



Guide to: the minimum rights for employees and contract workers

© DANZ 2011

Introduction

The nature of the dance industry in New Zealand is such that many people are employed as contractors rather than employees. DANZ research in 2009 highlighted concern within the industry that there is poor understanding of contracts, with only 56% of people saying they were fully informed about their rights on terms of employment. This resource has been produced to help clarify the differences between the rights of employees and contract (self-employed) workers.

The Department of Labour has produced a document which indicates the differences between a self employed contractor and an employee,

<http://www.dol.govt.nz/workplace/knowledgebase/item/1328>

If a person is an employee, they will have rights under the Employment Relations Act and other employment laws. If a person is a self-employed contractor they will not be covered by the Employment Relations Act, and most of their rights and obligations will be determined by general civil law.

Employee

Every employee must have a written employment agreement and are entitled to: annual holidays, public holidays, sick leave, bereavement leave and parental leave; they must be paid the adult minimum wage; receive equal pay and equal rights; are entitled to rest and meal breaks; their employer must provide a safe workplace, with proper training, supervision and equipment; and employees can access a variety of avenues for problem solving including mediation, and if necessary recourse to the Employment Relations Authority and actions in the Employment Court. Employees can't be asked to agree to less than these minimum rights.

For more information go to the Department of Labour website which has detailed information on all the minimum employment rights, <http://www.dol.govt.nz/er/minimumrights/index.asp>

Contractor

Annual Holidays

No minimum annual holiday entitlement.

Contractors often work for shorter periods of time and therefore a contractor's normal rate should take into account that they need to provide for both holidays and for 'down time' between jobs.

Public Holidays

No minimum public holiday entitlement.

Contractors are typically expected to work through holidays (and indeed work overtime without overtime rates). When negotiating contracts contractors should take these issues into account. Contractors can request that a premium payment be made for working on a public holiday.

Sick Leave

No minimum sick leave entitlement.

Contractors often work through sickness because there is no sick leave allowance in their contracts. Contractors should ensure their rate includes a small premium to cover times when they genuinely need to take sick leave.

Bereavement Leave

No bereavement leave entitlement.

Parental Leave

Contractors may be entitled to up to 14 weeks of paid parental leave, funded by the Government; this is a capped weekly amount. The payment can be taken by one parent or shared between two eligible partners.

Minimum pay

There is no minimum pay rate for contractors.

Equal Pay

Contractors negotiate their rate separately, but like employees cannot be paid less solely on the basis of their sex.

Equal Rights

Contractors cannot be discriminated against because of race, colour, national or ethnic origin, sex or sexual orientation, marital or family status, employment status, age, religious belief or political opinion, disability, or participation in certain union activities.

Break entitlements

No minimum break entitlements.

Health and Safety

The Health and Safety in Employment Act places a duty on an individual or company who engages any person to take all practicable steps to ensure that contractors, subcontractors and their employees, are not harmed while undertaking any work under the contract.

Problem Solving

Problem solving is usually determined by dispute resolution provisions in the contract. Contractors should ensure their contracts contain adequate provisions for dealing with disagreements and contracts should provide for independent mediation and arbitration.

Conclusion

In comparison with employees contactors do not have the same minimum rights in law, therefore it is important to ensure when negotiating your contract that adequate provision is made to include these.

Disclaimer: This is a guide only, not a comprehensive or complete list of all employment/contractual rights and may not be accurate for all situations. It should not be used as a substitute for legal or other expert advice.

See DANZ *Contract Checklist for Dancers* for information on contract clauses and tips for negotiating.

For more DANZ resources see DANZ website resources page, www.danz.org.nz/resources.php

Thank you Creative New Zealand for supporting the development of professional resources.