major areas: Grants, Services, Information & Research, Public Programs, and Donor Services. NYFA Classifieds is a tool created by NYFA to support its constituents.

ARTSEARCH is an online and print publication of Theatre Communications Group, supported by subscription. Theatre Communications Group²¹ is a non-profit service organization that exists to strengthen, nurture and promote the professional not-for-profit American theatre.

Their mode of remuneration

Agents and managers charge commission.

Neither national arts services organizations nor unions take a commission or other compensation for employment obtained through advertisements or listings in their publications.

Conventional commissions for theatrical agents range from 10% to 15%. Personal managers can charge up to 25% in commission fees.

Trade unions do not seek to secure employment for artists but they may provide services like Casting Call which can help members find employment.

Professional status

There is no standardised professional status. Within the field, the nomenclature of “professional” is used differently. Membership within a union is generally considered a demarcation of professional status. All affiliates of Theatre Communications Group are considered professional theatres. Most artists working in the field or who have completed professional training programs consider themselves professional.

However, there are certain standards enforced by contracts negotiated by theatre unions, and therefore not every person working in the industry can work for any theatre. For example, it is a requirement of LORT theatres (see www.lort.org) to operate under a LORT-Equity contract, and therefore many U.S. theatres (see www.lort.org/members) require the employment of artists who are members of the union.

Work contracts

Form and content of contracts

All union contracts are required to be in writing as well as those that include a license of copyright, when permission must be obtained by the copyright owner.

An exclusive contract is generally one relating to copyright ownership. When a theatre has exclusive rights to a play, that theatre is the only one who can produce the

²⁰ Actors' Equity Association www.actorsequity.org

²¹ Theatre Communications Group www.tcg.org

play and that the creator has ceded all rights to their works. Such endorsements may be limited in time and/or geographic scope.

Model contracts

Actors' Equity publishes information on their collective bargaining agreements (<http://www.actorsequity.org/AboutEquity/contracts.asp>)

Volunteer Lawyers for the Arts is a national community legal centre for the arts that provides specialized legal and business advice. Their website (<http://www.vlany.org/resources/index.php>) includes the following links for information on artist contracts:

- Legal Information Institute: Cornell University Legal Information Institute provides a convenient index and search engine on Contract law (<http://straylight.law.cornell.edu/topics/contracts.html>)
- Free Advice: General Contract Law Questions (http://law.freeadvice.com/general_practice/contract_law/)
- Recording Artists Project at Harvard Law School. Information on band agreements and recording contracts (<http://cyber.law.harvard.edu/rap/contract>)
- Graphic Artists Guild Contract Monitor: Information on how to read a contract, understand the contracts you receive, and learn to write your own contracts in order to protect your copyrights (<http://www.gag.org/contracts/contracts.html>)
- California Contract Law (<http://www.west.net/~smith/contracts.htm>)
- California Artists Contract Issues (Recording Industry Association of America): Examines the contractual relationships between record companies and artists: <http://www.riaa.com/issues/laborcode/default.asp>
- New York Foundation for the Arts Interactive (Simple and concise information on contracts with galleries and collectors): (http://www.nyfa.org/archive_detail_q.asp?type=6&qid=68&fid=6&year=2000&s=Spring)
- Dance NYC : Contracts for dancers and managers (<http://www.dancenyc.org/dancers.asp?file=contract>)

Mandatory clauses

Contracts outline the terms and conditions under which a person is hired. These include: the role to be undertaken, the kind of employment, remuneration and salary packaging. Conditions relating to breach of contract will also be included in the clauses.

Duration of contracts

The duration of contracts is not regulated. Casual or fixed-term contracts are used.

These contracts cannot be terminated before their expiry date.

Contracts can be broken. However, a person who breaks a contractual promise may be sued and can be liable for compensation or payment of lost earnings. Contracts often include liquidated damages provisions that allocate damages in the event of certain kinds of breach.

Fixed-term contracts are becoming increasingly frequent. U.S. unemployment rates for artists were far above the national average from 2000 to 2003. According to the Bureau of Labor Statistics, unemployment rate for artists rose from 3.5% to 6.1%

from the years 2000 to 2003.²² Actor unemployment rates rose from 19.9% to 35.2%; Producers and directors unemployment rate rose from 4.8% to 9.1%, and designers' rates rose from 3.2% to 4.9%.

