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ARTS & CULTURE

# For Some Small Arts Groups in CA, Adhering to Labor Law Means Not Paying Artists



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By [Chloe Veltman](#) Feb 4

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Like so many small California performing arts organizations, San Jose Taiko is grappling with the new labor laws and the pandemic. *(MarkShigematsu)*

The California arts and culture sector has long relied on a freelance workforce.

The vast **majority** of the state's roughly 4,000 performing arts organizations have budgets of less than \$1.5 million.

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Used to hiring artists who work as independent contractors in exchange for program or project fees, it's been tough for these small nonprofit arts groups in particular to adapt to **AB5**, the labor law intended to give the state's workers more benefits by preventing employers from misclassifying them as contractors in order to save money.



#### ➔ Gig Economy Regulations Leave Futures Unclear for Artists

“It’s just really challenging, not just in terms of money to pay for the higher expenses of having employees versus independent contractors, but time as a resource too,” says **San Jose Taiko** Executive Director Wisa Uemura.

Nevertheless, Uemura says she welcomes the shift.

“I like the idea that we’re being held more accountable and we have to be more careful,” Uemura says.

As does circus performer Indi McCahey, executive director of **Arts Education Alliance of the Bay Area**.

“I see AB5 as having the potential to really address ongoing labor issues for teaching artists,” McCahey says. “And I personally and professionally see it as a positive shift for community arts organizations.”

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**‘If I could blink my eyes and we were able to make everybody employees with benefits and and retirement accounts, of course I would want to do that.’**

—Lisa Mallette, **City Lights Theater Company**

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But converting a contractor to an employee increases payroll costs by about 30%, according to a [new research report](#) from the [Urban Institute](#) and the [Center for Cultural Innovation](#), funded by the [William and Flora Hewlett Foundation](#).

And that's devastating for some of the state's small performing arts producers, especially since the COVID-19 pandemic has [decimated](#) their already meager bottom lines.

"If I could blink my eyes and we were able to make everybody employees with benefits and and retirement accounts, of course I would want to do that," says Lisa Mallette, executive artistic director of [City Lights Theater Company](#) in San Jose. "It's just not possible at this point for a lot of organizations of a certain size."

"Their business models run on a shoestring," says Emiko Ono, performing arts program director at the Hewlett Foundation. "And so any kind of change in their bottom line can be make it or break it for these organizations."

"It is a point of crisis," says Martha Demson, producing artistic director of [Open Fist Theatre Company](#) in Los Angeles.

When AB5 became law in January 2020, Demson says she couldn't afford to put artists she used to hire as freelancers on payroll. So instead, she made them volunteers.

"It was a very sad day when we took that decision," Demson says. "It's not something anyone relished."

Demson, who has long volunteered her own time to the company, says it was a desperate act of survival—and hopefully temporary.

"The idea that you would be an all-volunteer organization smacks of privilege," Demson says. "How many people can give their time for no compensation?"

[Brenna Sammon](#) says she certainly can't.

Sammon is an up-and-coming musical theater artist based in San Francisco.

"I perform kind of all around the Bay Area—as far as Los Altos, Napa, Marin," she says.

Sammon used to get paid as a freelance contractor for her musical theater work. But she says instead of putting the performer on payroll since AB5, potential employers have only been able to offer expenses.

“That probably won’t even cover gas,” Sammon says. “Just because of that, I wasn’t able to even audition. Financially it didn’t make sense.”

Sammon’s day job, working as an executive assistant for a head-hunting firm in San Francisco, affords her some financial stability.

But she says she knows many early-career performers who’ve had to leave California, since the small companies that once provided paid professional opportunities are now asking artists to work for expenses, or even less.

“I think it really creates a lot of inequity because there’s so many people that just can’t afford to do shows for free,” Sammon says.

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**‘There is a need to professionalize the arts in a way that people can make a real living off of it. And we’ve got to come to terms with ways in which that can be done.’**

—Lorena Gonzalez, CA State Assemblywoman

For some organizations, turning contractors into volunteers is simply unthinkable.

**Ophelia’s Jump** is a theater group located on the border between Los Angeles and San Bernardino counties that focuses on centering underrepresented voices and narratives. The company frequently hires women, LGBTQ+, BIPOC and disabled performers.

Co-founder Beatrice Casagran says asking artists to volunteer their time would undermine the company’s diversity-focused mission.

“It would be really ironic and sad if this company that has always paid artists all of a sudden had to say, ‘You know what, we’re not paying you anymore,’” Casagran says. “Because I think that message is exactly the wrong message.”

So in order to meet payroll costs, Casagran has had to drastically scale back operations, doing virtual staged readings that require very little rehearsal time during the pandemic, and planning for reduced-scale live shows once theaters can reopen, featuring a maximum of four actors and four weeks of rehearsal.

Casagran would like to see the state’s labor laws change so small companies like Ophelia’s Jump have more flexibility to produce the work they want to produce on their own terms.

“Finding something that would allow us to pay artists on a fee-based contract rather than as hourly workers would be the way to go,” Casagran says.

Pushback from parts of the creative sector has led to a more recent law—**AB2257**—that now allows some arts workers to freelance if they meet certain employment conditions.

But **Lorena Gonzalez**, the San Diego assemblywoman who authored both AB5 and AB2257, is wary of exempting more employers from compensating workers properly—especially since the companies for whom these laws were originally created, gig economy tech giants like Uber and Lyft, managed to wriggle out of having to comply with them when California voters passed **Proposition 22** last November.

“There is a need to professionalize the arts in a way that people can make a real living off of it,” Gonzalez says. “And we’ve got to come to terms with ways in which that can be done.”

Gonzalez has floated a few possible solutions, ranging from state funding to help small arts groups comply with labor laws (though that idea went by the wayside early last year after the pandemic changed state funding priorities) to creating cooperatives to enable them to share the cost of workers comp.

But a more fundamental shift is needed to solve the equity issues that have long kept careers in the creative industries out of reach for those who can’t afford to work for very little or, in some cases, for free.

“AB5 and AB2257 are looking to solve the misclassification issue, and we know that even if folks are properly classified in the arts community as employees, that still is going to leave a good balance who are genuinely independent arts workers,” says the Hewlett Foundation’s Ono. She points out that protections that should apply to all working people still flow through employers. “Now that work is changing, those protections aren’t flowing to independent workers because of how the system was set up a long, long time ago.”

If nothing else, the unintended consequences of AB5 and AB2257 on small performing arts organizations, together with the outcome of Prop 22, have shone a light on this deep-seated, systemic problem.

“California is the world’s fifth-largest economy. So the fact that we can’t do better for our workers and our artists and creative communities is disappointing,” says teaching artist McCasey. “We need a bigger public campaign about what we value.”