

Activity sector : cultural sector
Technical areas : professional regulations
Sources : Articles L 762-3 and R 762-2 et al. of the labor code. Tax administration basic document 3C226 ; Decrees of October 22, 1973 and December 3, 1971 ; DGFP information note, August 1998
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Artist's agents Professional regulations, licenses, compensation, etc.

Artists and entertainment promoters sometimes use the services of intermediaries to conclude the contracts which they sign together.

These intermediaries who are involved with the placement of artists are defined by the law as artist's agents.

The artist's agent is mandated by entertainment artists to seek out engagements for them : he prospects and negotiates with the aim of concluding a work contract between the artist and an entertainment organizer or promoter, a film production company, a record company, etc.

In principle, the placement of salaried workers in France is a monopoly of the State ; moreover, paid placement is prohibited. However, given the specific nature of artistic professions, the law of December 26, 1969 stipulates an exemption in the case of the paid placement of entertainment artists.

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The law states that « *Entertainment artists notably include the following : opera artists, dramatic artists, choreographic artists, variety artists, musicians, singers, accompanying artists, orchestra conductors, arrangers, and for the physical execution of their artistic creations, directors* » (article L 762-1 of the labor code).

Thus, independent of the official placement service provided by the workforce offices of the government ministry which are now reorganized and placed under the direction of the ANPE, entertainment artists may choose to use the services of private intermediaries. As this constitutes an exemption from the general principle prohibiting placement services, the profession of artist's agent is strictly regulated by the law and is subject to a certain number of constraints and controls.

REGULATION OF THE PROFESSION OF ARTIST'S AGENT

> DEFINITION OF THE PROFESSION AND THE OBLIGATION TO HOLD A LICENSE

All physical persons and legal entities are required to hold an artist's agent license in order to carry out the placement of artists for monetary gain (i.e. receive compensation for their services). The labor code stipulates that this provision is notably applicable to those who, under the title of impresario, manager, or any other denomination, are mandated by more than

two entertainment artists to procure engagements for them during the course of a calendar year.

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This regulation concerns persons who exercise this activity in an independent manner and not persons who are salaried employees of a programmer or company, etc.

The artist's agent plays a role of promoter and negotiator for the artists who have retained his services. In information note of August 1998, the Ministry of Labor and Solidarity also specifies that the agent must insure that artists know their rights and that employers respect their obligations toward artists, in particular verifying :

- the existence of a bona fide contract ;
- the payment of social contributions (social security, paid vacations, pensions, etc.).

The *Cour de Cassation* (≈ Court of Appeals) has ruled that the placement of an orchestra corresponds to the placement of a single artist if no distinct separate services are rendered for the orchestra conductor and the musicians, in other words, if the mission given to agent concerns the placement of the orchestra as a whole and is not susceptible to occasionally concern the placement of certain musicians in other performances independently from the orchestra...

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Indeed, for artists who appear in the same performance or for musicians belonging to the same orchestra, the labor code expressly stipulates that, contrary to the general principle of concluding individual work contracts for each artist, the work contract may be common to several artists. In that case the contract must state the name of all the artists hired and specify the amount of salary paid to each.

In this case it is stipulated that the work contract may be signed by a single artist who is a member of the group or orchestra, under the condition that the artist has received a mandate from the totality of the artists listed in the contract authorizing the artist to sign the contract for them.

The artist who signs the performance contract for the whole of the group or orchestra retains the status of employee of the entertainment organizer or promoter.

Thus, when the negotiation and conclusion of performance contracts for a group or orchestra is handled by one of the artists of the group, for example the orchestra conductor, this artist does not fall into the category of licensed artist's agent.

> NATURE OF THE ACTIVITY AND LEGAL STATUS

The activity of placing artists for monetary gain is by nature commercial ; the practice of the profession of artist's agent is therefore subject to regulations governing commercial activities (registration with the Companies Register, business premises, business assets, etc.).

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Artist's agent businesses may only be sold or transferred to persons who already hold an artist's agent license.

