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Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

LAWS OF NEW YORK

GENERAL BUSINESS

ARTICLE 11 – EMPLOYMENT AGENCIES

§ 170. Application of article. This article shall apply to all employment agencies in the state.

§ 171. Definitions. Whenever used in this article:

1. "Commissioner" means the industrial commissioner of the state of New York, except that in the application of this article to the city of New York the term "commissioner" means the commissioner of consumer affairs of such city.

2. a. "Employment agency" means any person (as hereinafter defined) who, for a fee, procures or attempts to procure:

(1) employment or engagements for persons seeking employment or engagements, or

(2) employees for employers seeking the services of employees.

b. "Employment agency" shall include any person engaged in the practice of law who regularly and as part of a pattern of conduct, directly or indirectly, recruits, supplies, or attempts or offers to recruit or supply, an employee who resides outside the continental United States (as defined in section one hundred eighty-four-a of this article) for employment in this state and who receives a fee in connection with the arrangement for the admission into this country of such workers for employment.

c. "Employment agency" shall include any person who, for a fee, renders vocational guidance or counselling services and who directly or indirectly:

(1) procures or attempts to procure or represents that he can procure employment or engagements for persons seeking employment or engagements;

(2) represents that he has access, or has the capacity to gain access, to jobs not otherwise available to those not purchasing his services; or

(3) provides information or service of any kind purporting to promote,

lead to or result in employment for the applicant with any employer other than himself.

d. "Employment agency" shall include any nurses' registry and any theatrical employment agency (as hereinafter defined).

e. "Employment agency" shall not include: (1) any employment bureau conducted by a duly incorporated bar association, hospital, association of registered professional nurses, registered medical institution, or by a duly incorporated association or society of professional engineers, or by a duly incorporated association or society of land surveyors, or by a duly incorporated association or society of registered architects; (2) any speakers' bureau as defined in subdivision eleven hereof; (3) any organization operated by or under the exclusive control of a bonafide nonprofit educational, religious, charitable or eleemosynary institution. (4) any person, firm, corporation or organization defined and regulated by sections one hundred ninety-one through one hundred ninety-three of this chapter.

3. "Fee" means anything of value, including any money or other valuable consideration charged, collected, received, paid or promised for any service, or act rendered or to be rendered by an employment agency, including but not limited to money received by such agency or its emigrant agent which is more than the amount paid by it for transportation, transfer of baggage, or board and lodging on behalf of any applicant for employment.

4. "Agency manager" means the person designated by the applicant for a license who is responsible for the direction and operation of the placement activities of the agency at the premises covered by the license.

5. "Placement employee" shall mean any agency manager, director, counsellor, interviewer, or any other person employed by an employment agency who spends a substantial part of his time interviewing, counselling or conferring with job applicants or employers for the purpose of placing or procuring job applicants, but shall not include employees of an employment agency who are primarily engaged in clerical occupations.

6. "Nurses' registry" means any employment agency, bureau, office or other place which procures or attempts to procure employment or engagements for nurses licensed pursuant to article one hundred thirty-nine of the education law as a registered professional nurse or licensed practical nurse.

7. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office or the agent or employee of the foregoing.

8. "Theatrical employment agency" means any person (as defined in subdivision seven of this section) who procures or attempts to procure employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph

recordings, transcriptions, opera, concert, ballet, modeling or other entertainments or exhibitions or performances, but such term does not include the business of managing such entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.

9. "Theatrical engagement" means any engagement or employment of a person as an actor, performer or entertainer in employment described in subdivision eight of this section.

10. "Emigrant agent" shall mean any person, on behalf of an employment agency who, for a fee, procures or attempts to procure employment for persons outside the state or outside the continental United States seeking such employment, or employees from outside the state or outside the continental United States for employers seeking the services of such employees.

11. "Speakers' bureau" means any person whose principal business is to provide lecture business management and promotional services on behalf of lecturers or speakers and procures on behalf of a lecturer or speaker, speaking engagements to appear in lecture programs established by an individual or institutional sponsor and who charges a fee, directly or indirectly, to such lecturer or speaker.

Whenever used in this article words in the singular shall include the plural.