Nonetheless, Equity reports that the number of actors employed weekly has grown 39.7% over the past 20 seasons, and that the total number of members working seasonally grew by 36%.²³

Duration of work

The federal law that governs permitted hours of work is the Fair Labor Standards Act. This legislation requires that non-exempt employees be compensated at or above the minimum wage for all hours worked and a rate of one and one-half times their regular rate of pay for each hour worked over 40 in a workweek.

Each union involved with theatrical productions has its own collective bargaining agreements which regulate contract provisions. These stipulations are varied and the details can be found in each set of agreements.

For actor and stage manager agreements see Actors' Equity (http://www.actorsequity.org/library/library_home.asp)

For information on the Screen Actors Guild see: <http://www.sag.org>; for information on the American Federation of Television and Radio Artists see www.aftra.org, for information on the American Guild of Musical Artists see www.musicalartists.org

For director and choreographer agreements see the Society of Stage Directors and Choreographers: <http://www.ssdcc.org/contracts.php>

For designer agreements see: <http://www.usa829.org>

For other technical theatre employees including stagehands, find local agreements through IATSE: <http://www.iatse-intl.org>

Health care and safety regulations

General health care and safety regulations

Universal health care is not provided for all U.S. citizens under law. Because many artists need to find health insurance plans on their own, Actors' Equity has created the Artists' Health Insurance Resource Center which provides the arts community with the information necessary to make informed choices about individual and small business group health insurance options available in each state (see www.ahirc.org.)

Legislation that governs health and safety regulations does exist through the Federal Law; the legislation applies to all artists.

Applicable laws and regulations include:²⁴

- The Family and Medical Leave Act of 1993

The Family and Medical Leave Act provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period to eligible, covered employees for the following reasons: 1) birth and care of the eligible employee's child, or placement for adoption or foster care of a child with the employee; 2) care of an immediate family member (spouse, child, parent) who has a serious health condition; or 3) care of the employee's own serious health condition. It also requires that

²² Artist Employment in 2003: National Endowment for the Arts, Research Division http://www.nea.gov/pub/ResearchReports_chrono.html

²³ Actors' Equity Association 2004-2005 Annual Report www.actorsequity.org

²⁴ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-fmla.htm>

employee's group health benefits be maintained during the leave. The Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor administer the FMLA.

-Occupational Safety and Health Act of 1970 Section 11(c) - Provides protection against retaliation based on employee's exercising a variety of rights guaranteed under the OSH Act, such as filing a safety and health complaint with OSHA, participating in an inspection, etc.

-29 CFR Part 1977 – Discrimination Against Employees Exercising Rights under the Williams-Steiger OSH Act – Regulations implementing this federal statute designed to regulate employment conditions relating to occupational safety and health.

-Safe Drinking Water Act of 1974 - Requires that all drinking water systems in public buildings and new construction of all types be lead free. Employees are protected from retaliation for reporting violations, or alleged violations, of the law.

-29 CFR Part 24 – Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes - Implements employee protection provisions under the Safe Drinking Water Act, Water Pollution Control Act, Toxic Substances Control Act, Solid Waste Disposal Act, Clean Air Act, Energy Reorganization Act, and Comprehensive Environmental Response, Compensation and Liability Act.

There are no health regulations specific to artists. However, the trade unions agreements include regulations and reporting systems. For an overview of health guidelines specific to theatrical productions see Equity's Document Library, Safe and Sanitary (<http://www.actorsequity.org/library/library.asp?cat=33>). For an example of Equity's Accident Report and Safe and Sanitary Report see the Document Library, Stage Manager and Deputy, AEA Deputy Packet Materials, section: Safe and Sanitary Report (<http://www.actorsequity.org/library/library.asp?cat=34>).

The Occupational Safety and Health Act of 1970, Part 1977 has regulations designed to regulate employment conditions relating to occupational safety and health. Filing a safety and health complaint with the OSHA is protected under the federal law. Unions have their own preventative measures which are implemented through reporting systems, see 1.10.b.

