



Prior to entering any kind of apprenticeship, artists and students alike must prepare themselves for the on-site training experience. Successful apprenticeships rely on both parties' compliance with federal regulations and performance guidelines. They also depend on each party understanding the investment of time and resources required to foster creative growth. The following information will help orient both artists and students to the respective roles and responsibilities of a trade apprenticeship.

### Preparing for an Apprentice

Whether the artist creates on a commission basis, operates a small production facility or manages a studio/retail gallery, there are basic considerations for taking on an apprentice. Two steps – site preparation and business readiness – are essential before entering a contract/agreement with an apprentice. The decisions made during this phase can have a significant financial impact on, as well as legal/liability implications for, the artist.

If a third party (educational institution, non-profit organization or other independent agency) is coordinating or financing any or all of the apprenticeship program, be certain to define and understand their respective liability, policies and procedures. This advance education will ensure that the artist does not have any unexpected legal or financial surprises, or liabilities.

#### 1. Studio Preparation

One of the most important aspects of preparing for an apprentice is determining where the student will work. If the artist has a studio:

- Is there a dedicated space – either a workstation or area – for the apprentice?
- Is the studio stocked with sufficient supplies for the apprentice to use?
- Is the studio compliant with all US Department of Labor's Occupational Safety & Health Administration (OSHA) standards, including but not limited to:
  - Protective equipment
  - Emergency evacuation procedures, emergency exit and fire safety
  - Plan for responding to job-related injury or illness
  - Respiratory protection

Safety and health conditions of the workplace in most industries are administered and enforced by the **Occupational & Safety Act of 1970**, through the US Department of Labor (DOL). Although the self-employed are exempt from these regulations, employers subject to the Act have a general duty to provide work and a workplace free from recognized, serious hazards (*See Appendix: New Business Factsheet*).

The **Fair Labor Standards Act** (FLSA) contains rules concerning the employment of young workers, specifically



those under the age of 18, and is administered and enforced by DOL's Employment Standards Administration's Wage and Hour Division. Intended to protect the health and well-being of youth in America, the FLSA contains minimum age restrictions for employment, restrictions on the times of day youth may work, and the jobs they may perform.

The DOL's Office of Workers' Compensation Programs administers four major disability compensation programs which provide wage replacement benefits, medical treatment, vocational rehabilitation and other benefits to certain workers or their dependents who experience work-related injury or occupational disease. For help in determining which safety and health standards apply to particular employment situations, visit [www.dol.gov](http://www.dol.gov) and [www.osha.gov](http://www.osha.gov).

### ***Creating the Specific Training Program***

Once an artist determines the content for instruction, it is important to determine how the information will be delivered. Here is a sampling of methods for consideration:

- Will the student have a workbook with daily or weekly exercises?
- Will knowledge typically be shared while the artist is doing daily tasks or will specific times be set aside for instruction and discussion?
- Does the artist teach best through conversations or lectures?
- Is all instruction strictly a “learn by doing” method alongside the artist?
- Will the artist offer specific projects to the apprentice as an independent way to learn, with oversight and evaluation provided at key intervals?
- Will the artist schedule attendance at professional development or trade events to complement the on-site training? If so, who will pay for this?

### ***On-site Experience***

One of the key reasons students want apprenticeships is the ability to get into the work. “Learning by doing” is the advantage apprenticeships have over other types of classroom and academic instruction. In order to provide the most benefit to the student, the artist has to determine how this on-site experience will be delivered. For example,

- How much studio time will the apprentice have each week?
- Will the artist make additional studio time available for the apprentice to create his or her own objects? If so, will the artist offer a barter agreement or a reduced hourly fee for studio time?
- Will apprentice-made items be included as part of the artist's own inventory?
- Will the apprentices have the opportunity to create and market his/her line?



- Will a system be implemented for recognizing student work or contribution, separate from the artist's work?
- What tasks will the apprentice be expected to do in exchange for studio time?

Once the artist determines the content and style of learning, plus the philosophical and practical considerations for studio time, a detailed work plan can be developed for the apprenticeship. Information in this work plan includes, but is not limited to,

- Explanation of weekly duties, assignments, responsibilities. This information is further defined and detailed in the contract between artist and student (*See Section E*).
- Exercises or training materials for independent study, review. Suggested topics include owning and operating a business, how to market handmade objects to customers and businesses, e-commerce, tax and legal considerations, and other practical applications.
- Research about the craft industry, trends and resources for additional information (*See Appendix A*).

These considerations are important to establish the terms, conditions and benefits of an apprenticeship.

### Compensating your Apprentice? Know IRS Classifications

- An **independent contractor** is someone that you, the payer, have the right to control or direct only the result of the work they do, and not the means and methods of accomplishing the result. For tax purposes, you file a 1099-MISC (Miscellaneous Income) if compensation is more than \$600 annually.
- A **common-law employee** is anyone who performs services for you if you can control what will be done and how it will be done. This is applicable even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. A general rule is that anyone who performs services for you is your employee **if you can control what will be done and how it will be done**.
- If workers are independent contractors under the common law rules, such workers may nevertheless be treated as employees by statute (**statutory employees**) for certain employment tax purposes if they fall within any one of four categories and meet the three conditions described under Social Security and Medicare taxes, including an individual who works at home on materials or goods that you supply and that must be returned to you or to a person you name, if you also furnish specifications for the work to be done (*See C-5: Employee vs Independent Contractor*).