§ 172. License required. No person shall open, keep, maintain, own, operate or carry on any employment agency unless such person shall have first procured a license therefor as provided in this article. Such license shall be issued by the commissioner of labor, except that if the employment agency is to be conducted in the city of New York such license shall be issued by the commissioner of consumer affairs of such city. Such license shall be posted in a conspicuous place in said agency.

§ 173. Application for license. 1. An application for such license shall be made to the commissioner of labor, except that if the employment agency is to be conducted in the city of New York the application for such license shall be made to the commissioner of consumer affairs of such city. If the employment agency is owned by an individual such application shall be made by such individual; if it is owned by a partnership such application shall be made by all partners; if it is owned by an association or society, such application shall be made by the president and treasurer thereof, by whatever title designated; if it is owned by a corporation, such application shall be made by all its officers and, if the stock of the corporation is

publicly traded, by all stockholders holding ten percent or more of the stock of such corporation. A conformed or photostatic copy of the minutes showing the election of such officers shall be attached to such application.

If the applicant will conduct business under a trade name or if the applicant is a partnership, the application for a license shall be accompanied by a copy of the trade name or partnership certificate duly certified by the clerk of the county in whose office said certificate is filed. Such trade name shall not be similar or identical to that of any existing licensed agency.

2. a. Such application shall be written and in the form prescribed by the commissioner and shall state truthfully the name and address of the applicant; the name under which the employment agency is to be conducted; the street and number of the building or place where the business is to be conducted; the business or occupations engaged in by the applicant theretofore; the name and address of the individual who will be responsible for the direction and operation of the placement activities of the agency, whether such individual be the applicant or another; the length of time such individual has spent as a placement employee; a description of the duties of such individual when so engaged; the name and present address of the last employer to employ such individual as a placement employee; and such other information as may be prescribed by the commissioner. If such individual is not the applicant, the application for a license shall be accompanied by an application for an agency manager permit by the individual who will be responsible for the direction and operation of the placement activities of the agency. An application for an agency manager permit shall be on such form as prescribed by the commissioner.

b. The application for a license shall be accompanied by samples or accurate facsimiles of each and every form which the applicant for a license will require applicants for employment to execute, and such forms must be approved by the commissioner before a license may be issued. The commissioner shall approve any such forms which fairly and clearly represent contractual terms and conditions between the proposed employment agency and applicants for employment, such as are permitted by this article.

c. If the applicant for a license intends to recruit persons who reside in a state outside this state for employment as domestic or household employees, or to recruit persons from outside the continental United States for domestic or household employment, or is to provide or arrange for lodging of applicants for employment or other persons doing business with the agency, he shall so state in the application for a license, and give the address where such lodging will be provided. Such application shall be accompanied by the statements of at least two reputable residents of the state, subscribed and affirmed by such residents as true under the penalties of perjury, except that where the

agency is to be conducted in New York city, the statements shall be of at least two reputable persons who reside or do business in such city, to the effect that the applicant is a person of good moral character.

§ 174. Procedure upon application; grant of license. 1. Upon the receipt of an application for a license, the commissioner shall cause the name and address of the applicant, the name under which the employment agency is to be conducted, and the street and number of the place where the agency is to be conducted, to be posted in a conspicuous place in his public office. Such agency shall be used exclusively as an employment agency and for no other purpose, except as hereinafter provided. The commissioner shall investigate or cause to be investigated the character and responsibility of the applicant and agency manager and shall examine or cause to be examined the premises designated in such application as the place in which it is proposed to conduct such agency. The commissioner shall require all applicants for licenses and agency managers to be fingerprinted. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

2. Any person may file, within one week after such application is so posted in the said office, a written protest against the issuance of such license. Such protest shall be in writing and signed by the person filing the same or his authorized agent or attorney, and shall state reasons why the said license should not be granted. Upon the filing of such protest the commissioner shall appoint a time and place for the hearing of such application, and shall give at least five days' notice of such time and place to the applicant and the person filing such protest. The commissioner may administer oaths, subpoena witnesses and take testimony in respect to the matters contained in such application and protests or complaints of any character for violation of this article, and may receive evidence in the form of affidavits pertaining to such matters. If it shall appear upon such hearing or from the inspection, examination or investigation made by the commissioner that the applicant or agency manager is not a person of good character or responsibility; or that he or the agency manager has not had at least two years experience as a placement employee, vocational counsellor or in related activities, or other satisfactory business experience which similarly tend to establish the competence of such individual to direct and operate the placement activities of the agency; or that the place where such agency is to be conducted is not a suitable place therefor; or that the applicant has not complied with the provisions of this article; the said application shall be denied and a license shall not be granted. Each application should be granted or refused within thirty

days from the date of its filing.

