

Harsh Reality

Working Conditions for Reality TV Writers

2007 WGA Report on Standards in Reality Television



EXECUTIVE SUMMARY

The entertainment industry is a vital sector of Southern California's economy. Based on jobs, it is the third largest industry in Los Angeles County.¹ Reality television is a rapidly expanding segment of the entertainment industry that constitutes almost half of local television production. The Writers Guild of America, West, commissioned Goodwin Simon Victoria Research, an independent research firm, to conduct a study of working conditions for reality television writers. The results show that almost all reality television writers are classified as exempt employees who overwhelmingly work long hours and receive no overtime pay, health insurance, or other benefits.

The study found that most reality writers do not meet the salary or job duties requirements to be classified as exempt, salaried employees and should be classified as nonexempt, hourly employees entitled to overtime pay. The misclassification of reality writers as exempt employees and the failure to pay overtime indicates that the entertainment industry may be in violation of wage and hour law, with a potential *annual* industry-wide liability of at least \$30 million. In California, an employee can file a wage claim with the Department of Labor Standards Enforcement (DLSE) to collect unpaid overtime from employers under a 3 year statute. In the case of reality writers the survey results indicate that the total overtime liability for employers could reach almost \$100 million. Such liability is likely to be the shared responsibility of multiple entities—production companies, networks and payroll companies—which may be deemed to be “joint employers” under applicable wage and hour standards. Indeed, the California Labor Commissioner recently announced that, as a matter of enforcement policy, the agency assumes that production and payroll companies are joint employers for the purpose of assessing liability for unpaid overtime.

KEY FINDINGS

WORKING HOURS

- 91% of reality TV writers receive no overtime pay.
- 88% of reality TV writers work more than 40 hours a week.
 - On average, reality TV writers on a broadcast network (ABC, CBS, CW, FOX, NBC) show work 60 hours per week.
 - Reality TV writers on a cable show work an average of 55 hours per week.

BENEFITS

- 86% of reality writers were not offered health insurance by their employer.
- 18% of respondents currently have no health insurance.
- Very few reality writers are offered any retirement benefits. Only 5% were offered a 401(k) and only 1% were offered a pension.

MEAL BREAKS

- 73% of respondents work through their meal break at least once a week.
- Only 43% of reality writers *always* receive a meal break of at least 30 minutes.

TIMECARDS

- 86% of reality writers fill out a timecard but 59% say that their timecard is *never* an accurate reflection of the hours they worked.
- 65% of reality writers handing in timecards say they have been asked to turn in a card that just says “worked.”
- 57% reported that they have been asked to turn timecards in early.

WAGE AND HOUR VIOLATIONS

- Reality TV production companies as well as networks and payroll companies who could be deemed joint employers may be facing significant wage and hour liability due to their:
 - Failure to pay overtime
 - Failure to provide meal periods
 - Failure to ensure accurate record keeping

INTRODUCTION

Reality television is a rapidly growing sector of the entertainment industry, as is evident by the broadcast network primetime lineup, which for the first time this year features as much reality-type programming as traditional scripted programs.² Reality programming is also a staple in the cable television world, with multiple channels devoted to the genre. According to Film LA, the Los Angeles permitting agency for film and television production, reality television production has grown to 46 percent of all Los Angeles-area TV production.³ Many reality programs are incredibly popular and have created tremendous wealth for the networks that broadcast them. During the 2006-2007 television season, nine of the top 15 hours of network primetime programming were reality programs.⁴ Michael Nathanson, a media analyst at Sanford C. Bernstein, estimates that *American Idol* brings in about \$200 million in profits for Fox.⁵

While reality television shows have quickly become popular with viewers and profitable for the networks, the writers who make these programs possible have not shared in the success. Currently, most reality television programs are written without the protections and benefits of a union contract. As a result, these writers work long hours without health and pension benefits or minimum salary protections or residuals.

