

## **Grey Paper No. 11 - September 2004 - Employment Law for Theatres**

### **1. Introduction**

- 1.1. Many Little Theatres will pay members or non-members for their services at some time or other. This may be in the form of a fee to a Musical Director, payment to a book-keeper, cleaner or cash to the man who tidies the gardens. It is important that, as an organisation, you are clear whether you are acting in the role of an employer or whether the recipient of the payment can be considered to be self-employed. The reasons why this distinction is important may not become apparent until you find yourself in dispute with the person you are paying, such as when you wish to dispense with their services or because they injure themselves while working for you. While you may consider that the person is self-employed, in a dispute they may be considered an employee and, under the law your responsibilities to an employee are much greater than those to a self-employed person. They will include provision of sick pay, holiday pay, the right not to be unfairly dismissed, redundancy payments and ensuring tax and national insurance payments.
- 1.2. If under the law you are deemed to be acting as an employer then failure to comply with these requirements could result not only in the award, by the courts, of damages to the individual but could also lead to an investigation by the Inland Revenue with the possibility of claims for back payment of taxes or the imposition of a substantial fine.

### **2. Employed or self-employed?**

- 2.1. In order to determine whether someone to whom you make payments is an employee or self-employed the courts and/or the Inland Revenue will apply some of the following tests. However it should be borne in mind that no single test is conclusive and it may ultimately be a matter of judgement.
  - 2.1.1. Does the person have a job description or a contract outlining their duties and responsibilities?
  - 2.1.2. Does your theatre exercise line management responsibilities over the activities of the person (i.e. could you discipline them if they did something wrong)?
  - 2.1.3. Do you provide the working tools, materials or facilities for the individual to carry out their duties?
  - 2.1.4. Do you specify when and where the duties of the individual should be carried out or can they do them at home and when it suits them?
- 2.2. If the answer to the majority of these questions is in the affirmative then the law would probably determine that the individual is an employee and as such should have employee's rights and that the theatre would be responsible for ensuring that the individual's tax and national insurance had been paid in respect of that employment.
- 2.3. The number of hours an individual works for you is irrelevant in determining the nature of their employment. You can have an employee who works for an hour a week or can contract work to a self employed person that may entail them working a 40hr week.

### **3. What action do theatres need to take?**

- 3.1. If you have an employee
  - 3.1.1. If you decide that an individual to whom you make payments is an employee then you should make sure that they are issued with a basic written contract of employment which should contain what is called a Section 1 description itemising the following:-
    - A start date for the post
    - A job title
    - Hours of work
    - Details of overtime payment
    - Details of holiday entitlement

- Details of employer's responsibility for sick pay
- Details of where information about disciplinary and grievance procedures may be found
- Details of lines of responsibility
- Details of how much notice they or you must give to terminate employment

3.2. If you contract work to a self-employed person

3.2.1. If you decide that someone to whom you give money for services is self-employed then they should be issued with a self-employment consultancy agreement. This document should contain the following:-

- Details of the terms under which the service is provided to you
- Details of the payment agreed
- A tax indemnity which states that the individual is responsible for paying their own tax and national insurance on the monies they receive
- A statement to the effect that the individual will provide their own equipment or work facilities

4. The LTG hopes to publish draft contracts of employment and self-consultancy employment agreements along with outline disciplinary and grievance procedures to help you in preparing appropriate documentation. However if there is any doubt about any of the issues raised here then it is recommended that theatres seek independent legal advice from a specialist in employment law. This document was produced following a presentation at the Bolton Northern AGM and is based on a presentation by TP People ([www.tppeople.co.uk](http://www.tppeople.co.uk)) (who would be happy to offer advice to any Little Theatre).

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The People's Theatre