Artists with disabilities

The *Americans with Disabilities Act of 1990* and other state based legislation outlines requirements for employment and public access. The legislation applies to artists but there is no particular regime for artists with a disability. National Arts and Disability Center exists to promote the full inclusion of audiences and artists with disabilities into all facets of the arts community (see: <http://nadc.ucla.edu/>)

Administrative inspections

Under city jurisdiction, the local Fire Marshal will frequently inspect theatre facilities to ensure that they are operating under applicable fire code. Unless there has been a reported incident, additional safety audits of workplaces are not generally carried out. Independent auditors retained by theatres themselves, in order to comply with both financial regulations, conduct financial audits and many grant specifications. The Internal Revenue Service periodically conducts random audits of tax compliance and employment laws.

State and local governments have work place safety and hygiene inspectors from a range of bodies. Their reports are filed with the Secretary of Health and Human Services and must comply with legislation outlined in the Occupational Safety and Health Act of 1970.

Vocational training

A list of United States theatre training institutions is available at the National Association of Schools of Theatre website (<http://nast.arts-accredit.org/>) (For artists' training in other disciplines see: National Association of Schools of Music; the National Association of Schools of Art and Design; the National Association of Schools of Dance).

The Bureau of Labor Statistics occupational data reveals that most artist occupations require post-secondary education. The work of singers and actors is also characterized by "long-term on-the-job training".²⁵

Lifelong training involves:

- university courses
- continuing training
- retraining or refresher courses
- training paid for by the worker
- training paid for by the employer
- training financed by a professional organization/trade union

Law or regulations governing these matters: Universities are governed by the Higher Education Act of 1965, 1998 Higher Education Act Amendments. (See: www.higher-ed.org)

SOCIAL WELFARE (EXCLUDING UNEMPLOYMENT)

a) Salaried artists (those with an employment contract)

Legal framework

Under Federal Law, the Fair Labor Standards Act of 1938 prescribes the basic minimum wage and overtime pay. Employers are not required by law to provide any benefits to its employees, aside from salary or wages.²⁶

Employment contracts generally include the wages and conditions of employment for employees. Contracts may include provisions about specific issues such as medical or pension plans and holiday or sick leave pay.

If an employer chooses to offer benefits, then it becomes subject to federal employee benefit law. The U.S. Department of Labor laws²⁷ and regulations concerning employment benefits include:

Retirement Benefits governed by the Employment Retirement Income Security Act of 1974;

²⁵ Artist Employment in 2003: National Endowment for the Arts, Research Division
http://www.nea.gov/pub/ResearchReports_chrono.html

²⁶ The Nonprofit Legal Landscape © 2005 BoardSource

²⁷ U.S. Department of Labor <http://www.dol.gov/compliance/topics/benefits.htm>

Health Benefits related to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and other federal laws affecting group health plans;
Leave under the Family and Medical Leave Act;
Benefits under Federal Contracts governed by the McNamara-O'Hara Service Contract Act and the Davis-Bacon and Related Acts; and
Other Leave Benefits*.

*The Fair Labor Standards Act does not require pay for time not worked such as vacations, personal time off, funeral leave, or jury duty. These types of benefits are generally a matter of agreement between an employer and an employee. The FLSA also does not require:

- severance pay
- meal, rest periods or holidays off
- premium pay for weekend or holiday work
- pay raises or fringe benefits
- discharge notice, reason for discharge, or immediate payment of final wages to terminated employees

In addition, the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who become unemployed through no fault of their own, and the Office of Workers' Compensation Programs administers four major disability compensation programs.

Existing insurance regimes (sickness, maternity, invalidity, retirement...)

Insurance plans are based on the award under which the person is employed. Plans may include: Medical, Dental and Optical Insurance, Life Insurance, Long-Term Disability, Retirement. Additional benefits can include Maternity and Paid Leave, Wellness Benefits (such as access to a health club) and Professional Development. The insurance plans can cover the employee and may or may not also cover their dependents.

Social welfare provisions are awarded on an employee-to-employee basis, although many arts employers offer standardized packages to all their employees. Unions negotiate minimum benefit allotments for their members, but even their benefits can be subject to employment standards met by the union member. (For example, it is currently the mandate for Actors' Equity members to work a minimum of twelve weeks of covered employment in the previous four quarters to qualify for six months of coverage.²⁸)

(See "Health care and safety" Section for details on health and safety regulations covered under Federal law)

Provisions are dependent on individual contracts. If an employee participates in a benefit plan that they electively subscribe to at their own expense, the benefits will be subject to the terms and cost of that plan.

