



ABOVE THE LINE ARGUMENTS

Markup is designated as compensation to cover a production company's overhead as well as profit. Denying markup is insinuating that there are neither overhead costs that are incurred by the production company, nor profit that is earned by assuming the obligation and risks involved with the job. There are three areas that advertiser's representatives (agencies and cost controllers) have keyed on as not worthy of markup, with the consequent conclusion that compensation is not due. These are the explanations of why this thinking is unfounded.

Pension and Welfare

Obligation- As a signatory to all crew collective bargaining agreements, the production company (as the employer) is obligated to make payment to the employee within the timelines of the various state labor codes. You are also obligated to make sure that all fringes are calculated correctly and made to the appropriate plans.

Risk- If payment is not made within the time limits of state labor code (usually 2 weeks), companies as employers are exposed to fines and class action suits; this is without any regard to whether or not the production company has received payment from the agency. The company is also exposed to audits by a multitude of plans that are obligated by ERISA to do regular audits of employers' books. Most plans may conduct an audit for up to 5 years, require extensive preparation and assistance in conducting the audit, and also oblige the company to maintain all pertinent records.

Travel

Obligation- The production company is required to make sure that all members of the crew arrive at the location of the shoot at the appropriate time no matter where their home location is. They need to make sure that the crew arrives in a timely manner, and has accommodations that are in keeping with the requirements of various collective bargaining agreements.

Risk- In the case of overtime or extended shoots, adjustments may have to be made for all members of the cast and crew. The production company often commits to a firm cost for travel despite the fact that airfare rates change constantly and travel arrangements for crew must adhere to various union regulations dealing with travel and rest periods.

Casting

Obligation- The production company has to set up, distribute tapes, coordinate shipping to multiple and changing locations of director, agency and client, as well as deal with spec changes, conflicts, and talent schedule issues. The company also needs to abide by the rules of collective bargaining agreements that production companies are not signatory to.

Risk -Unknown at bidding time: quantity and type of tapes and Polaroids required, shipping costs, overtime. Yet firm price is submitted. Most agency contracts make production company liable for any issues arising out of violations of union contracts which employ agency employees (SAG/AFTRA).