## 2. Business Readiness

Artists must understand and address the administrative ramifications of having an apprentice before seeking out or contracting with a student. An additional staff person that may or not be paid, yet uses studio equipment and facilities, presents a host of legal and fiscal responsibilities. Take time to sit down with an accountant, lawyer, insurance agent and tax advisor prior to soliciting a student apprentice. There are specific and unique circumstances that may determine how viable an apprenticeship is for an artist.

### *Legal Compliance*

Intellectual property is a hot issue for artists. Clearly stating who owns the creative process is important from the start. It is also important to spell out confidentiality, conflict of interest, and ethical conduct as part of the agreement. Key policy issues include:

- Ownership of designs and creative application, content
- Product licensing
- Compensation for work

Many of the legal issues can be addressed in the contract between apprentice and artist (*See Section E*).

### *Insurance and Liability*

Depending on the studio space and how the artist's business is currently insured, key changes may need to be made. For example,

- If a student is going to use mechanical or heavy equipment, does the business need to expand its coverage for liability and job-related injuries?
- If room and board is provided, what acts are covered under current policies?
- Will workman's compensation be provided for on-premise accidents?
- If the apprentice travels to trade shows or events, do current policies cover any medical or business-related injury or accident?
- If a student uses the artist's vehicle for business travel or deliveries, does coverage need to include an additional age-specific driver?
- Is additional insurance needed to cover spillage, breakage and other related product/material costs due to having extra people working in the studio/business?
- Is a "hold harmless" clause required to protect the artist from any business or personal litigation, liability?



### Employee Vs. Independent Contractors

To determine whether an individual is an employee or independent contractor under the common law, the relationship of the worker and the business must be examined. All evidence of control and independence must be considered. In an employee-independent contractor determination, all information that provides evidence of the degree of control and independence must be considered. Facts that provide this evidence fall into three categories:

*Behavioral Control* covers facts that show whether the business has a right to direct or control how the work is done through instructions, training, or other means.

*Financial Control* covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job. This includes:

- The extent to which the worker has unreimbursed business expenses,
- The extent of the worker's investment in the facilities used in performing services,
- The extent to which the worker makes his or her services available to the relevant market,
- How the business pays the worker, and
- The extent to which the worker can realize a profit or incur a loss.

*Type of Relationship* covers facts that show how the parties perceive their relationship. This includes:

- Written contracts describing the relationship the parties intended to create,
- The extent to which the worker is available to perform services for other, similar businesses,
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay,
- The permanency of the relationship, and
- The extent to which services performed by the worker is a key aspect of the regular business of the company.

It is critical that the artist/employer correctly determine whether the individuals providing services are employees or independent contractors. Generally, income taxes must be withheld and Social Security, Medicare, and unemployment taxes must be paid for an employee. In contrast, independent contractors are responsible for paying such taxes on their own. **Caution: If you incorrectly classify an employee as an independent contractor, you can be held liable for employment taxes for that worker, plus a penalty. See Internal Revenue Code section 3509 for additional information ([www.irs.gov](http://www.irs.gov)) and Tax Topic 762 for Basic Information on Independent Contractor vs. Employee.**

Address specific tax and legal issues, and other stipulations as warranted to protect both artist and apprentice, in the contract agreement (See Section E).



## *Tax Implications*

Perhaps the most costly decision for an artist is how the Internal Revenue Service (IRS) defines the apprentice. Traditionally, three compensation scenarios exist with apprenticeships:

- 1) If the apprentice agrees to a barter, with training and studio time in lieu of wages for a defined set of time, performance duties;
- 2) If the apprentice is paid a reduced wage for services, in exchange for training, expertise;
- 3) If the apprentice is paid by a third party (through a grant, stipend, etc.).

The tax implications to the artist depend on whether the apprentice is compensated **DIRECTLY** for any services. Discuss with your tax advisor or accountant regarding state and federal guidelines for other situations which may impact the financial reporting of apprenticeships, such as:

- If the apprentice is accepting stipend or **barter** in lieu of compensation, consult with an accountant to determine tax implications regarding fair-market value for training and in-kind services and expenses related to having this apprentice.
- If the apprentice is accepting training or a stipend in lieu of full compensation, yet will **produce goods for commercial sale or profit** to artist, determine how these transactions will be reported, and if any monetary payment is due the apprentice.
- If the apprentice is provided **housing** as a benefit, in addition to wages or stipend, determine the fair market value for this service and how it needs to be reported to the IRS.
- If the apprentice is paid by **a third party**, the artist should make sure that the compensation is clearly defined and that the artist is not liable in any way for taxable income or benefits.
- If the **artist is compensated** in teaching the apprentice, be sure the performance duties, length of service, measurement procedures and payment procedures are clearly defined in advance of the apprenticeship. Define how the third-party will report this compensation to the IRS. A contract between the artist and third party is recommended.
- If the artist is to **reimburse expenses** directly to apprentice, submit the guidelines and forms for acceptable expenses, submission and payment of expenses.

Define the specific business relationship between artist and apprentice – such as hours, benefits, compensation, deliverables/outcomes, evaluation and grounds for termination by either party – prior to entering any contract for services (*See Section E for sample contracts*).