Provision for welfare or benefits during periods of unemployment or inactivity

The Federal-State Unemployment Insurance program²⁹, administered by the U.S. Department of Labor's Employment and Training Administration, provides a partial wage replacement for individuals who are unemployed through no fault of their own

²⁸ Actors' Equity Association <http://www.actorsequity.org/Benefits/healthinsurance.asp>

²⁹ U.S. Department of Labor <http://www.dol.gov/compliance/topics/benefits-ui.htm>

(as determined under state law), and meet other eligibility requirements. Unemployment insurance payments (benefits) are intended to provide temporary financial assistance to unemployed workers who meet the requirements of state law. Under the Federal-State Unemployment Insurance Program, each state administers a separate unemployment insurance program within guidelines established by federal law.

The status of intermittent worker

This status exists and can be defined as a part-time staff position, a guest artist or a freelance worker.

The Fair Labor Standards Act does not define part-time or full-time employment; rather, this is generally a matter of agreement between the employer and the employee.

The employer's legal obligations (employment statements, wage slips...)

An employer has legal obligations to the Internal Revenue Service³⁰ with regards to all employees. It is the employer's responsibility to file Copy A of Form W-2, Wage and Tax Statement, with the Social Security Administration for all employees, showing the wages paid and taxes withheld for the year, and therefore the business needs an Employer ID Number (For additional information refer to the IRS article: <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>).

A business must verify that each new employee is legally eligible to work in the United States. Potential employees must fill out Form I-9, Employment Eligibility Verification and Form W-4, Employee's Withholding Allowance Certificate. If the employees qualify for and want to receive advanced earned income credit payments, they must give the business a completed Form W-5, Earned Income Credit Advanced Payment Certificate.

The business must get each employee's name and Social Security Number and to enter them on Form W-2. (This requirement also applies to resident and nonresident alien employees.)

If a business has employees, it is responsible for federal, state, and local taxes. Employment taxes include the following:

- Federal income tax
- Social Security and Medicare taxes
- Federal Unemployment Tax Act (FUTA).

To encourage prompt payment of withheld income and employment taxes, including social security taxes, Congress passed a law that provides for the TFRP. These taxes are called trust fund taxes because the employer actually holds the employee's money in trust until the employer makes a federal tax deposit in that amount (For additional information, refer to Trust Fund Taxes: <http://www.irs.gov/businesses/small/article/0,,id=98830,00.html>).

³⁰ Internal Revenue Service, United States Department of the Treasury www.irs.gov

Businesses must keep records of employment taxes for at least four years.

Social welfare cover and contracts

140 U.S. theatres responded to a 2005 Employee Benefits Survey Report administered by Theatre Communications Group.³¹ As reported by survey participants, benefits to part-time employees are often pro-rated according to the number of hours in an employee's workweek compared to a 40-hour workweek. Most often the pro-ration applied only to paid leave, but in some cases health insurance was available with the company paying for a pro-rated portion of the insurance premium. Overall 46% of part-time employees and 48% of guest artists in the theatre industry were offered benefits.

Legal status of salaried employees resident abroad

Salaried employees have the same status abroad as in their country of employment.

Additional and/or voluntary insurance

Workers may choose to participate in additional pension plans, and have additional private medical coverage and/or life insurance.

Supplementary insurance

Social welfare is not obligatory. Artists have similar overall health coverage rates as other groups (approximately 80%), although artists are much less likely to have coverage from their own employer. Approximately 51% of artists pay for their own health insurance, compared with 8% of U.S. workers. A quarter of those artists with health insurance pay the extremely high costs of non-group coverage.³² Artist unions are important providers of insurance to their members, and most artists with access to such coverage take advantage of it.

Social welfare cover for artists with disabilities

There is no particular social welfare cover for artists with disabilities.

However, artists who have disabilities may have social welfare cover. A summary report is available at <http://artsedge.kennedy-center.org/forum/sba/attach1.html> from the Social Security Policy Education Meeting on careers in the arts for people with disabilities. The meeting was held in December 1999 and co-Sponsored by 4 federal agencies: the Administration on Developmental Disabilities, Social Security Administration, Office of Education, and the National Endowment for the Arts. This report covers topics such as: employment trends, ticket to work incentive, and information on SSI benefits for artists with disabilities.

