

STUDY OF PERFORMERS' RIGHTS IN THE
PERFORMING ARTS INDUSTRY IN SOUTH AFRICA

FOR THE NATIONAL ARTS INITIATIVE

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A. EMPLOYMENT STATUS:

The employment status for performers is often not a clear cut issue. The nature of their employment ranges from one -off performances to permanent engagements as members of a performing arts company.

The distinction which has to be made when addressing this issue, is between a contract of **services** and a contract of **service**. In the contract of **services**, the employer and independent contractor negotiate as equals, whereas in the contract of **service**, the focus becomes the degree to which the person hired for service is subordinated and submissive to the person who hires the service.

An employee in other words must be " distinguished from an independent contractor who undertakes to deliver not his capacity to produce but the product of that capacity, the completed work." *

The status of the relationship between performer and "engager" is of vital importance in the area of labour legislation since certain statutes provide protection to all persons who are regarded as **employees**.

Indeed, only employees can rely on the protection afforded to them by the Basic Conditions of Employment Act.(No.3 of 1983).Only employees can be granted unemployment insurance. It is the status of the performer as employee which will also determine whether he or she is covered by the Labour Relations Act (No. 28 of 1956).

Whether a performer is regarded as an employee or as an independent contractor is dependant upon several factors which the courts have formulated in deciding the nature of the relationship.

Some of these relevant factors are:

- whether the service performed is obligatory or not;
- whether the service is personal;
- the power of control over the individual;
- the freedom of action of the individual;
- the nature of the work performed;
- the manner of payment;
- the power of dismissal over the individual;
- and the control and supervision over the individual;

*Professor Martin Brassey, "The Nature of Employment" ILJ at 936