In order to get an accurate picture of the labor conditions in reality TV, the Writers Guild of America, West (WGAW) commissioned Goodwin Simon Victoria Research, an independent survey firm, to conduct a study of working conditions among reality writers. This White Paper reveals the findings of this independent study. It begins with a description of the methodology of the study, followed by an overview of the reality TV writing workforce. The report then examines the hours, benefits, and working conditions of reality writers.

The results show that production companies and payroll services improperly classify most reality TV writers as exempt employees, i.e. as salaried workers who are exempt from the overtime provisions of wage and hour laws. In fact, based on careful analysis of the nature of their work, the data reveals that these writers should be classified as nonexempt employees subject to state and federal overtime requirements. The result is that reality TV writers overwhelmingly work long hours and receive no overtime pay, health insurance, or other benefits. They are not ensured proper meal breaks and accurate records of their hours of work are not maintained. These findings suggest that the companies acting as employers in reality television may be facing significant exposure to wage and hour liability.

Finally, the White Paper makes several critical recommendations for how the entertainment industry could improve working conditions for reality TV writers.

METHODOLOGY

The WGAW asked Goodwin Simon Victoria Research to conduct an online survey of reality TV writers to assess their working conditions.

The sample for this survey was drawn from a list provided by the WGAW that includes writer contacts from reality television programs over the past three years. Email invitations were sent out to more than 1,200 reality writers. Respondents were administered the survey if they confirmed in a screening question that they had worked on a reality television production in the preceding year, since August 1, 2006. One hundred thirty-four respondents, or 11 percent, did not qualify based on this criterion. Three hundred-three respondents who did qualify completed the survey for a 36 percent response rate.

BASIC FACTS ABOUT REALITY TV WRITING

- In reality television, hundreds of hours of footage are shot for a single episode. The resulting story is similar in its narrative structure to an episode of scripted television. Reality TV programs have a beginning, middle and end, complete with character arcs, plots, conflict and resolution. The difference between shows like *Desperate Housewives* and *Survivor* is how the source material is generated. Reality writers don't script each line for a professional actor to speak. Instead, these writers must use existing footage to work backwards from the ending in the most interesting way possible.
- Only 3% of reality writers are actually given the job title of "writer." Other job titles include story producer, story editor, segment producer, field producer and a host of other titles.
- 69% of reality writers create storylines or outlines based on previously shot footage. 55% create "paper cuts," which consist of written outlines for a reality TV episode. 54% write material for a host to read or for characters to read as a voiceover. Other job duties include devising the concept or structure for a show and creating scenarios, games and tasks for a program.
- Reality TV writers spend an average of 18 weeks working on a particular production. They average 32 weeks of employment in reality TV annually.
- 70% of reality writers work on productions for cable networks, while almost 30% work for one of the five broadcast networks (ABC, CBS, CW, FOX, NBC).
- Almost 70% of reality writers are under the age of 40. The median age for reality television writers is 36. 82% are white, and 56% are male.

EXEMPT VERSUS NON-EXEMPT EMPLOYEES

One of the major issues assessed by the independent study concerns overtime pay. Are reality TV writers eligible for such pay, or are they exempt from this requirement? And if they are not exempt, are they receiving it according to the law?

APPLICABLE LAW

Most reality TV writers would be considered California employees. Ninety-three percent of respondents worked for a production company located in California and 98 percent of these writers have their permanent home in California. Overtime obligations of California employers are governed by both federal and state law. The two bodies of law overlap but are different in important respects. The federal statute, the Fair Labor Standards Act, provides that nonexempt employees must be paid overtime (normally 1½ times the “regular rate” of pay) for all hours worked in excess of 40 in a week. State regulation comes from two sources: the Labor Code and the Wage Orders issued by the Industrial Welfare Commission. The regulation governing the television industry is Wage Order 11. State law provides for the payment of both weekly overtime (for all hours worked in excess of 40 in a week) and daily overtime (for all hours worked in excess of eight during any workday).

IS THE EMPLOYEE EXEMPT?

