SOUTH AFRICAN GUILD OF EDITORS

Employees vs Independent Contractors

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www.editorsguildsa.org

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SAGE is a Non-Profit Company #2007/006516/08 and a Non-Profit Organisation #268-737 NPO

SAGE has assembled a document which aims to provide clarification about the rights of employees and to enable editors to determine when they are independent contractors, and when they are employees.

Download the full PDF here.

Introduction

This document aims to provide editors with guidance to determine when they are independent contractors or employees in any particular engagement.

The determination as to whether an editor is an independent contractor or employee is usually relevant in the context of determining the parties' rights and obligations in terms of labour and tax legislation.

It is important to note at the outset, however, that the determination as to whether an editor is an independent contractor or employee differs in terms of labour and tax legislation. This can lead to much confusion, as an editor can be an independent contractor in terms of labour law and an employee in terms of tax legislation.

Since there is confusion about when someone is truly an independent contractor or rather an employee, we would like to bring the Basic Conditions of Employment Act (BCEA) to the attention of our members.

Contracts available

SAGE has invested in a contract designed specifically for Independent Contractors, which can be found on our website.

SAGE members who would like to use a standard employee contract should consider the template available on this website.

At the start of a project, editors and producers should aim to reach agreement regarding the nature of their relationship. In other words, it would be ideal for the parties to determine whether they intend to have a relationship as independent contractor/client, or whether it should be a relationship of employee/employer.

This determination, however, must be done in relation to each engagement. Most important, though, is the fact that the actual circumstances of the engagement will determine whether the editor will be considered to be an employee or an independent contractor (in terms of applicable law), and not the label the parties attach to the engagement. A court or tribunal tasked with assessing the relationship of the parties will consider the substance, and not the form, of the engagement.

Set out below is a list of comparative indicators that can be used in making such determination. Please note, however, that no single factor in the list is decisive – in the context of any single engagement, consideration must be given to all of the factors.

A quick comparison

Employee	Independent Contractor
Works for only one employer at a time	Generally provides services to more than one person or company at a time
Works the hours set by the employer	Sets his or her own hours
Usually works at the employer's place of business and uses their equipment	Works out of his or her own office or home and uses own equipment
Is entitled to annual and sick leave	Is not entitled to any leave
Often receives employment benefits, such as medical aid or bonuses	Does not receive employment benefits from the employer
Works under the control and direction of the employer	Works relatively independently
Receives a nett salary after employer has deducted income tax and UIF	Is a provisional taxpayer and responsible for paying his or her own taxes

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