

GUIDE TO EMPLOYMENT ON TOUR

CONTENTS

Page	Topic
-------------	--------------

2	Introduction
3	Rates of Pay
4	Place of Residence
	Transportation
5	Travel Allowances
6	Accommodation
7	Hours of Work and Travelling Time
10	Taxation
11	Schedule A – Suitable Accommodation Guidelines

IMPORTANT DISCLAIMER:

The material contained in this publication is for general guidance only, and neither purports, nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice to take account of their own particular circumstances. Live Performance Australia (LPA) and the authors expressly disclaim all and any liability to any person in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication.

For more information on employing people on tour, please contact Live Performance Australia at info@liveperformance.com.au or on (03) 9614 1111.

1. INTRODUCTION

Employees that are working in the live performance industry will generally be covered by the Live Performance Award 2010 (the Award). However, there are a number of employers and employees that are not covered by the Award and include:

- Employers who are not constitutional corporations;
- Venues owned and operated by local governments and the employees of those venues;
- Sole traders in those States that have not referred their industrial relations powers to the Commonwealth (eg. Western Australia)
- If they have a Pty Ltd company that has been engaged to provide their services and so therefore they are a contractor and not an employee; or
- If they are a high income earner and earn over the High Income Threshold, which at 1 July 2012 is \$123,300 per year or \$2371.15 per week, then they will be award-free.

The Award applies to all other employers in the live performance industry. It provides the minimum terms and conditions of employment including minimum weekly rates of pay and travel allowances for performers, dancers, singers, musicians and production staff. Should an employer not abide by the Award, they shall be in breach of the Award and may be subject to action by an employee, a former employee, or the Fair Work Ombudsman (FWO). (NOTE: The FWO is a statutory office that operates separately from the Government and may investigate complaints or suspected contraventions of workplace laws (including the Award) and litigate to enforce workplace laws)

NOTE: Touring personnel should not be engaged as an individual under an ABN, even if they request it. This would be considered by the FWO to be “sham contracting” and may result in the person missing out on entitlements that they are owed. In any case, all personnel in the live performance industry are entitled to receive compulsory statutory superannuation contributions unless they are engaged through a Pty Ltd company.

If an employee is engaged to tour, they must be employed under a contract. Any employee that is required to travel for a production should generally be engaged as a weekly employee rather than as a casual. Template contracts are available for LPA Members on the Members-only site:

<https://members.liveperformance.com.au/login>

This Guide provides information primarily regard to employees on tour that are engaged under the **Live Performance Award 2010**.

2. RATES OF PAY

Employees are required to be paid at least minimum Award rates of pay whilst they are on tour.

Juveniles and supernumeraries are employed at the applicable full-time adult rate whilst they are on tour. A summary of these rates are provided below:

CLASSIFICATION	LEVEL	WEEKLY RATE OF PAY
Performers	Performer Category 1, Grade 1	\$770.50
	Performer Category 1, Grade 2	\$809.60
	Performer Category 2	\$809.60
	Opera Principal	\$852.10
	Supernumeraries	\$770.50
Company Dancers	Training Level	\$592.90 to \$695.40
	Level 1	\$770.50
	Level 2	\$798.40
	Level 3	\$826.00
	Level 4	\$852.10
	Level 5	\$880.80
	Level 6	\$912.80
	Level 7	\$950.80
Musicians*	Musician	\$101.19 per call, minimum of 6 calls
	Musician Required to Accompany Artists	\$106.50 per call, minimum of 6 calls
	Principal Musician	\$118.86 per call, minimum of 6 calls
	Vocalist	\$118.86 per call, minimum of 6 calls
	Conductor-Leader	\$128.94 per call, minimum of 6 calls
	* Musicians are also entitled to applicable allowances including: <i>Doubling allowance</i> <i>Upkeep allowance</i> <i>Instrumentalists playing alone</i> <i>Soloists</i> <i>Specialty entertainment</i> <i>Supply of music</i>	Check with LPA for applicable rate \$12.70 per instrument per week 17.5% additional per week 0.7% per instrument per call 66.7% additional per week \$9.18 per week
Production & Support Staff	Level 1 <i>(Induction/Training)</i>	\$606.40
	Level 2 <i>(Basic Crowd Control, Program Seller, Stage Door Attendant, Stage Hand, Usher, Ticket Seller etc.)</i>	\$659.60
	Level 3 <i>(Accounts Clerk, Assistant Scenic Artist, Booking Clerk, Marketing Assistant, Mechanist, Publicity Assistant, Stage Door Supervisor etc.)</i>	\$692.80
	Level 4 <i>(Accounts Clerk, Assistant Projectionist, Scenic Artist)</i>	\$706.10
	Level 5 <i>(ASM, Board Operator, Experienced Mechanist/Technician, Food & Beverage Manager, Head Fly Operator, Prop Maker, Tailor, Wigs)</i>	\$728.20
	Level 6 <i>(Deputy Heads of Department, Front of House Manager, Publicity/Marketing Officer)</i>	\$750.40
	Level 7 <i>(Box Office Manager, Event/Marketing Co-ordinator, Heads of Departments, Props Master, Technical Supervisor, Wardrobe Supervisor etc.)</i>	\$798.40
	Level 8 <i>(Stage Manager, Publicity/Marketing Supervisor)</i>	\$826.00
	Technical Manager	\$912.80