Overtime requirements only apply to employees, and not to individuals properly classified as independent contractors. Moreover, both state and federal law exempt certain employees from overtime requirements. Although state and federal exemptions are different in certain respects, both require that, to be exempt, the employee must meet two tests: the *salary test* and the *duties test*. Employees must be paid overtime unless they meet both tests. The legal burden of establishing exempt status lies with the employer.

Salary test: An employee must be paid a salary (usually weekly or monthly), which he or she receives regardless of the number of hours actually worked. In general, this means that the employee must be paid a salary for the entire week if she or he performs any services during the week, and may not be docked for short-term absences (such as sick days or other short leaves of absence) unless the company has a bona fide paid leave policy.

Duties test: There are three so-called “white collar” exemptions: executive, administrative and professional. With respect to writers engaged in the production of reality TV, the claim of exemption could fall under the administrative or professional exemption. There are several court decisions, most notably *Nordquist v. McGraw-Hill Broadcasting*, 32 Cal. App.4th 555 (1995), that discuss the standards for applying this test to television writers. The key consideration is whether the writer exercises “discretion and independent judgment” with respect to the creative content of the material, or is required to produce program segments according to predetermined structures and formats.

Although many workers in the entertainment industry would consider themselves creative, the work of reality writers may not meet the legal requirements necessary to be classified as exempt. The state agency that administers the statute notes in its compliance manual that “a few writers employed in the motion picture or broadcast industries have sufficient discretionary powers to be exempt, but most do not.”

APPLICATION OF TESTS TO REALITY WRITERS

Reality TV producers have chosen to classify almost all writers as exempt employees who are not paid overtime. To establish whether misclassification is occurring, the survey asked several questions to determine if the terms of employment met the exemption requirements of the salary test and the job duties test.

To apply the salary test, the survey asked if pay was withheld if the writer missed a day of work or part of a day of work. Forty-nine percent of respondents indicated that, if they missed a day of work, pay was withheld. In order to be considered an exempt employee, a writer must be paid a fixed weekly rate. In most cases the withholding of pay for missed work days violates the salary test, indicating that these employees should be considered nonexempt and entitled to overtime pay.

To apply the duties test, questions were asked about the level of creative judgment and discretion in making creative choices. Fifty-one percent of respondents indicated that they exercised little or no independent creative judgment over the format or story structure of an episode. Eighty-five percent of respondents said that they did not always have discretion in making completely independent creative choices, free from direct supervision.

Applying the salary and duties tests together, the survey found that 95 percent of respondents should be classified as non-exempt and paid on an hourly basis with overtime pay.

WORKING CONDITIONS IN REALITY TELEVISION

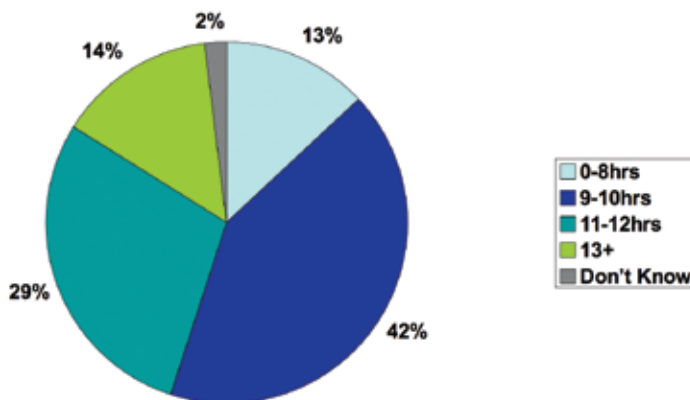
The independent study found that writing jobs in reality television are characterized by long hours, almost no benefits, inconsistent meal breaks and inaccurate record-keeping.