Like any commercial activity, the business of artist's agent may be practiced in the form of a solely or jointly-owned company, etc., with the exception of the form of a corporation or publicly traded company.

> PROFESSIONAL INCOMPATIBILITIES

In order to avoid confusion between artist's agents and companies or organizations which hire artists, the

artist's agent license is incompatible with the practice of certain professions.

Therefore, no person may obtain or hold an artist's agent license if that person exercises, directly or through an intermediary, any of the following activities :

- entertainment artist ;
- manager of an entertainment venue specially designed for public performances ;
- film producer ;
- television or radio broadcasting programmer ;
- administrator, artistic director or assistant director of a film production company ;
- manager or artistic director of a record company or any other type of sound recording company ;
- musical instrument manufacturer ;
- vendor of music or sound equipment ;
- renter of entertainment venues and equipment ;
- producer for a television or radio broadcasting company ;
- music publisher ;
- publicity agent.

Salaries of artist's agents are subject to the same incompatibilities. If the activity is exercised by a company which holds an artist's agent license, these incompatibilities also concern company managers (for example, managers of limited liability companies), as well as all associates.

These incompatibilities are thus quite broad. Nevertheless, the law of December 31, 1992 instituted a relaxation of these provisions. Agents may in fact produce live entertainment performances, under the condition that they hold a live entertainment promoter license. In this case, they may not receive commissions from artists who are involved in the performance. The same person cannot be both the employer and agent of an artist for a single principal work contract.

> CONSTRAINTS REGARDING LOCATIONS FOR HEADQUARTERS AND OFFICES

Artist's agents are prohibited from locating the headquarters of their agencies, as well as branches and auxiliary offices, in buildings or complexes occupied by the following businesses : hotels, furnished apartment rentals, restaurants, bars, traders or representatives dealing in foodstuffs, clothing or personal articles, pawnbrokers, or any of professions listed above (film producer, television or radio broadcasting company, record company, etc.).

> REGULATIONS PERTAINING TO COMPENSATION OF ARTIST'S AGENTS

The sums which agents may receive for their placement services may not exceed 10 % of the compensation received by the artist who benefited from the placement.

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Any indemnities or income in kind pertaining to travel expenses or any other professional expenses for which the artist may be reimbursed are not to be included in the sum to which the percentage is applied and shall not be paid to the agent.

Therefore, the commission which an artist's agent may receive as compensation for his services may not exceed 10 % of the artist's fee.

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This compensation is subject to the normal TVA (value added tax, or sales tax) rate of 19.6 %.

In addition to this compensation, only the expenses which the agent may have incurred while working toward the placement of the artist may be reimbursed by the artist, and only if these expenses can be justified with the corresponding documents.

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In the event that these regulations are not respected, or if the compensation is deemed excessive, the courts have the power to reduce the compensation paid to the artist's agent.

The work contract between an artist and an employer may be concluded for a lump sum, with the artist in charge of paying compensation to his or her agent. In this case the agent must give a receipt to the artist for the payment he receives as compensation (commission, etc.). In practice however, work contracts frequently distinguish between the compensation of the artist and that of the artist's agent.

PROCEDURES FOR ISSUING ARTIST'S AGENT LICENSES

> AN APPLICATION TO BE FILED WITH THE MINISTRY OF LABOR AND SOLIDARITY

Requests for licenses must be mailed by registered mail with acknowledgement of receipt to : Délégation Générale à l'Emploi et à la Formation Professionnelle (DGEFP) - Mission Marché du Travail - 7 square Max Hymans – 75741 PARIS cédex 15
Tel : +33 (0)1 44 38 28 78.