Disabled artists may be covered under Title I and Title V of the Americans with Disabilities Act of 1990 which prohibits employment discrimination against qualified individuals

³¹ 2005 Employee Benefits Survey Report: Theatre Communications Group www.tcg.org

³² Investing in Creativity: A Study of the Support Structures for U.S. Artists: © 2003 Urban Institute www.usartistsreport.org www.ccc.urban.org

Financial Aspects

Percentage (in relation to salary) of social security contributions paid by the employer

The Federal Insurance Contributions Act (FICA) tax includes two separate taxes. One is social security tax and the other is the Medicare tax. Different rates apply for each of these. For 2006, the IRS requires the employer to pay Social Security tax of 6.2% for an employee's wages up to \$94,200; the employer must pay Medicare tax of 1.45% on all wages.

The employer is also responsible for the payment of State Unemployment Insurance Payments (SUI) and Federal Unemployment Insurance (FUI) as well as Workers Compensation Premiums. SUI in New York State is 10%, FUI is .8%; Workers Compensation Premiums are dependent on the size of the organization, and any history of claims made by the organization.³³

Percentage (in relation to salary) of social security contributions paid by the employee

For 2006, the IRS also requires the employee to pay Social Security tax of 6.2% for wages up to \$94,200 and Medicare tax of 1.45% on all wages.

Administrative aspects

Body responsible for collecting contributions (State, a body under State control, trade union, private enterprise, etc.)

The employing organization collects contributions, on behalf of the U.S. Government.

The U.S. Government or state governments is responsible for paying benefits to artists.

Health costs and other welfare benefits when a salaried employee is no longer protected by an insurance scheme

Medicare is a health insurance program for people age 65 or older and people under 65 with certain disabilities. Medicaid is available to certain low-income individuals and families who fit into an eligibility group that is recognized by federal and state law.³⁴

Law or regulations governing these matters:

- Federal Insurance Contributions Act
- Federal Unemployment Tax Act of 1939
- Social Security Act of 1938

The following laws govern Medicare and Medicaid³⁵: The Medicare Catastrophic Coverage Act of 1988; The Medicare Catastrophic Coverage Act of 1988; Legislative Summary for Family Support Act of 1988; Technical and Miscellaneous Revenue Act of 1988; Medicare Catastrophic Coverage Repeal Act of 1989; Omnibus Budget Reconciliation Act of 1989; Omnibus Budget Reconciliation Act of 1990; Department of Veterans Affairs Appropriations Act; Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991; Dayton Area Health Plan Inc.; Tennessee Primary Care Network;

³³ Internal Revenue Service, United States Department of the Treasury www.irs.gov

³⁴ Centers for Medicare & Medicaid Services <http://www.cms.hhs.gov>

³⁵ Centers for Medicare & Medicaid Services <http://www.cms.hhs.gov/RelevantLaws/>

Mammography Quality Standards Act of 1992; Veterans' Benefits Act of 1992; Veterans Health Care Act; Social Security Independence and Program Improvements Act of 1994; Social Security Act Amendments of 1994; Omnibus Budget Reconciliation Act of 1993; Balanced Budget Act of 1997; Medicare Prescription Drug, Improvement, and Modernization Act of 2003; Social Security Disability Amendments of 1980; Mental Health Systems Act of 1980; Omnibus Reconciliation Act of 1980; Medicare Coverage of Pneumococcal Vaccine Administration; Orphan Drug Act; Tax Equity and Fiscal Responsibility Act of 1982; Omnibus Budget Reconciliation Act of 1981; Technical Corrections Act of 1982; Virgin Islands Tax Reduction Act; Social Security Amendments of 1983; Deficit Reduction Act of 1984; Consolidated Omnibus Budget Reconciliation Act of 1985; Omnibus Budget Reconciliation Act of 1986.

b) Non-salaried workers (those without an employment contract)

Legal framework

Obligations of “employers” and non-salaried artists

“Employers”, that is, those who call upon the services of artists (producers and organizers of shows, record and film producers, radio and television companies, gallery owners, publishers, and so forth), do not have any social obligations, particularly regarding the payment of contributions, when artists are not employed under contract

Non-salaried artists must comply with the IRS regulations.
They are not required to contribute towards social welfare cover.

