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THE STATUS OF THE ARTIST

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1. THE SOCIAL STATUS OF THE ARTIST

1.1. Introduction

The new status of the artist came into effect on 1st July 2003. It introduces several rules to the social security legislation to make it easier for artists to accrue social security entitlements (e.g. child benefit, pensions, unemployment benefit, holiday pay, etc.).

The **basic principle** is that every artist who "provides an artistic service and/or produces artistic works commissioned by a natural or legal person in return for payment" shall have the status of **employee**.

However, the artist is free to opt for the status of **self-employed** if this is better suited to his/her personal situation. To help artists decide between the status of employee or self-employed, an **Artists' Commission [Commissie Kunstenaars]** has been set up (see further).

For artists working under short-term contracts for a variety of clients (e.g. an actor who plays with several theatre companies) the legislation recognises "**social bureaus for artists [sociale bureaus voor kunstenaars]**" (**SBKs**), which act as temporary employment agencies for artists.

On 1st July 2004 the **small fees scheme** came into effect. Under this scheme artists can receive a small fee exempt from social security contributions.

2. Employee

The status of the artist applies to anyone who provides 'an **artistic service** and/or produces **artistic works**'. The law defines an artistic service and/or an artistic work as "the creation and/or performance or interpretation of artistic works in the audiovisual and visual arts, in music, literature, shows, the theatre and choreography."

This broad definition makes **no distinction** between **creative activities** (e.g. sculpting) and **performance/ interpretative activities** (e.g. acting, dance).

Nor does the definition make a **distinction** between **amateur/professional** and **regular/occasional**.

If you have any doubts as to whether your creation is considered an "artistic service" or an "artistic work", you can always contact the **Commissie Kunstenaars**.¹

As an employee artistic services are rendered "**by commissioning**" (e.g. a company asks an artist to paint a painting for the entrance hall) and for "**pay**". All fees given as a form of recompense for providing an artistic service and/or work are considered as pay. Reimbursements of expenses are not considered as pay.

¹ The Commissie Kunstenaars, Waterloolaan 77, 1000 Brussels

Tel : 02 546 40 50 (information for the self-employed), Tel : 02 509 34 26 (information for employees)
Fax: 02 513 04 13, E-mail : info@articomm.be

1.2.1. Lowering of labour costs

As an employee you are protected against a number of social risks. For example, you are entitled to family credit, a pension, employment benefit and disability benefit, holiday pay, sick pay, etc.

On the reverse side of these entitlements there are, of course, obligations. These obligations involve the payment of social security contributions. These are partly paid by the employee (13.07% of gross pay) and partly by the employer (at least 32.44% of gross pay).

As an incentive to employ artists under the employee system the government decided to make a part of the pay **exempt from employers' contributions**. Since 1st July 2004 the figure has been 55.67 euros of gross daily pay (provided the minimum gross pay is 56.96 euros/day²) or 7.33 euros of gross hourly pay (provided the minimum gross hourly pay is 7.49 euros/day³).

This exemption applies no matter what the form of employment. If the artist works for several employers on the same day each will be entitled to the exemption.

3. Employee via an SBK

If an artist works for several clients, all on short-term contracts (e.g. a musician who performs in several youth centres in one week), he can use the services of a social bureau for artists. These temporary employment agencies take on the role of employer. They ensure that the employers' obligations are met and that the artist receives his pay.

Not every employer who employs an artist can make use of an SBK. He/she can only do so in four cases:

1. To **replace** a permanent employee (e.g. an actress in a theatrical company goes on maternity leave).
2. A temporary **increase in work volume** (e.g. when the new theatre season starts a theatrical company organises an event for which a number of artistes are required on a temporary basis).
3. For a **one-off performance** (e.g. a company organises an exhibition to celebrate its tenth year of business).
4. Or when an **artistic service** is provided and/or an artistic work is produced **for an occasional user**. The "occasional user" does not carry out his/her main profession in the artistic sector and/or does not employ other personnel

² Please note! Some sectors have negotiated higher wage brackets via collective labour agreements (CLAs)

³ See note 2

1.3.1. Practical activities of an SBK

The artist and client decide when they want to use an SBK and when not. They reach agreement over the type of commission, its duration, and the pay involved.

The commission must be communicated to the SBK in advance (!). The SBK takes care of the employers' obligations; the client pays the fee to the SBK and the SBK pays the artist.

Please note! An SBK does not deal with bookings.

1.3.2. SBK costs

Temporary employment agencies always charge a percentage over and above the fee as an **operating cost**. This percentage varies from agency to agency. It is therefore advisable to contact various agencies in advance.

VAT is charged at 6% of the total sum (wage + administration costs).

The reduced employers' contribution applies to the SBKs too (see 1.2.1.).

1.3.3. Accredited SBKs

Most of the larger temporary employment agencies have already been accredited as SBKs (e.g. Randstad, T-interim, Adecco, Payroll, Creyf's, Vedior...)

A list of accredited SBKs is available at:

<http://www.kunstenloket.be> (useful links; 6. specialist service providers).

4. Self-employed

If an artist elects to work on a self-employed basis he/she must be able to demonstrate "**socio-economic independence**". This is assessed through a number of factual indicators such as a financial plan, relevant training and/or experience, investment, personnel in service, income from another professional occupation, etc.

When an artist sets up on a self-employed basis he must join a social insurance fund and apply for a VAT number (if subject to VAT).

