



PROFESSIONALLY MADE PROFESSIONALLY PAID

A GUIDE
TO COMBATING
LOW-PAY AND
NO-PAY WORK
IN THE
ENTERTAINMENT
INDUSTRY



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Introduction



PROFESSIONALLY MADE PROFESSIONALLY PAID

IN 2014, EQUITY LAUNCHED THE PROFESSIONALLY MADE, PROFESSIONALLY PAID CAMPAIGN.

Since then, the work we have done to help our members enforce their rights to statutory minima such as the National Minimum Wage and holiday pay along with efforts we've made to encourage more engagers to use Equity Agreements has generated more than £3m into the pockets of members and fellow professionals.

But there's still more to do. This update of the Professionally Made, Professionally Paid guide sets out what the problems are and how we can tackle them.

For workers

This guide will help you get to grips with your rights at work. This matters, because if you don't know what your rights are then it's easier for exploitative engagers to take them away from you. There's also information in here about how you can be involved in combating the problem of low and no pay in our industries and how to get in touch for further advice.

For engagers

The information in this guide will help you understand what your statutory obligations are to performers and stage managers. We've also included a template Equity Fringe Agreement, which you can use where appropriate after negotiation with the relevant Equity Official. Get in touch with us to discuss further – you'll find contact information on the back page.

For everybody

By working together, we can continue to ensure that workers in our sector are paid for the work they do and have their basic rights respected in the workplace. Get involved!

Low and No pay is a serious problem for Equity members. We are tackling it because we believe a better, fairer entertainment industry is possible.

What's the Problem?

Low and no pay is a serious issue in sections of the entertainment industry. Emerging professionals are regularly told that they should expect to work for free in order to establish their careers, or that poor terms and conditions of employment are just 'how it is' in this industry. Aside from theatre, Equity members working on student and independent films, TV, music videos, in dance, as singers and models have all faced requests to provide their professional services for low or no pay.

Equity believes that this is an unfair and unsustainable trend which is damaging to the industry. Equity members are skilled professionals who deserve to be paid for the work they do, just like workers in every other sector of the economy.

Isn't unpaid work illegal?

Yes! The National Minimum Wage Act 1998 makes it illegal to pay adult workers less than the minimum wage, with a small number of exceptions relating to the Armed Forces or genuine volunteer work. There are no special exemptions for the entertainment industry.

The right to the National Minimum Wage depends on being categorised a 'worker' in employment law terms. That means there will be some circumstances where Equity members are not covered, such as instances of genuine self-employment or as participants in genuinely collaborative partnership work where the nature of the structure means nobody is technically working for anyone else.

It's important to remember that just because entertainment industry workers are most commonly categorised as self-employed for tax and national insurance purposes, it doesn't automatically follow that they are self-employed for the purposes of employment law. The genuinely self-employed are excluded from a number of statutory rights workers have access to – including the right to holiday pay and the National Minimum Wage.

A spate of recent employment tribunal claims have highlighted the spread of bogus self-employment by organisations that aim to deny workers their statutory rights by incorrectly

designating them as self-employed. It's important to note that when assessing whether or not someone is a worker or self-employed, the test is the reality of the job and not the label chosen by the engager in the contract.

How do I determine my employment status?

Employment status is not a matter of choice – it's a matter of law. This means that even if you have signed a contract that states you are not a worker and therefore not entitled to holiday pay and the National Minimum Wage, if you should be defined as a worker then you are still entitled to it.

You can test your worker status by thinking about these questions:

- Do you have a genuine, unrestricted right to provide a substitute to do the work?
- Can you control how and when the work is done?
- Does the job involve you taking on a financial burden, or business risk?
- Are you responsible for your own expenses?

This is not an exhaustive list and there are a number of other important considerations, so always contact Equity for advice. We treat all calls as confidential and will not tell your employer you have contacted us.

What can I do to help?

There are lots of ways to get involved, either as an Equity member or with your Equity branch. Check out our website for more information or email the Low & No Pay Organiser Charlotte Bence on cbence@equity.org.uk

Equity members are skilled professionals who deserve to be paid for the work they do, just like workers in every other sector



How to Allocate and Calculate holiday pay



When paid holiday is given within a contract

STEP 1: Calculate entitlement

$(7 \times \text{number of weeks worked}) \div 13 = \text{entitlement}$
Allocate the required amount of holiday within the contract without deducting from the weekly salary.

EXAMPLE

Contract length: 4 weeks

$(7 \times 4) \div 13 = 2.15$

Entitlement: 2.15 days

When paid holiday is not given within a contract

If paid holiday is not allocated within the contract, you must be paid the equivalent amount for holiday not taken.