3. Any license heretofore issued shall run to the first Tuesday of May next following the date thereof and no later, unless sooner revoked by the commissioner. On and after May first, nineteen hundred seventy-six, licenses shall run to May first, nineteen hundred seventy-eight; thereafter to May first of every second year. A separate license shall be required for each branch of any agency.

4. No license shall be granted to a person to conduct the business of an employment agency in rooms used for living purposes or where boarders or lodgers are kept or where meals are served or where persons sleep or in connection with a building or premises where intoxicating liquors are sold to be consumed on the premises, excepting cafes and restaurants in office buildings. No license shall be granted to a person to conduct the business of an employment agency where the name of the employment agency directly or indirectly expresses or connotes any limitation, specification or discrimination as to race, creed, color, age, sex, national origin, disability or marital status, and the lack of intent on the part of the applicant for the license to make any such limitation, specification or discrimination shall be immaterial, except that any presently licensed employment agency bearing a name which directly or indirectly expresses or connotes any such limitation, specification or discrimination may continue to use its present name and may have its license renewed using its present name, provided that it display under such name, wherever it appears, a statement to the effect that its services are rendered without limitation, specification or discrimination as to race, creed, color, age, sex, national origin, disability or marital status.

§ 175. Form and contents of license. 1. Every license shall contain the name of the person licensed, a designation of the city, town or village, street and number of the place in which the person licensed is authorized to carry on the said employment agency, and the number and date of such license. If the licensee is a corporation, the license shall be issued in the name of the corporation and the names of the president and treasurer individually and as officers. All other officers of the corporation and all stockholders of a corporation whose stock is not publicly traded holding ten percent or more of the stock of such corporation shall be deemed licensees.

2. It shall be the duty of the licensee to notify promptly the commissioner of any changes of the persons licensed or deemed to be licensees, and of any material change in the ownership or operation of the agency.

§ 176. Assignment or transfer of license; change of location;

additional locations. A license granted as provided in this article shall not be valid for any person other than the person to whom it is issued or any place other than that designated in the license and shall not be assigned or transferred without the consent of the commissioner. Applications for such consent shall be made in the same manner as an application for a license, and all the provisions of sections one hundred seventy-three and one hundred seventy-four shall apply to applications for such consent. The location of an employment agency shall not be changed without the consent of the commissioner, and such change of location shall be indorsed upon the license. A person who has obtained an employment agency license in accordance with the provisions of this article, may apply for an additional license to conduct an additional employment agency, in accordance with the provisions of section one hundred seventy-three. The manner of application, and the conditions and terms applicable to the issuance of such license shall be the same as for an initial or original license except that the said license shall not extend beyond the termination date of the original license. An additional bond shall be furnished to the commissioner issuing the additional license, and the terms of said bond shall be such as to make it payable as well to the people of the state of New York or of the city of New York, as the case may be.

§ 177. Bonds and license fees. 1. Every person licensed under the provisions of this article to carry on the business of an employment agency shall pay to the commissioner a license fee in accordance with the following schedule before such license is issued. The minimum fee for said license shall be five hundred dollars, and for an agency operating with more than four placement employees, seven hundred dollars, provided, however, that if the license is to run less than one year, the fee shall be two hundred fifty dollars and three hundred fifty dollars respectively, and if the license is to run less than six months, the fee shall be one hundred twenty-five dollars and one hundred seventy-five dollars respectively. For the purpose of determining the license fee which an employment agency shall pay, the applicant for such license shall state in his application to the commissioner the average number of placement employees employed by the applicant's employment agency during the preceding calendar year; or, in the event that the applicant has not previously conducted an employment agency under the provisions of this article, he or she shall state the average number of placement employees which he or she reasonably expects will be employed by the employment agency during the calendar year in which the license is issued. If the application for a license is denied or withdrawn, one-half of the license fee provided herein shall be returned to the applicant. He or she shall also deposit before such license is issued, with the commissioner, a bond in the penal sum of five thousand dollars

with two or more sureties or a duly authorized surety company, to be approved by the commissioner, provided, however, that if the applicant will engage in the recruitment of domestic or household employees from outside the continental United States, or will conduct a modeling agency the bond shall be in the penal sum of ten thousand dollars.