3. PLACE OF RESIDENCE

The contract of employment must state the employee's ordinary **place of residence**, as this will determine when travel allowances are payable. Place of residence is defined in Clause 3 of the Award as "the place where an employee ordinarily resides".

There is an onus on the employer to ensure that the place of residence of the employee has been **stated correctly** as it will affect whether **travel allowances** are payable or not. Travel allowances are payable whenever the employee is required to travel away from their place of residence. Under Clause 14.5(f)(ii) of the Award, the travel allowances will still apply where the place of residence of an employee has been incorrectly stated due to:

- The employer inducing an employee or prospective employee to misrepresent their place of residence; or
- Where the employer knows that an employee or prospective employee has misrepresented their place of residence.

If an employer advertises a job as being Sydney-based and they engage a performer that they know is Melbourne-based on the basis that the performer agrees to state Sydney as their place of residence in the contract, this potentially exposes the employer to breaching Clause 14.5(f)(ii) of the Award.

4. TRANSPORTATION

Under the Award, an employee that is required by their employer to travel away from their place of residence is to be provided with an economy class fare or equivalent to their destination or, if the employer does not provide such transport, the employee is to be reimbursed for the **actual cost** of the transport.

Employees are also to be provided with transport to and from the airport, otherwise the employee is to be reimbursed the cost of such transport to a maximum of \$38.14 as at 1 July 2012.

An employer is also required to provide to the employee or reimburse the employee for the cost of the transportation of their luggage and/or instruments as follows:

- Luggage up to a maximum weight of 40 kilograms
- Any bulky instrument required for employment
- Insurance of the employee's luggage and instrument(s) for loss, theft or damage when travelling.

5. TRAVEL ALLOWANCES (PER DIEMS)

An employee that is on tour may be eligible to receive travel allowances (also called “per diems” or “living away from home allowances” or “LAHA” although technically they are not living away from home allowances) whilst they are away from their place of residence. In order to be eligible to receive travel allowances, the employee must be travelling away from their place of residence. They will not be eligible if they are:

- Engaged to work at a single location away from their place of residence for a specific period of 12 months or more, eg. if they are contracted to perform in a production for a specific period of 12 months in Sydney. If the production closed early, as it is a specific period contract then the employer would be liable to pay out the rest of the 12 month contract.
- Engaged for a local show, ie. a show that is playing in one city only and is engaging employees from that city.

If the employee does not fall into one of these categories, then the travel allowances will apply whilst they are on tour. This includes days on which the employee is travelling from their place of residence or back to their place of residence. However, for any period of time that the employee is working on the tour but residing at their place of residence, for instance if a Melbourne-based performer is working on an Australian tour during the Melbourne leg of the tour, then no travel allowances are payable for that part of the tour.

Clause 14.5 sets out the travel allowances that apply including a **meals allowance** and an **incidentals allowance**. Both of these allowances have a daily rate with a maximum weekly cap. As of 1 July 2012, these allowances are as follows:

Meals: \$50.03 per day up to a weekly maximum of \$250.09

Incidentals: \$13.61 per day up to a weekly maximum of \$68.14

TOTAL: \$63.64 per day up to a weekly maximum of \$318.23

These allowances apply whether meals are provided to the employee or not. The only way for an employer to provide meals in lieu of paying the meals allowance would be to vary the Award under Clause 7 through an Individual Flexibility Arrangement separate from the employee’s contract of employment. If a member is considering varying the Award, they should contact LPA on (03) 9614 1111 prior to doing so.