Additional insurance

They can take out additional insurance, particularly with regard to health and retirement provision. They can take out personal medical insurance and participate in retirement savings plans.

Legal status of salaried employees resident abroad

There is no legal status.

Financial aspects

Social contributions (as a percentage of salary or as a fixed sum) for the non-salaried artists

These will vary according to personal tax income status (see www.irs.gov/individuals)

Social cover provided for non-salaried artists

Non-salaried artists have the same social cover as salaried artists.

Administrative aspects

Body responsible for collecting contributions (State, a body under State control, trade union, private enterprise, etc.)

The Internal Revenue Service

The U.S. Government is responsible for paying benefits to artists.

Health costs and other welfare benefits when a salaried employee is no longer protected by an insurance scheme

Medicare and Medicaid are covered by the State to those eligible.

UNEMPLOYMENT

Statistics on the average duration of total unemployment

According to the Bureau of Labor Statistics, unemployment rates for artists are almost twice as high as rates for all professional workers. In 2003, among performing artists, unemployment rates are highest for actors- 35.2%; producers and directors unemployment rates were at 9.1%, musicians and singers were at 5.1%. (For details on other artists' unemployment statistics see Artist Employment in 2003: http://www.nea.gov/pub/ResearchReports_chrono.html.)

Unemployment insurance system

All unemployed people, including artists, may access unemployment benefits (if certain criteria are met). The unemployment insurance system does not distinguish between open-ended, fixed-term, casual or government employees.

The Social Security Act provides for the administrative framework for unemployment. Title IX authorizes the various components of the Federal Unemployment Trust Fund; title XII authorizes advances or loans to insolvent State Unemployment Compensation Programs.³⁶

Payments are rarely made to a self-employed person or non-salaried freelancer. Freelance workers can be deemed ineligible for assistance if they are seen to be in a business enterprise and thus not actively looking for work.

Financial aspects

Scale and duration of the unemployment benefits

In 1999, the national average weekly benefit amount was \$215 and the average duration was 14.5 weeks.³⁷

Conditions of entitlement to unemployment benefits

In order to qualify for benefits, an unemployed person must have worked recently for a covered employer for a specified time and earned a certain amount of wages. In addition, states have diverse and complex methods for determining unemployment compensation eligibility which often include: a demonstration that the applicant is seeking employment, and that the recent job separation or job refusal meets qualification requirements.

On average, workers must have worked in two quarters (the first four of the last five completed calendar quarters) and earned \$1734 to qualify for a minimum monthly benefit.³⁸

Artists receiving unemployment do not necessarily meet the requirements for Medicare or Medicaid eligibility.

³⁶ U.S. Social Security Administration www.socialsecurity.gov

³⁷ http://www.policyalmanac.org/social_welfare/archive/unemployment_compensation.shtml

³⁸ http://www.policyalmanac.org/social_welfare/archive/unemployment_compensation.shtml

Administrative aspects

Body responsible for collecting contributions (State, a body under State control, trade union, private enterprise, etc.)

The U.S. Government.

The U.S. Government is responsible for paying benefits to artists.

REMUNERATION

Salaries are paid directly to artists by their employer. Social welfare percentages are paid to the government by the employer. If an artist is employed under a union contract, health and pension benefit fees will be collected from the employer by the union.

Certain union contracts stipulate that housing be provided by the employer for the artist.

Minimum level of remuneration (by service, by week, by month)

The level of remuneration is based on the award or agreement under which under which the artist was employed. In some cases where there is no award, the government has federal, state and local minimum wage legislation. (See section 1.9.e. for links to union agreements)

Artists may donate their services for charity. Information on current practices is not currently available.

Remuneration and intellectual property rights

Societies for collective rights management

There are several collection agencies across art forms including:

American Society of Authors, Composers and Publishers (www.ascap.com)

Authors Licensing & Collecting Society (www.alcs.co.uk)

Broadcast Music, Inc. (BMI) (www.bmi.com/home.asp)

Christian Copyright Licensing International (<http://www.cvli.org>)

Copyright Clearance Center (www.copyright.com/)

The Copyright Licensing Agency (<http://clans.cla.co.uk>)

Harry Fox Agency (www.nmpa.org/hfa.html)

Motion Picture Licensing Corporation (www.mplc.com)

SESAC (www.sesac.com)

iCopyright.com (www.icopyright.com)

Membership of a collecting society does not guarantee payment. Artists only receive revenue from a collecting society if the use of a particular work is monitored.