2. The bond executed as provided in subdivision one of this section shall be payable to the people of the state of New York or of the city of New York, as the case may be, and shall be conditioned that the person applying for the license will comply with this article, and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit, or any unlawful act or omission of any licensed person, his agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of this article in carrying on the business for which such license is granted. The bond also shall be conditioned that the person applying for the license shall pay the commissioner all fines imposed pursuant to section one hundred eighty-nine of this article.

3. If at any time the surety or sureties become financially irresponsible in the judgment of the commissioner or insolvent the licensed person shall, upon notice from the commissioner, file a new bond, subject to the provisions of this section. The failure to file a new bond, within ten days after such notice, in the discretion of the commissioner, shall operate as a revocation of such license and the license shall be thereupon returned to the commissioner.

§ 178. Action on bond. All claims or suits brought in any court against any licensed person may be brought in the name of the person damaged upon the bond deposited by such licensed person as provided in section one hundred seventy-seven and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. The commissioner may institute a suit against the bond on behalf of any person damaged. Where such licensed person has departed from the state with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service shall be made upon the surety in the manner provided for service of a summons. A copy of such summons shall be mailed to the last known post office address of the residence of the licensed person and the place where he conducted such employment agency, as shown by the records of the commissioner.

§ 179. Registers and other records to be kept. It shall be the duty of every licensed person to keep a register, approved by the commissioner,

in which shall be entered, in the English language, the date of the application for employment, the date the applicant started work and the name and address of every applicant from whom a fee or deposit is charged, the amount of the fee or deposit and the service for which it is received or charged. Such licensed person shall also enter in the same or in a separate register, approved by the commissioner, in the English language, the name and address of every employer from whom a fee is received or charged or to whom the licensed person refers an applicant who has paid or is charged a fee, the date of such employer's request or assent that applicants be furnished, the kind of position for which applicants are requested, the names of the applicants sent from whom a fee or deposit is received or charged with the designation of the one employed, the amount of the fee or deposit charged, and the rate of salary or wages agreed upon. It shall also be the duty of every licensed person to keep complete and accurate written records in the English language of all receipts and income received or derived directly from the operation of his employment agency, and to keep records concerning job orders. No such licensed person, his agent or employees, shall make any false entry in such records. It shall be the duty of every licensed person to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families, or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency for a period of at least three years. Every register and all records kept pursuant to the requirements of this article shall be retained on the premises of the agency concerned for three years following the date on which the last entry thereon was made except a job order which shall be retained for one year following the date on which it was received.

§ 181. Contracts, receipts. It shall be the duty of every employment agency to give to each applicant for employment:

1. A true copy of every contract executed between such agency and such applicant, which shall have printed on it or attached to it a statement setting forth in a clear and concise manner the provisions of sections one hundred eighty-five, and one hundred eighty-six of this article.

2. Information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee for the applicant based on such anticipated wages or compensation, whether such employment is permanent or temporary, the name and address of the person authorizing the hiring of such applicant, and the cost of transportation if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in

ten-point type signed by the job applicant.

3. A receipt for any fee, deposit, consideration, or payment which such agency receives from such applicant, which shall have printed or written on it the name of the applicant, the name and address of the employment agency, the date and amount of such fee, deposit, consideration or payment or portion thereof for which the receipt is given, the purpose for which it was paid, and the signature of the person receiving such payment. If the applicant for employment has been recruited from outside the state for domestic or household employment the receipt shall have printed on it, or attached to it, a copy of section one hundred eighty-four of this article.

4. The original or duplicate-original copy of each such contract and receipt shall be retained by every employment agency for three years following the date on which the contract is executed or the payment is made, and shall be made available for inspection by the commissioner or his duly authorized agent or inspector, upon his request. Notwithstanding the other provisions of such contracts, the monetary consideration to be paid by the applicant shall not exceed the fee ceiling provided in subdivision eight of section one hundred eighty-five.