HOURS

Almost all reality television writers work overtime without receiving any additional compensation. Eighty-five percent of reality

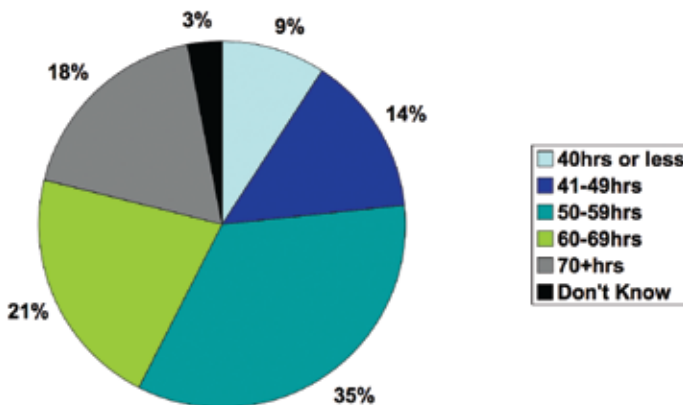
TV writers work more than eight hours per day. Chart I illustrates the average number of hours worked per day by the 95 percent of respondents deemed nonexempt employees. Forty-three percent report working 9 to 10 hours per day while 29 percent work 11 to 12 hours per day. On average, reality writers work 11 hours per day. Sixty-nine percent reported working overtime every day. An additional 19 percent reported working more than eight hours per day at least once a week.

CHART I: HOURS OF WORK PER DAY



Eighty-eight percent of reality writers work more than 40 hours per week. Most reality writers work between 50 to 70 hours per week. The average number of hours worked per week is 56 hours. Chart II illustrates the weekly working hours for reality writers who should be entitled to overtime pay. Seventy-six percent of writers work more than 40 hours per week every week. An additional 13 percent work more than 40 hours a few times a month.

CHART II: HOURS OF WORK PER WEEK



The survey found that reality writers working on television shows for the broadcast networks (ABC, CBS, CW, FOX, and NBC) work longer hours than their cable counterparts. On average reality writers on the broadcast networks work 60 hours per week, compared to cable writers who work 55 hours per week.

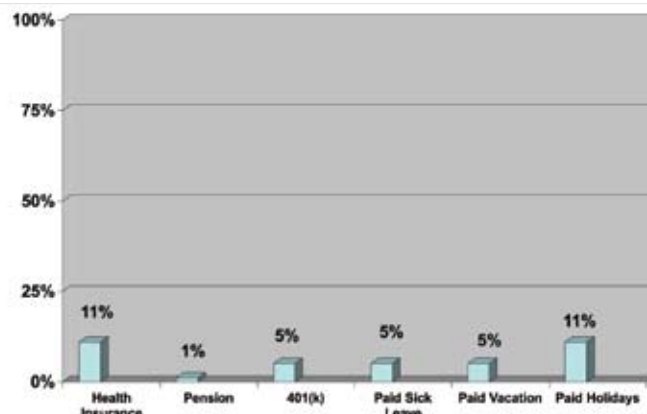
Reality TV writers also find themselves working more than 5 days per week. Seventy-seven percent of writers have worked 6 days per week on their job. Forty-six percent reported working 7 days per week on their reality TV job.

It is clear that reality TV writers are consistently working overtime, on a daily and weekly basis. Despite these long hours, 91 percent do not receive any overtime pay. Only 1 percent of respondents indicated that they received overtime pay after 8 hours of work.

BENEFITS

Although reality writers work long hours for their employers, they are offered few benefits. Entertainment industry employees who work under a union contract are guaranteed pension and health contributions by their employers. Because almost all reality television writing is not covered by a union contract, workers must negotiate coverage for themselves. The result is that 86 percent of reality writers were not offered health insurance by their employers. Only 11 percent of respondents were offered health insurance through their employers. Almost all reality TV writers must pay out of pocket or go without health insurance. Eighteen percent of respondents are currently without health insurance. For those who do have health insurance, they pay on average \$228 per month for individual coverage or \$374 per month for coverage for themselves and members of their family.

