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ENTERTAINMENT & ARTS

How AB5 has instilled fear and confusion in California's arts community



Elvira Barjau, left, Joan Almedilla and Anthea Neri star in East West Players' production of "Mamma Mia!" last year directed by Snehal Desai, the company's artistic director. (Steven Lam)

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JAN. 29, 2020
8:19 AM

What does it mean to be a “fine artist”? That’s the question vexing California’s performing arts community as it begins to grapple with the state’s new gig-economy law, which went into effect Jan. 1.

Assembly Bill 5 is intended to reduce worker misclassification, making it harder for companies to treat workers as independent contractors. Signed into law in September, it establishes a test to determine if workers are employees who should receive minimum wage, paid sick days and other benefits.

For the record:

1:39 PM, Jan. 29, 2020 *An earlier version of this article referred to Californians for the Arts as a lobby group. The organization is an advocacy group.*

But the law’s ambiguous language — specifically the use of the phrase “fine artist” without actually defining the term — already had led one opera company to postpone a production, prompted other small arts organizations to consider cutting programs and sent others scrambling to raise more money to comply with the law.

Under AB5, some professions including travel agents, graphic designers and grant writers are exempt. Fine artists are included in the list of exemptions, but there is no particular exemption for performing artists and no clarification if actors, singers, dancers or musicians are considered fine artists.

That has left the performing arts community in a state of fear and confusion.

"We really have no idea how this will be enforced or how it might change over the next couple years," said Christopher Maikish, executive director of L.A.'s Celebration Theatre. "We're having a lot of internal conversations about what does compliance mean and how do we get there."

The term fine artist was intentionally undefined, said AB5's author, Assemblywoman Lorena Gonzalez (D-San Diego). Clarifying the exemption is a job that falls to the state's Employment Development Department, she said. The Times asked EDD for comment but has not received a response.



Assemblywoman Lorena Gonzalez (D-San Diego) speaks at a rally after her measure to limit when companies can label workers as independent contractors was approved by a Senate committee in July. (Rich Pedroncelli / Associated Press)

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"The administration has asked me not to do their job in how it would be defined or how it would be implemented," Gonzalez said. "We wanted to give a broader interpretation. Defining it would have narrowed it."

For the last year, the advocacy group Californians for the Arts has been working to create exemption language for arts industries and educate the legislature on the common arts employment model, which is run largely on independent contractors. "In a highly creative industry, we're really not the kind of employment models where you fit into this neat box," said Julie Baker, Californians for the Arts' executive director.

Converting an independent contractor to an employee typically increases staffing costs by 30%, said M.J. Bogatin, an attorney and board member of California Lawyers for the Arts. Those costs include insurance premiums, disability premiums, workers compensation, "a bunch of additional admin and the costs of now administering these people as employees."

Those who fail to comply with the law face fines. Under AB5, if a court finds a company or small arts organization willfully violating the law, penalties may run from \$5,000 to \$25,000 per violation.

For arts organizations staying afloat on grants and donations, both options — paying a penalty or facing a 30% increase in costs — could be devastating.

L.A. choreographer and dance curator Deborah Brockus typically pays dancers a stipend for performing in shows.

"We all would love to pay artists but we're not getting enough actual income coming in for the gigs that we do," Brockus said. "All of us are terrified and all of us are just reining everything in and trying to figure out how we can not collapse and stay legal."

A midsize dance company might pay its dancers a flat rate of \$1,000 for weeks of rehearsal time and a weekend performance. Under AB5, the company might be required to pay minimum wage for those rehearsals and performances, plus benefits, adding up to higher costs.

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L.A.'s Skylight Theatre Company already had been affected by the Actors' Equity Assn. 2015 minimum wage rule for theater companies with fewer than 100 seats, said producing artistic director Gary Grossman. The controversial rule prompted many small theater companies in L.A. to move from a stipend system to minimum hourly wage for rehearsals and performances.

With AB5, Grossman expects a 17% increase in costs for set, lighting, sound and video designers, who historically were hired as independent contractors. "We can barely succeed in what we're doing right now with the minimum wage," Grossman said, referring to the Equity change.



The cast of "Bulrushes," from left, Chauntae Pink, Bianca Lemaire, Patrick Cragin, Joshua Wolf Coleman and Heidi James, at the Skylight Theatre, which worries about the effect of AB5. (Ed Krieger)

Some in the performing arts have already begun difficult conversations about cutting costs.

According to a Californians for the Arts survey of 450 people working in the arts, 80% said AB5 will affect their ability to offer programs and 57% will have to close business or cease certain programs.

Under the guidance of its legal counsel earlier this month, Island City Opera, a Bay Area volunteer-run organization, decided to postpone indefinitely its March production of "The Wreckers." The Ethel Smyth opera was Island City's only scheduled production of 2020.

"It became clear that it seemed the law would probably apply to us and they weren't going to have an exemption for performing artists or musical artists," said Artistic Director Eileen Meredith. "We can't afford to be risky. We just need to do what we can to get through this."

AB5 is forcing a search for new donors — fast — said Snehal Desai, producing artistic director of East West Players, the L.A. company whose mission is to develop artists of color and share the Asian American experience through theater.

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The saddest thing about this bill, Desai said, are the financial stresses that emerge as companies spend more to get into compliance. "The first thing that gets cut is ancillary programs, which tend to be arts education and outreach programs to schools and students."

Some feel they are facing unintended fallout from a law aimed at massive corporations.

AB5 "was meant for companies that have resources," said East West Players general manager Jeff Cason. "We understand the idea behind it, that we want to give our workers in California an opportunity to make a living wage. But there is a vibrant gig economy that

isn't a gig economy just because we're trying to stick people, but it's a gig economy because we are truly gigging."

Gonzalez countered by saying "misclassification happens in every industry."

"There has been massive misclassification in performing arts for a very long time, and somehow we accept that because somebody loves the job that they do," she said.

"This is aimed at ensuring that all workers, no matter who they're working for, are properly classified if they are employees," Gonzalez added.

Performers should be "fairly compensated and have the same standard protections that employees in other industries have," Mary McColl, executive director of Actors' Equity, said in a statement. "Theater is an inherently dangerous profession. Why shouldn't everyone who works in theater have access to workers' compensation and unemployment insurance?"

In an effort to protect workers from exploitation, the law could damage L.A.'s performing arts community, Brockus said. "They're hitting people doing everything they can to support their artists with what they have."

As arts groups scramble for AB5 compliance, other industries have challenged the law, including freelance writers and independent truckers. Gig-economy companies Uber, Lyft and DoorDash launched a campaign against the legislation.

In the meantime, arts organizations "caught on the horns of AB5 are desperate for information on what they can and must do to abide by AB5," Bogatin said. "I think we're going to see a whole lot of community theater and smaller organizations disappear. Just like the recession in 2008 — they are being slammed."

Are you a California artist or arts organization impacted by AB5? Submit your response [here](#).

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