When an employee is travelling for 5 days or more, then the **weekly maximum amounts** will apply. These are roughly equivalent to five times the daily allowances. For example, if an employee is on tour for four full weeks and three days, they are entitled to 4 x \$318.23 + 3 x 63.64. Travel allowances are usually paid at the same time as an employee’s wages. However, because travel allowances are

usually paid in advance but wages are usually paid in arrears, this may result in the employee receiving just travel allowances in the first week and just wages in the week following the conclusion of the tour.

6. ACCOMMODATION

When an employee is travelling away from their place of residence and are eligible to receive travel allowances, then they must either be provided with accommodation, paid a cash allowance in lieu or reimbursed the cost of their accommodation. This depends on **i)** whether the employer is offering to provide accommodation and **ii)** whether the employee elects to accept it.

a) Employer Provides Accommodation

Where the Employer provides accommodation to an Employee who is required to travel away from their place of residence, only the meals and incidentals allowances need to be paid:

Meals: \$50.03 per day up to a maximum of \$250.09 per week
Incidentals: \$13.61 per day up to a maximum of \$68.14 per week
TOTAL: \$63.64 per day up to a maximum of \$318.23 per week

If the employee is travelling for 4 days or less, it is cheaper to pay the daily rate.

If the employee is a performer engaged under the PCA, then the Suitable Accommodation Guidelines in **Schedule A** should be followed.

b) Employer Offers to Provide Accommodation but Employee Elects to Find Own Accommodation

If the Employer offers to provide accommodation to the Employee but the Employee wants to find their own accommodation, then in addition to the meals and incidentals allowances the Employee is also entitled to receive the cash allowance for the accommodation. Therefore, they should be paid:

Meals: \$50.03 per day up to a maximum of \$250.09 per week
Incidentals: \$13.61 per day up to a maximum of \$68.14 per week
Accommodation: \$109.88 per day up to a maximum of \$549.43 per week
TOTAL: \$173.52 per day up to a maximum of \$867.66 per week

c) Employer Does Not Offer to Provide Accommodation

If the Employer does not offer to provide accommodation to the Employee, then the Employee can be reimbursed for the cost of their accommodation up to the maximum limits prescribed in clause 14.5(c)(ii) plus meals and incidentals allowances.

Destination	Weekly amount
	\$
Sydney and Melbourne	1099.00
Adelaide, Hobart, Perth and Brisbane	776.13
Canberra	945.14
Other places	723.49

d) Shared Accommodation

An employer can also ask the employees to agree to share accommodation under Clause 14.5(c)(iii) of the Award. If agreement is made, then it must be set out in writing and the employer must retain a copy of the written agreement.

e) Accommodation Guidelines

The Award does not set out what is required when an employer provides accommodation to an employee. However, the guidelines in Schedule A provide guidance on what is standard in the industry.

7. HOURS OF WORK AND TRAVELLING TIME

a) Performers

Normal Tours

The ordinary hours of work for performers are between 9.00 am and 11.15 pm for both work and travelling. The time that performers spend travelling from one destination to another (whether it is to a different town, city, state or country) is counted as time worked, that is, the hours count towards the weekly total of 38 ordinary hours that a performer can work in each week. Performers should be provided with regular stops for comfort and refreshment, which are included in the time worked (apart from substantial meal breaks such as lunch or dinner).

Under the Award, where a performer is travelling they must be provided with a two hour break between arrival at the destination point and any rehearsal call or performance (under the PCA this break is to be four hours). However, a performer cannot be required to do any work on a day in which they are travelling to or from the following places:

- Sydney/Perth
- Brisbane/Perth
- Melbourne/Perth

If a performer is required to travel on a Sunday, Public Holiday or on a rostered day off, then they are entitled to be paid an additional 1/12th of their weekly wage.

The maximum number of performances that a performer can work in a week is as follows:

Performance Length	Maximum No. of Performances
A substantially whole time production or pantomime (ie. at least one hour in duration)	8
Up to one hour in duration	12

Penalties apply if the performers work more than this.

There should be a break of at least 45 minutes clear of dressing, undressing, making up and taking off make-up between the end of one performance and the start of another, but if the break is less than 2 hours then a meal allowance is payable (or the employer must provide a satisfactory meal). Meal breaks should be at least 1 hour in length if taken before 4.00 pm and at least 1.5 hours in length if taken after 4.00 pm.

Country Tours

If a performer is engaged for a country tour (ie. a regional tour), then they can travel between the hours of 9.00 am and 7.00 pm unless they are travelling on a day on which they will be performing or rehearsing. If they will be travelling on the same day as working then they can only travel between the hours of 9.00 am and 4.00 pm without penalties applying.