CHART III: REALITY TELEVISION BENEFITS



Only 1 percent reported being offered a pension and only 5 percent were offered a 401(k) through their employers. Cable writers are a little more likely to be offered a 401(k) than network reality writers. Seven percent of cable reality writers were offered a 401(k) compared to only 1 percent of network reality writers.

Only a very small percentage of writers have any formal paid leave in their jobs in reality TV. Eleven percent of writers say they receive paid holidays, but just 5 percent receive paid sick leave or paid vacation.

MEAL PERIODS

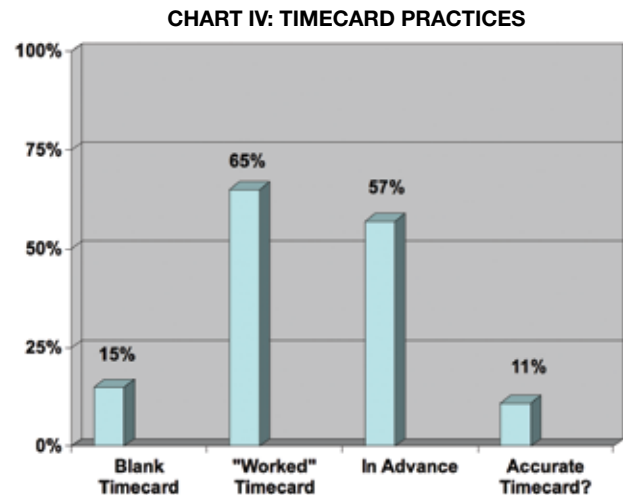
The independent study also found that reality television writers often do not receive their meal breaks. Seventy-three percent of reality writers work through their meal breaks at least once a week and only 43 percent always receive a meal break of at least 30 minutes.

Writers working on a reality television productions for the broadcast networks are less likely to get meal breaks than those in cable. Forty-two percent of network reality writers never, rarely or only occasionally receive meal breaks, in contrast to 25 percent in cable. Only 33 percent of network reality writers always receive a meal break, compared to 46 percent of cable writers. This trend also applies to the practice of working through a meal: Seventy-six percent of writers in broadcast always or several times a week work through their meal; 61 percent of writers in cable do.

TIMECARDS

The independent study found that record-keeping violations are rampant. Although 86 percent of reality writers fill out a time card, 59 percent say that their timecards are never accurate reflections of the hours they worked. Just 11 percent say they are always accurate. These numbers are even higher among writers who are working the most hours: 77 percent of those working over 55 hours a week and 74 percent of those working over 11 hours a day say their timecards are never accurate.

Chart IV illustrates the problems with timecard practices. Overall, 65 percent of those handing in timecards say they have been asked to turn in a card that just says “worked,” 57 percent say they have been asked to turn them in early, and 15 percent have been asked to turn in a blank timecard. These practices clearly illustrate the failure of production and payroll companies to abide by their legal obligation to keep accurate records.



VIOLATIONS OF WAGE AND HOUR LAW

The findings of the independent study reveal that reality production companies may be committing multiple violations of wage and hour law based on the pervasive employment practices that include:

- Failure to pay overtime
- Failure to provide meal breaks
- Failure to keep accurate records

OVERTIME

Almost all reality writers work overtime on a regular basis and almost none receives any overtime compensation for this work. This highlights the widespread nature of the overtime violations. Television networks and production companies have made reality TV profitable at the expense of the employees who craft the stories for these programs.

The survey found that reality writers, on average, work 16 hours of unpaid overtime per week. According to California law, “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

The survey found that the average pay range for reality writers was \$2,000 to \$2,500 per week. Based on an average weekly rate of \$2,000, writers are losing \$1,200 per week in overtime pay. If the average writer works 32 weeks per year, he or she loses \$38,400 in overtime pay, annually. The survey was sent to approximately 1,200 reality TV writers. The study revealed that 11 percent had not worked on a reality television production in the last year, indicating that the annual reality television workforce is at least 1,000 employees. As the data indicates that approximately 95 percent of these writers should receive overtime pay, lost wages for these employees could create an annual industry-wide liability of well over \$30 million. California law allows workers to seek overtime pay for up to three years, which indicates that total liability could be close to \$100 million.