Applications must specify the location of the agency headquarters and include the following :

- name, first names, nationality, personal address and phone number of the candidate ; birth certificate ; extract from police records, bulletin #3, dated within the preceding three months ; a résumé indicating notably the profession practiced at the time of hiring ;
- a note on the conditions in which the agency exercises or will exercise its activity ; address and telephone number of the agency in activity or being established, and if necessary, the business name ;
- a list of permanent collaborators or persons who may be authorized to represent the agency for all or part of its activities at headquarters or in branch offices, indicating for each of these persons : names, first names, nationalities, dates and places of birth, personal addresses, and the positions occupied at the agency ;
- a declaration by the candidate certifying, both for himself and if necessary for each of his collaborators, agency representatives and those in charge of artist placement, that they do not directly or indirectly practice any of the professions deemed incompatible by the law.

Any application filed by a company must also include the following documents and information :

- the legal status of the company ; the date of establishment, registry with commercial court where the declaration of legal status was filed, date of publication of this declaration in a journal of legal notices ; legal and business name of the company ; company statutes ; addresses and telephone numbers of headquarters and branches ; names, first names, positions and personal addresses of associates ;
- the manager or managers of the company must provide the documents and information required for license applicants, as well as a declaration stating that they do not practice an incompatible profession. This declaration must also be filed by associates.

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The completed applications are sent by the DGEFP to the appropriate departmental authorities for labor, employment and vocational training which carry out necessary inquiries at the local level.

> PRELIMINARY OPINION BY COMMISSION

Applications are examined by a consulting commission assigned to give an opinion on the issuance, renewal or revoking of the artist's agent license.

MONITORING OF THE PROFESSION OF ARTIST'S AGENT

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- two civil servants from the Ministry of Labour ;
- two representatives from the Ministry of Cultural affairs ;
- a representative from the Ministry of the Interior ;
- a representative from the Ministry of Economy and Finance ;
- a representative from the State Secretary to the Prime Minister in charge of youth, sports and leisure ;
- a representative from the National Employment Agency ;
- eight representatives from professional organizations of artist's agents ;
- five representatives from professional organizations of entertainment artists ;
- three representatives from professional organizations of entertainment promoters.

Currently this commission meets three times per year (generally in February, June and October).

> ISSUING OF LICENSES

The artist's agent license is issued by decree from the Minister of Labor (sent by mail to the candidate and published in the *Journal officiel*) for a period of one year. The license is renewable by tacit agreement.

The decision (acceptance, refusal, or adjournment for further inquiry) is taken based on application content and commission opinion. The decision is based notably on the following criteria :

- absence of incompatible activities, including activities by intermediaries (in particular spouses) if the case arises ;
- conditions in which the profession will be practiced ; a basic knowledge of current regulations governing the entertainment profession is required ;
- the need for placement of artists in the region in question.

The waiting period between the filing of the application, on the condition that the application is complete, and the decision of acceptance or refusal is a maximum of 4 months. A lack of reply at the end of the 4-month period indicates that the license has been granted.

> INFORMATION AND PRIOR ACCORD FROM THE MINISTER OF LABOR FOR ALL MODIFICATIONS

The choice and transfer of the headquarters of an agency and the creation of branches or auxiliary offices are contingent on a prior authorization by the Minister of Labor. The request must be filed with the Minister of Labor by registered mail with acknowledgement of receipt. The request is submitted to the commission for an opinion.

Any modification of the articles of association or the composition of the executive staff of a company holding an artist's agent license must be communicated to the Minister of Labor by registered mail with acknowledgement of receipt within a one-month period.

Any hiring by an agency of an employee in charge of placement of artists must be communicated within one month by the holder of the license to the departmental director of Labor where the agency headquarters is based. This notification must be made by registered mail with acknowledgement of receipt.

> KEEPING A REGISTER OF ARTIST ENGAGEMENTS

In addition to the account books, registers and other documents which all companies are required to keep, an artist's agency must keep a register which records the following for each artist :

- name, first names and address of the artist ;
- dates of placements (dates of engagement contracts) ;
- the name (or if necessary, pseudonym) or the business name and address of employers, the nature of their artistic activities, their URSSAF registration number, and if necessary their entertainment promoter license number ;
- the agent's compensation.

This information must be kept available for consultation by work inspectors, criminal investigators and inspectors from social security organizations.