Artists do not have problems receiving rights collected in their name by the collective management society or societies. Agencies are generally prompt and fair in distribution of payment to artists.

TAX STATUS AND TAX ADVANTAGES

Tax Status

Artists do not enjoy a particular tax status. However, the federal government subsidizes the arts and the employment of artists by making cultural contributions tax deductible.

Royalties and tax system

Royalties are treated as taxable income.

Exemptions or special provisions on cultural products

Temporary importation is allowed under coverage of the ATA Carnet, which simplifies the Customs formalities involved in temporarily importing goods into the U.S. and other countries. The ATA Carnet service is available to travelling professionals including artists and entertainers. For details see the United States Council for International Business: <http://www.uscib.org/index.asp?documentID=718>

Commercial samples, professional equipment and advertising material can be imported into the United States by a non-resident. Other countries also permit the use of a carnet to import other: ordinary goods such as computers, tools, camera and video equipment, wearing apparel; and extraordinary goods such as circus animals and the New York Philharmonic's equipment.³⁹

Special tax regime for cultural products

The ATA Carnet temporary importation rules allow the importation of certain kinds of goods without the payment of customs duty. This includes, but is not limited to cultural imports.

Customs duties agreements

The U.S.A. is a signatory to the Customs Convention on the ATA Carnet for the Temporary Admission of Goods, which has a membership of over sixty countries. Compare these advantages with those enjoyed by other professions.

Law or regulations governing these matters: The ATA Carnet is available to most commercial temporary imports, and thus any advantages are not limited to cultural imports.

The legislative provisions for imports are contained in U.S. Code Title 19- Customs Duties (see U.S. Code: www.access.gpo.gov/uscode/title19/title19.html)

ILLEGAL WORK

Scale of illegal work

Information not available

³⁹ United States Council for International Business www.uscib.org

Control and sanctions

The IRS is responsible for the curbing of any black market activity and tax evasion. See Criminal Enforcement: <http://www.irs.gov/compliance/enforcement/index.html> and Compliance and Enforcement News: <http://www.irs.gov/newsroom/content/0,,id=137869,00.html>

Penalties for non-payment of tax include fines and in some cases jail terms.

The IRS has several measures to ensure compliance. These include auditing and site visits to suspected businesses and individuals.

Illegal work is effectively penalized by the judicial system.

Law or regulations governing these matters: Code, U.S. Code Title 18, Title 26, and Title 31 (see <http://www.irs.gov/irm/part9/ch09s03.html#d0e62477>)

INTERNATIONAL MOBILITY OF ARTISTS

Constraints imposed on foreign artists wishing to work on the national territory

The Immigration and Nationality Act sets forth the conditions for the temporary and permanent employment of aliens in the U.S. and includes provisions that address employment eligibility and employment verification.

(See www.dol.gov/compliance/laws/comp-ina.htm)

A practical guide to U.S. immigration law and procedures which governs foreign workers who wish to work in the U.S. performing arts world is available on: www.artistsfromabroad.org

Visa application policies and procedures are prone to change without warning. Current information is available on the websites U.S. Citizenship and Immigration (<http://www.uscis.gov>) and U.S. Department of State (<http://www.travel.state.gov/>)

Foreign guest artists normally must obtain one of the following:

O-1B classification for aliens of extraordinary ability in the arts;

O-2 classification for personnel accompanying an O-1B alien;

P-1B classification for internationally renowned performing groups and essential support personnel;

P-3 classification for culturally unique performers or groups, teachers and coaches, and essential support personnel.

The ArtistsFromAbroad website also touches briefly on the B1/B2 business visitor/tourist and 90-day visa waiver program (VWP), H-3 trainees, F-1 and M-1 students, J-1 exchange visitors, P-2 reciprocal exchange programs operated by Actors Equity Association and the American Federation of Musicians, and Q-1 international cultural exchange visitors, as well as on issues relating to spouses and dependents.