When employed in blocks of full weeks

STEP 1: Calculate entitlement

$(7 \times \text{number of weeks worked}) \div 13 = \text{entitlement}$

STEP 2: Calculate Average Daily Pay

This is based on average daily pay over the preceding 12 weeks.

STEP 3: Entitlement X average daily pay = holiday pay.

EXAMPLE

Contract length: 4 weeks of 6 working days per week; Weekly pay: £450

Entitlement: $(7 \times 4) \div 13 = 2.15$

Entitlement: 2.15 days

Average Daily Pay: $\pounds 450 \div 6 = \pounds 75$

Holiday Pay: $2.15 \times \pounds 75 = \pounds 161.25$

When employed for single days

Add 12.07% of the fee on top.

EXAMPLE

Daily fee: £150

12.07% of Daily Fee: £18.11

Holiday Pay: £18.11

The Agreement



1. THE AGREEMENT

a) It has been agreed between

for Equity, and

for

(referred to as 'The Company' hereafter) that all productions by The Company shall use the following as their minimum terms for the engagement of performers and stage managers (referred to as 'Company Members' hereafter).

b) This agreement is to commence on DD/MM/YYYY and subsist until further notice. Either party may terminate this agreement by giving one month's written notice.

c) It is understood and acknowledged that this agreement is a first step towards developing good employment practices and adoption of an industry standard Equity agreement such as the Equity/UK Theatre Commercial Theatre agreement or the Equity/ITC Ethical Managers' Agreement. The Company shall meet with Equity on a regular basis, at least once a year, to discuss progress towards this goal.

d) It is understood and acknowledged that the salary provisions of this agreement are intended to apply to productions which receive no public or significant private funding. Where such funding is granted, salaries for that production should be at industry standard rates, in line with Arts Council and Equity policies.

2. USE OF THIS AGREEMENT

a) This Agreement will form the basis of each individual Contract of Employment.

b) If The Company enters into negotiations concerning the transfer or a tour of a production they shall consult Equity and no agreement will be made in advance of this.

3. SALARIES

- a) Company Members shall be paid a minimum of £_____ per hour/week of work, including but not limited to rehearsals and performances. All time during which Company Members are required to be present at the venue, rehearsal space or other place of work shall be considered working time.
- b) Where a profit is made on the production, a bonus payment will be paid to all Company Members, the amount of which shall be agreed with the relevant Equity official.
- c) The Company shall keep an open financial book for the production that any member of the company or relevant Equity official can inspect on request. Equity may require detailed financial information, including books and accounts, for the purposes of a full audit.
- d) The salary and any other payment shall be paid weekly by a mutually convenient method on a specified day. The company shall issue payslips on or before each payment date. Cash payments, particularly in the first week, shall not be unreasonably refused in the event of mutually agreed methods of payment not being finalised.

4. HOURS OF WORK

- a) The hours and conditions of work shall be agreed between The Company and the Company Members before the first rehearsal begins.
- b) The working week shall be no more than 40 hours worked over no more than 6 days in a 7 day period.
- c) The Working Time Regulations mean that no more than 48 hours a week, on average, may be worked. This average should be calculated over length of the run of the production.
- d) The maximum working day shall be 10 hours (including meal breaks) and those hours shall fall between 8.00am and 12.00 midnight apart from in exceptional circumstances.
- e) There shall be a one-hour meal break between morning and afternoon working periods and between afternoon and evening working periods.

- f) There shall be a break of 15 minutes within any continuous working period of 3 hours.
- g) Breaks specified in ss. e) and f) are not included in working time.
- h) A minimum period of at least 11 hours shall elapse after the conclusion of each day's work.
- i) There shall be no more than 12 performances of under 50 minutes or 8 performances of over 50 minutes in one week.
- j) There should be no more than 12 workshops per week and no more than 3 on any one day.
- k) There shall be at least one free day for every 6 days worked and there shall not be more than 6 days worked between each free day.

5. OVERTIME

- a) The overtime rate shall be 1.5 x the hourly rate for all hours worked in excess of the weekly or daily maximum, or breach of breaks
- b) Where there is a breach of the Free Day provision or of the overnight gap, overtime shall be paid at 2 x the hourly rate
- c) The Company shall provide time sheets for completion by each Company Member on a weekly basis.
- d) Where a weekly salary has been agreed, the hourly rate shall be calculated as 1/40th of weekly salary.