MEAL BREAKS

Employers also have a responsibility to ensure that nonexempt employees are provided a meal break of no less than 30

minutes for each 6 hours of work. The survey found that less than half of the reality TV writers are afforded this benefit. When an employer fails to provide a meal break, an employee is entitled to an hour of pay as a penalty on the employer for the lack of meal period. Additionally, the California Labor Code provides civil penalties of \$50 per initial violation for each underpaid employee, and \$100 per subsequent violation for each underpaid employee.

TIMECARDS

The California Labor Code requires employers to keep payroll records showing the daily hours worked by and wages paid to employees. Failure to keep such records is a misdemeanor. Employers are also required to keep records showing each employee's pay rates, wages, and daily work schedules; and the total hours worked during each payroll period by each employee. The timecard practices exposed by the survey indicate that employers are not keeping accurate records, in potential violation of the law. Sixty-five percent of writers reported handing in a timecard that just says "worked." Employers who do not keep accurate records can be penalized. The Labor Code provides that an employer who willfully fails to maintain these records shall be subject to a civil penalty of \$500.

WHO IS LIABLE?

The employer is liable. According to both state and federal law, an employer is:

"Any person... who directly or indirectly, or through an agent or any other person, *employs or exercises control over* the wages, hours or working conditions of any person."

Under this definition, multiple companies, acting as joint employers, may be liable for overtime violations. This includes not only the production companies that directly employ reality writers, but also the broadcast and cable networks that set the terms under which those production companies must ultimately work, and the payroll companies that process the timecards and checks. A recent decision of the California Labor Commissioner announced that it is the official enforcement policy of the agency that production and payroll companies are joint employers for the purpose of wage and hour laws.

RECOMMENDATIONS

This White Paper paints a disturbing picture of the working conditions of reality television writers—a picture characterized by long hours, no benefits and nearly universal non-payment of overtime. The blanket classification of reality writers as exempt employees and the failure to pay overtime appear to be at odds with the requirement of both state and federal wage and hour laws. As a result, the companies involved in reality TV production - a group that includes production companies, payroll companies and the networks that determine production budgets - could be facing significant liabilities based on these employment practices. Reality TV production companies must change their practices in order to comply with the law.

1. PROPERLY CLASSIFY EMPLOYEES AND PROVIDE OVERTIME PAY

Most reality TV writers are currently classified as exempt employees despite the fact that their positions fail to meet the salary and duties tests. These employees should be properly classified as nonexempt employees who are paid on an hourly basis and receive overtime pay for the long hours they work.

2. ENSURE MEAL PERIODS ARE PROVIDED

Reality writers often work through their lunch or are unable to take a full 30 minute meal break. Employers must provide a 30-minute meal period for every six hours worked or provide an hour of penalty pay if the employee is unable to take the break.

3. KEEP ACCURATE RECORDS

Reality TV employers must instruct employees to accurately fill out their timecards with the actual hours worked in a week. While the practices of simply writing "worked" or handing in a blank timecard disguises the extent of overtime worked, it also exposes the employer to liability for not having kept accurate records.

¹"Film Industry Profile of California/Los Angeles County," Los Angeles County Economic Development Corp., November 29, 2005.

²Ben Block, Alex, "Primetime Reality Shows Exceed Scripted Fare for First Time," Hollywood Today, August 6, 2007.

³"L.A. On-Location Production Surges In Second Quarter as Industry Preps for Contract Talks," Film L.A. Press Release, July 31, 2007.

⁴"2006-2007 Primetime Wrap Up: Series Programming Results," The Hollywood Reporter, May 25, 2007.

⁵Steinberg, Bryan, "Is ABC's 'Stars' the Next 'Idol'?" Broad Sponsorships by AT&T, Macy's Reinforce Power of Reality Shows," Advertising Age, September 27, 2007.