Foreign workers are required to pay federal, state and local taxes (for details on taxation policy see: <http://www.artistsfromabroad.org/taxes/index.html>)

COLLECTIVE REPRESENTATION

Trade union freedom

there are legal provisions protecting trade union freedom. It is illegal under the Labor-Management Reporting and Disclosure Act of 1959 to restrict freedom of association.⁴⁰

For public sector workers, any employee from any industry is eligible to join a union (except members of the defence forces).

Law or regulations governing these matters: The Labor-Management Reporting and Disclosure Act of 1959.

Collective agreements

Collective agreements are an acceptable way of negotiation in the U.S. The right to collective agreements is covered by the Labor-Management Reporting and Disclosure Act of 1959, Section 104.

There are collective agreements for each sector. All sectors have the choice of collective or individual agreements.

Promotion of social dialogue

There are service organizations that are not-for-profit entities engaged in social dialogue regarding the arts. These include:

- § Theatre Communications Group www.tcg.org
- § American Symphony Orchestra League www.symphony.org
- § Dance/USA www.danceusa.org
- § Opera America www.operaamerica.org
- § American Association of Museums www.aam-us.org
- § Fractured Atlas: www.fracturedatlas.org
- § Alliance of Artists Communities www.artistcommunities.org
- § Alternate ROOTS www.alternateroots.org
- § National Association of Artists' Organization www.naa.org
- § Community Arts Network www.communityarts.net
- § National Association of Media Arts and Culture www.namac.org
- § Asian American Arts Alliance, www.aaartsalliance.org
- § Atlatl — the National Service Organizations for Native American Arts www.atlatl.org
- § The National Association of Latino Arts and Culture www.nalac.org

Status of such bodies : Public, not-for-profit organizations.

Mediation and/or appeals

There are bodies for mediation and/or appeals. The American Arbitration Association (www.adr.org) is a non-profit organization that is a provider of conflict management and dispute resolution services.

The National Arbitration Forum (www.arb-forum.com) also provides arbitration and mediation services.

⁴⁰ U.S. Department of Labor <http://www.dol.gov/compliance/laws/comp-lmrda.htm>

Status of such bodies : the American Arbitration Association is an independent, not-for-profit, public service organization. The National Arbitration Forum is a private company.

CONTINUING TRAINING, RESEARCH AND FINANCIAL AID

List of professional schools and institutions

As stated before, a list of United States arts and vocational training institutions is available at the National Association of Schools of Theatre website: <http://nast.arts-accredit.org/>

For arts training in other disciplines see:

National Association of Schools of Music <http://nasm.arts-accredit.org>

National Association of Schools of Art and Design <http://nasad.arts-accredit.org>

National Association of Schools of Dance <http://nasd.arts-accredit.org/>

Training to artists in administration

The Association of Arts Administration Educators has a list of graduate and undergraduate programs in arts administration. See: www.artsadministration.org
The Field www.thefield.org, the Center for Cultural Innovation <http://cciarts.org> and Fractured Atlas <http://fracturedatlas.org> offer independent artists career management resources and training opportunities.

Source : THEATRE COMMUNICATIONS GROUP

U.S. CENTER OF THE INTERNATIONAL THEATRE INSTITUTE

520 EIGHTH AVENUE, 24th FLOOR
NEW YORK, NEW YORK 10018-4156
FAX: 212-609-5901
www.tcg.org

Information collected from:

U.S. Department of Labor www.dol.gov

Higher Education Resource Hub www.higher-ed.org

Internal Revenue Service, United States Department of the Treasury www.irs.gov

U.S. Social Security Administration www.socialsecurity.gov

U.S. Equal Employment Opportunity Commission www.eeoc.gov

United States Council for International Business www.uscib.org

U.S. Customs and Border Protection www.customs.gov

Centers for Medicare & Medicaid Services www.cms.hhs.gov

Artist Employment in 2003: National Endowment for the Arts, Research Division
www.nea.gov/pub/ResearchReports_chrono.html

More Than Once In A Blue Moon: National Endowment for the Arts, Research Division
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www.nea.gov/pub/index.php

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www.tcg.org
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Actors' Equity Association 2004-2005 Annual Report www.actorsequity.org
Americans for the Arts www.artsusa.org
Volunteer Lawyers for the Arts www.vlany.org

The Non-profit Legal Landscape © 2005 BoardSource