6. HOLIDAYS & PUBLIC HOLIDAYS

- a) The Company Member shall be entitled to 7/13th of a day's paid holiday for each week worked.
- b) Holiday shall be taken at a date agreed by The Company.
- c) If holiday is not taken during the engagement, the Company Member must receive pay in lieu of holiday at the end of the engagement.
- d) Pay in lieu of holiday shall be at 7/13th of actual daily salary (averaged over the period of the engagement) for each week worked.
- e) No work shall be required on 25th December or in Scotland on the 1st of January.

7. EQUAL OPPORTUNITIES & DIGNITY AT WORK

The Company must have an Equal Opportunities and Dignity at Work Policy and must adhere to them in practice and monitor them regularly.

8. EQUITY MEETINGS

The Company shall contact Equity to arrange an Equity meeting during working hours. All Company Members shall be encouraged to attend this meeting and if not already members should be encouraged to join Equity. An Equity meeting will be arranged before the first performance, and a full list of Company Members provided to Equity in advance of the meeting.

9. TOURING CONDITIONS & TRAVEL

Touring conditions and travel arrangements shall be agreed with Equity in advance of contracts being issued where Company Members are required to stay overnight away from the Company Base.

10. STAGE MANAGEMENT

- a) Where 9 or more performers are used there should be at least 2 dedicated Stage Managers.
- b) Where fewer than 9 performers are used there should be at least 1 dedicated Stage Manager.
- c) On some minimal productions (e.g. fewer than 4 performers, minimal set, no lighting rig, extremely simple sound, get-in less than 40 mins. etc) it may be possible to operate without a dedicated Stage Manager.
- d) A company member engaged to undertake stage management duties may be required to appear on stage.
- e) There is no provision for buy-outs in this agreement.

11. COSTUME AND PROPERTY

- a) The Company shall provide all costume, hair-pieces, wigs, specialist make-up etc. and shall ensure that they are clean, kept in good repair.
- b) Should the Company Member agree with The Company to use his/her own property for the production, The Company shall negotiate a fee for use of the property before first use, indemnify the Company Member against loss or damage and provide proper insurance cover.

12. HEALTH AND SAFETY

- a) The Company shall provide and maintain safe and healthy conditions of work in accordance with Health and Safety legislation for the time in force.
- b) The Company must have a written Health and Safety Policy which shall be prominently displayed and shall include:
 1. Procedure for risk assessment of all productions
 2. Provision for training to be given to Company Members where appropriate.
 3. The Company shall be responsible for providing all necessary protective clothing and equipment.
 4. The Company shall effect and maintain Employer's Liability Insurance for all Company Members during working time.
 5. The Company shall ensure that a copy of the fire regulations and drill is prominently displayed and drawn to the Company Members' attention.
- c) Risk assessments will be carried out in advance of the rehearsal period and will be shared with Equity on request.

13. DISCIPLINARY, DISMISSAL & GRIEVANCE PROCEDURES

Disciplinary, Dismissal and Grievance issues shall be resolved in accordance with the principles of the ACAS Guide to Disciplinary and Grievances at Work, and use the sample policies for small organisations contained therein. Refer to →

www.acas.org.uk for further information.

14. SICKNESS

- a) Any Company Member who is forced to be absent through sickness shall notify The Company as soon as practicable and advise wherever possible on the likely duration.
- b) The Company shall continue to pay the Company Member at his/her full basic weekly salary for at least 2 days of absence per month of the production, thereafter statutory sick pay shall be paid for the remainder of the contract.
- c) The Company are entitled to give notice of termination of contract after 1 week of absence.

15. ABSENCE

- a) The Company may deduct from the Company Member's salary for any part of the working day for which the Company Member is absent for reasons of his/her own neglect or default on a pro rata hourly basis.
- b) Any absence without reasonable cause or explanation will be treated as serious misconduct and will entitle The Company to dismiss the Company Member.

16. GENERAL PROVISIONS

- a) The Contract must be completed and signed by the first day of the engagement.
- b) There is no pension scheme under this Contract.
- c) Photographs taken of the Company Member during specified photo calls shall only be for the relevant single production and for general publicity for the Company. If photos are used for Company publicity after the completion of the production it should be clearly stated that they are from a previous production and the Company Member's consent must be sought.
- d) The programme shall at all times show current Creative Team, Cast and Stage Management.

17. COPYRIGHT OF DEvised 17. COPYRIGHT OF DEvised PLAYS

A Devised Play is a play for which no working script exists at the beginning of rehearsals. Copyright arrangements for devised plays will be discussed and agreed with Equity prior to contracts being issued.

For Equity

For

(The Company)

Date _____

Please Note

The use of this agreement is the product of negotiation between the engager and Equity.
If you would like to use the Fringe agreement, please contact Equity.

Further help and advice

Professionally Made Professionally Paid
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www.equity.org.uk/pmpp
#MadeAndPaid

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