School Tours

On a school tour, the hours that a performer may travel are between 9.00 am and 11.15 pm. However, the hours that a performance may take place are different; they are to be held during **usual school hours** in the school that they are performing at and **up to one hour after such usual schools hours**, provided that the performer is not required to be at any central pick-up point more than one hour before the usual school starting time. There should not be more than one move from one school to another in a day.

The maximum number of performances that a performer can work in a week is as follows:

Performance Length	Maximum No. of Performances
Up to 1.5 hours in duration	10
Up to one hour in duration	15

Penalties apply if the performers work more than this.

There should be a break of at least 15 minutes between the end of one performance and the start of another, and a break of at least 40 minutes (clear of dressing, undressing, marking up or taking-off makeup) for lunch.

b) Musicians

The Award does not set out specific travelling provisions for musicians, but they are generally paid one call for each day of travel. The hours of work remain the same, that is, they are engaged for three hours per call and any work in excess of three hours is paid as overtime. Ordinary calls (and travel) may occur between the hours of 7.00 am and 12 midnight from Monday to Saturday, but if they are outside those hours or on a Sunday then the musician is entitled to be paid double time for those hours.

If a musician is required by an employer to travel on a Sunday, Public Holiday or a rostered day off, they are to be paid \$10.88 in addition to the one regular (not Sunday rates) call unless they are paid for working on that day.

c) Production Staff

Generally only weekly employees are taken on tour and travel, and they can work up to 38 hours a week (including travelling time). Although the Award does not set out specific travelling provisions for production staff, the hours are generally counted as time worked. They can travel and work during ordinary hours on any five days of the week (ie. Monday through to and including Sunday) from 7.00am – 12 midnight Monday – Sunday. However, any work on a Sunday (whether they are ordinary hours or not) or a Public Holiday is paid at double time with a minimum payment as for 4 hours and for any travel on a Sunday or a Public Holiday, they are entitled to an additional 1/10th of their weekly wage. If production staff work on a sixth day in the week, if it is a Sunday they are entitled to be paid double time or if it is any other day, they should be paid time and a half for the first four hours and double time thereafter.

8. TAXATION

Travel allowances in the live performance industry are specifically recognised as Travelling Allowances for taxation purposes and not as Living Away From Home Allowances. Therefore, a person or organisation paying travel allowances to an employee will not be subject to Fringe Benefits Tax.

In terms of how travel allowances should be treated for an employee's Payment Summary, the travel allowances should not appear on the Payment Summary. This is because they are not taxed as they are fully deductible on the basis that they are bone fide travel allowances. That is:

- The employee is sleeping away from their home (ie. away from their place of residence)
- The allowance covers the cost of accommodation, food or drink, or incidentals
- The travel allowance is paid for specific journeys undertaken (ie. not a fixed annual travel allowance or a travel allowance paid at a certain rate per hour for hours worked)
- The travel allowance is paid as an allowance and is not folded-in as part of normal wages
- The travel allowances is "reasonable"

When the tax payer does their Tax Return, the travel allowances are added to their income as an allowance and then fully deducted as an expense so that it has no tax effect. As the allowances paid within our industries are within the "reasonable" amounts set by the Australian Taxation Office, they do not require substantiation in the form of written evidence such as receipts.

SCHEDULE A: SUITABLE ACCOMMODATION GUIDELINES

1. The standard of accommodation should be between 3 star and 4 star.
2. Accommodation should be modern, clean and well maintained.
3. Apartments and/or hotel/motel rooms should have adjoining private bathroom and toilet facilities.
4. Facilities for accommodation should include television, local and STD telephone, AC, laundry and parking and cooking facilities.
5. Accommodation should have tea and coffee making facilities and a refrigerator.
6. Accommodation should contain adequate furniture for reasonable comfort, including writing desk and easy chair.
7. Accommodation should be within 15 kms radius of venue. It should be close to public transport and where security of employees can be assured.
8. Accommodation should be of sufficient size to allow room for preparation, warm up, etc., and in the case of musicians, consideration should be given to the capacity to practice musical instruments in the room.
9. In addition, particularly in the case of longer tours, accommodation should be of sufficient size and comfort to provide a reasonable standard of living when away from home.
10. Accommodation should be serviced.
11. Accommodation shall be quiet and, where possible, shall take into account that the employees are required to work at night and rest during the day.