

Talent Agencies

In British Columbia, talent agencies must be licensed under the *Employment Standards Act* (“the Act”). A licensed talent agency may receive wages from employers on behalf of clients who have performed work in the film and television industry and may deduct a fee from those wages in accordance with the Employment Standards Regulation.

Definitions

“Talent Agency” means a person or company that, for a fee, offers or promises or attempts to procure, or does procure, employment for actors, performers, extras or technical creative film personnel.

“Technical Creative Film Person” includes: film directors, directors of photography, production designers, art directors, persons involved in writing or rewriting scripts, hair stylists, make-up artists, costume designers, and animal co-ordinators involved in the production of a film, video, television show or television commercial.

Licensing

To obtain a licence, the agency must complete an application form, which is available at any Employment Standards Branch office or online at www.labour.gov.bc.ca/talent

The completed talent agency application form should be signed by the Director(s), Officer(s), and Owner(s) of the talent agency.

A new application for a talent agency licence must include:

- a completed application form;
- a copy of the talent agency’s standard contract;
- a \$100.00 annual licensing fee; and
- a bond, currently in the amount of \$725.

A talent agency must renew its licence annually by completing the application form and providing the \$100.00 annual licensing fee.

All licence applications are processed at the Employment Standards Branch office at:
250-4600 Jacombs Road, Richmond BC, V6V 3B1
Fax: 604 713-0450

Bonding

A bond may be in the form of cash, an irrevocable letter of credit, or other security that accords with the *Bonding Act*. Most agencies provide a cheque for the bond amount. The cheque is cashed and the funds held without earning interest. If a talent agency ceases to operate, the bond is returned after the end of the six month period for filing complaints as long as there are no outstanding complaints.

Responsibilities of talent agencies

Talent agencies must display their licence number on any contract or written agreement made with a client.

Talent agencies that receive wages from an employer on behalf of a client must ensure that the client receives the

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wages within the following time limits:

- Five business days of receipt of payment, if payment is made from within British Columbia; or
- Twelve business days of receipt of payment, if payment is made from outside British Columbia.

If the talent agency is unable to locate the client in order to pay wages, it must forward the wages to the Director of Employment Standards within 60 days after wages are received. The Director of Employment Standards will hold the monies in trust for the client and provide a receipt to the talent agency.

Talent agency fee limits

Talent agencies cannot charge more than a 15 percent fee on wages received by their client. The talent agency must ensure that their client receives no less than minimum wage plus vacation pay after the fee is deducted (see below).

A talent agency cannot charge a client more than \$25 per year for taking and providing photographs. This fee must be deducted from wages. The 15% fee and the photography fee are the only fees that may be charged by the talent agency.

Booking fees

In some sectors of the industry, a producer may pay a talent agent directly for providing talent. This is sometimes called a 'booking fee.' Booking fees are not part of a performer's income and are not subject to the requirements of the *Employment Standards Act*.

Confusion about what is a booking fee and the performer's resulting commissionable income can result if the booking fee is shown on the performer's pay statement as part of the performer's income.

Employers and their payroll departments or services must ensure these payments are processed separately.

Calculating minimum pay requirements

A talent agency must ensure that, after its fee is deducted, its client still receives at least minimum wage plus vacation pay. As of May 1, 2012, minimum wage is \$10.25 per hour, so after adding 4% vacation pay, the client must receive at least \$10.66 per hour.

Previous minimum wage rates were:

- May 1, 2011 - \$8.75 per hour, so after adding vacation pay, the client must receive at least \$9.10 per hour; and
- November 1, 2011 - \$9.50 per hour, so after adding vacation pay, the client had to receive at least \$9.88 per hour.

Example

A talent agency charges a 15 percent fee on gross income. In order for the client to earn enough for the talent agency to collect its fee, the production pays the client \$12.00 per hour as follows:

Hourly rate	\$12.00
+ 4% vacation pay	.48
Total	\$12.48
- 15 % agency fee	(1.87)
= Amount received by client	\$10.61 per hour

Where there is overtime worked in a day the client must receive an amount which at least equals minimum wage, applicable overtime and vacation pay for all hours worked.

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Keeping records

A talent agency must keep records for two years for each actor, performer, extra or technical creative film person employed as a consequence of the efforts of the talent agency. The required records are:

- The amount of money received by the talent agency for the employment;
- The amount the talent agency is claiming as its fee;
- The amount paid to the actor, performer, extra or technical creative film person;
- The name and address for each employer for whom the talent agency provides a service; and
- The name and address of each client employed as an actor, performer, extra or technical creative film person as a consequence of the efforts of the talent agency, or who is provided with information about employers seeking actors, performers, extras or technical creative film persons.

The records must be kept in English at the talent agency's principal place of business in British Columbia

No kickbacks

Talent agencies may not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone else, other than by paying for any form of advertisement placed by the talent agency.

Recovery of wages

The Employment Standards Branch will treat talent agencies that have received wages from an employer on behalf of a client in the same manner as an employer.

If wages received by the talent agency are not paid to a client in accordance with the Act and Regulation, the Branch can take legal action to collect the outstanding wages (including interest on unpaid wages) from the talent agency.

Directors and officers of talent agencies are personally liable for unpaid wages. Should collection against the talent agency fail, a Determination can be issued against each director or officer of the talent agency to collect the outstanding wages.

The Employment Standards Branch cannot recover wages from a director of a talent agency that is bankrupt or subject to a proceeding under an insolvency act.

Penalties

The Director of Employment Standards may cancel, suspend or refuse to issue a licence to any talent agency. If a talent agency contravenes any of the provisions of the *Employment Standards Act* or Regulation, it may lose its licence and be subject to escalating penalties.