1.4.1. Certificate of self-employment

The choice between employee and self-employed status is not always an obvious one. Artists who would like to prevent doubts being raised over their self-employed status at a later date can apply to the **Commissie Kunstenaars**⁴ for certificate of self-employment.

A certificate of this type is not obligatory, but anyone who can produce it will be considered 'self-employed' without dispute during its validity period (= 2 years and extendible on request) and for the activities to which it relates.

⁴ The Commissie Kunstenaars, Waterloolaan 77, 1000 Brussel
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5. The small fees scheme

Anyone who provides an artistic service and/or produces artistic work (see 1.2. for the definition of artistic service and/or artistic work) is entitled to make use of the small fees scheme. These small fees are seen as a fixed reimbursement of expenses (no documentary evidence required!) on which **no social security payments** are paid, provided that

1. the maximum figure of 103.72 euros per day is not exceeded;
2. no more than 2 074.33 euros are received under the small fees scheme per annum;
3. the scheme is used on no more than 30 days/annum;
4. the fee relates to no more than 7 consecutive days of work for the same client;
5. the artistic performers' card is filled in on each occasion.

(Since no artistic performer's card is available at the present time it is recommendable that the client makes a list of the small fees paid and that he/she also asks the artist to sign an **oath** confirming that the artist satisfies the conditions)

Artists and clients who do not abide by the conditions will be obliged to pay tax and social security unless they can demonstrate the fee is a real reimbursement of expenses.

If the artist performs several works on the same day for several clients he/she is entitled to receive a maximum of 103.72 euros from each under the small fees scheme.

Please note! The 'small fees' is an all-in reimbursement of expenses. This means that no other reimbursements can be issued for the same work (e.g. mileage allowance...).

Employees and the self-employed alike can work under the small fees scheme. If the artist has an employment contract, a contractor's agreement or a statutory appointment (civil servant), he/she will not be able to apply the small fees scheme for the same client, unless he/she can demonstrate that the work involves a different type of service. For example, this means that an actor who has an employment contract with a theatre company will not be able to apply the small fees scheme for the same company during the life of his contract. An employee who gives a performance at the staff party can, however, apply the small fees scheme.

On those days on which artists receive the small fee they will not be able to apply the volunteers' scheme (= fixed fee of maximum 27.92 euros/day and maximum 1 116.71 euros/annum for non-artistic services). In the case of artistic services it is not possible to cumulate the volunteers' and small fees schemes over one calendar year.

2. UNEMPLOYMENT AND ARTISTIC ACTIVITY

The unemployment regulations include a number of rules specific to artists.

2.1. Conditions of entitlement

To be entitled to benefits you must satisfy one of the general conditions of entitlement. Either you will have worked a certain number of days in paid service; or you will have been through a waiting time after gaining your qualifications; or you will have accrued unemployment benefit entitlements in the past.

There is a "**cachet regulation**" for performance artists. Instead of looking at the number of days worked we convert gross pay into day equivalents. The number of days is calculated by dividing the gross pay by a reference pay of 33.46 euros/day (or 24.93 euros if you are under the age of 21).

2.2. Conditions of issue

To receive unemployment benefit you must be available for work. There are exceptions to this, such as preparing to establish yourself on a self-employed basis; volunteer work; practise of a secondary activity; a political or Social Service Department mandate, and, since 2001, practise of an artistic activity.

A. Artistic activities not considered as work

An artist entitled to benefits may perform an artistic activity in the context of artistic training or as a hobby (e.g. writing a book, sculpting, performing in an amateur society) without being obliged to report this to the National Employment Office and without this affecting his/her benefit payments.

B. Cumulation of paid secondary artistic activities with unemployment benefit

If an artist intends to commercialise his/her artistic creations he/she must, however, disclose these artistic activities via the **form C 1 – Artist**.

A **creative artist** is entitled to unemployment benefit if his/her artistic activity is not a main activity. Occasional activity days or days of activity as a self-employed person in a secondary profession need not be recorded on the social security card. The creative artist must, however, record the following days on his card:

1. days on which the artist is required to attend exhibitions, by virtue of a written agreement;
2. days on which the artist is required to be present in sale rooms, where the artist handles sales himself;
3. days on which audiovisual works are recorded;
4. days for which the artist receives pay.

Interpretive or performing artists (employees and the self-employed) must always record paid activity days on the social security card. On these days they lose their entitlement to unemployment benefit.

The artist can continue to receive benefits provided that his/her net taxable income from artistic activities (other than pay and statutory income) is no higher than 3 575.52 euros per annum.

C. Artistic main activities under an employment contract

C.1. Artists employed exclusively in their main profession under **short-term contracts** (= less than 3 months) (mostly for work under pc 303 (film company) and pc 304 (entertainment company)), can avail themselves of a preferential regulation used to set the daily benefit figure. The amount of unemployment benefit will not reduce according to the length of unemployment.

C.2. To be entitled to benefits you must be available for work and must not refuse any offer of suitable work. Special rules on availability for work are applicable to artists carrying out artistic work as a main profession.

If an artist can demonstrate 156 "artistic" days' work in the last 18 months he/she is entitled to refuse offers of non-artistic work. If he/she cannot demonstrate 156 "artistic" days' work, then each job offer is assessed on the basis of intellectual development, physical suitability and the risk of diminishing his/her artistic skills.