

Employment Protections in the Arts and the Humanities

1. How does Federal law protect workers on arts and humanities projects?

Federal law requires organizations (grantees and subgrantees) that receive funds from the National Endowment for the Arts (NEA) or the National Endowment for the Humanities (NEH) to:

- Pay professional performers and related supporting personnel at least the prevailing minimum compensation for their professions; and
- Comply with Federal standards for workplace health and safety.¹

The Department of Labor (DOL) enforces these rules and has issued governing regulations at 29 C.F.R. Part 505. For more information on anything discussed in this factsheet, refer to the DOL regulations.

Prevailing Minimum Compensation

2. Who must pay prevailing minimum compensation?

The rules apply to any project that receives direct financial support from NEA or NEH. The grantee administering the project, including any subgrantees, must follow these rules with respect to the entire project, even if NEA or NEH is supporting only a portion of the work.²

3. Who is entitled to receive prevailing minimum compensation?

The rules apply to professional performers who work on the project and anyone whose work supports the activities of the professional performers, such as stagehands, scenery designers, technicians, electricians, and moving picture machine operators.³

4. What is prevailing minimum compensation?

Prevailing minimum compensation is the minimum amount that the employee – or others performing similar activities – generally receive for work in their profession, in the area where the project is taking place.

If the work is covered by a collective bargaining agreement that was negotiated by a labor union on the list set forth at 29 C.F.R. § 505.3(a)(1) (a “CBA”):

- The compensation that the employee would receive under the CBA is the prevailing minimum compensation.
- If the employee or the employer believes the CBA doesn’t accurately reflect the prevailing rate in the local area, they can ask DOL to make a new determination of prevailing minimum compensation.

If the work isn’t covered by a CBA:

- The employer and the employee should attempt to agree on what constitutes prevailing minimum compensation for similar activities in the local area.
- If they can’t agree, DOL will make a final determination.

5. How does an employer or employee ask the Department of Labor to decide?

Contact DOL’s Division of Government Contracts Enforcement at DGCEInquiries@dol.gov for more information.

6. Can the employee receive more than the prevailing minimum compensation?

Yes. The employer must pay at least the prevailing minimum compensation. An employer does not violate the rule if it pays more than the prevailing minimum compensation and may be required to pay more than the prevailing wage minimum compensation under a collective bargaining agreement, or state or local law.

1. 20 U.S.C. §§ 954(m), 956(g); 29 C.F.R. Part 505. Organizations receiving Federal funds for construction projects also must pay their laborers and mechanics the prevailing minimum wage. 20 U.S.C. §§ 954(n), 956(j); 29 C.F.R. Parts 3, 5.

2. 29 C.F.R. § 505.4(c).

3. *Id.* § 505.2(e).

4. Separate rules govern the compensation of these employees. 29 C.F.R. Parts 3, 5.

5. “Compensation” doesn’t include reimbursement of expenses or compensation in kind, such as free meals.

6. *Id.* § 505.2(e).

7. *Id.* § 505.3.



Workplace Health and Safety

7. What safety standards apply to arts and humanities projects?

Projects that receive funds from NEA or NEH may not take place under conditions that are unsanitary, hazardous, or dangerous to employees' health and safety.

Employers must comply with the Occupational Safety and Health Administration's standards for workplace health and safety.

If an employer complies with laws for workplace health, safety and sanitation in the state the performance is to take place, the government will deem the employer in compliance with the Federal standards for purposes of these rules, unless there is evidence of a failure to comply with any applicable safety and health standards in 29 CFR parts 1910 and 1926.⁸

Enforcement

8. How does the government enforce these rules?

NEA or NEH may not release funds for an arts or humanities project until the recipient organization provides a formal written assurance that it will comply with these rules.

Once a project is underway, DOL may investigate the project or review the employer's records to determine whether the employer is complying with these rules.⁹

9. What records must an employer keep?

An organization receiving funds from NEA or NEH must keep records that demonstrate its compliance with these rules. For each employee who is entitled to prevailing minimum compensation, the employer must keep a record of the employee's name; home address; occupation; rate of compensation (e.g., hourly rate or monthly salary), including fringe benefits; total amount of work performed; and the date and amount of each payment.

The employer must keep a record of any injury that an employee incurs in connection with the project,¹⁰ and the dates and duration of any resulting disability.

The organization must keep these records for three years following the conclusion of the project and must provide them to DOL upon request.

10. What are the penalties for violating these rules?

If DOL determines that an organization is not complying with these rules, it may direct NEA or NEH to suspend payment of funds to the organization.

DOL may also bar the organization from receiving additional NEA or NEH awards, for up to three years, if DOL determines that the violation was willful, the violation casts doubt on the employer's trustworthiness, or the employer failed to properly remedy the violation.¹³

11. What are the penalties for violating these rules?

If you suspect that an employer is violating these rules, contact DOL's Division of Government Contracts Enforcement at DGCEInquiries@dol.gov.

8. *Id.* § 505.6(a).

9. *Id.* §§ 505.4, 505.5.

10. Including employees who are not covered by the prevailing minimum compensation rule.

11. *Id.* § 505.5(b).

12. *Id.* § 505.4(a).

13. *Id.* § 505.7.