§ 182. Cards to be furnished nurses; registry records. A nurses' registry shall send out to practice nursing only persons duly licensed pursuant to article one hundred thirty-nine of the education law as a registered professional nurse or licensed practical nurse. Every nurses' registry, before sending a person out to practice nursing, shall investigate such person's educational qualifications and verify such person's licensure and current registration. At least two current written references shall be required of such person. The record of such investigation and verification shall be kept on file in the registry.

Every nurses' registry that sends out any such person shall at such time give to such person and send to the employer of such person a card stating (1) such person's name, address and salary, (2) whether such person is a registered professional nurse or licensed practical nurse, (3) the number of the current registration certificate issued to such person by the education department, and (4) a statement that the record of such person's educational qualifications and experience in the practice of nursing is on file in such registry and that a copy thereof will be sent to such employer on request. A copy of such card shall be kept on file in the registry.

The record of investigation and verification and the card-copy required by this section to be kept on file shall be open to inspection by any duly authorized agent of the university of the state of New York, and every nurses' registry shall furnish a complete list of its registrants on request of such agent.

§ 184. Recruitment of domestic or household employees who are residents of other states; findings and policy. The acute shortage of domestic or household employees in this state has led to extensive recruitment of such employees from other states in the continental United States. Social, economic and community problems occur in the process of recruiting and relocating unskilled employees from outside the state for such household employment. It is hereby declared to be the public policy of the state to encourage the recruitment of such employees from outside the state only under circumstances and conditions which will safeguard and protect the interests of such employees, their employers and the public at large. Incident to such recruiting are factors and considerations which do not exist in the recruitment of workers from within the state which impose certain responsibilities upon employment agencies engaged in such recruiting. Likewise, such employment agencies incur costs in the recruiting and placement of employees from without the state which are not entailed in recruiting residents of the state. Therefore, in order to provide sound and responsible practices and procedures for such recruitment and adequate regulation thereof, the following provisions of this section are deemed to be in the interest of the public safety and welfare.

1. No employment agency, directly or indirectly, shall accept applications from persons who reside in a state outside New York, procure or offer to procure employment of persons as domestic or household employees who are residing in states outside of this state previous to their application for employment, except as provided in this section and in the applicable provisions of other sections of this article. As used in this section, the term "state" applies to the forty-eight states on this continent, and the District of Columbia, but does not include the state of Alaska.

2. An employment agency which engages in such recruitment, offer or procurement as described in subdivision one, directly or indirectly, shall furnish to the commissioner a written list containing the name and address of all emigrant agents from whom it accepts job applicants. If such emigrant agents are required to be licensed in the places in which they are recruiting employees, no employment agency, directly or indirectly, shall accept applicants from persons other than duly licensed emigrant agents.

3. No employment agency shall, directly or indirectly, procure or offer to procure domestic or household employment for a person who is under the age of eighteen years and resides outside of the state.

4. If an employment agency engages in the recruitment of domestic or household employees from outside of the state, it shall:

(a) Enter into its register the following information, in addition to

the register entries prescribed in section one hundred seventy-nine of this article: (1) the last home address and birth date of all applicants for such employment whom the employment agency is responsible for bringing into New York state; (2) the name and address of the emigrant agent, if any, through whom such applicant was obtained; (3) the name and address of all persons to whom the employment agency has made payments in connection with the recruitment of the applicant and amounts of such payments; (4) the total charges made by the agency to the applicant include, to be separately designated: (A) agency fee; (B) any charges for transportation, and (C) any other charges in connection with placement.

(b) Respecting applicants from out of the state for whom the agency is responsible, directly or indirectly, for bringing into New York state, the agency shall have the following additional obligations: (1) direct that the transportation of such applicants shall be by duly licensed common carrier for passengers where transportation to New York is arranged for or authorized, directly or indirectly, by the employment agency; (2) provide solely at agency expense suitable lodging and meals for the applicant if he or she is not placed in employment the day he or she arrives at the office of the employment agency, from the time he or she reports at such agency until he or she is placed, or is returned to the place from which he or she was recruited, or is given the option of returning to such place as provided in part (3) hereof, and provide solely at the agency's expense meals and lodging for the applicant at any time the applicant is not employed during the thirty-day period following the day the applicant arrives at the office of the employment agency unless the applicant unreasonably refuses to accept comparable employment offered by the agency; (3) provide the return fare and reasonable allowance for one day's meals to the applicant or employee should the employment terminate within thirty days and such applicant or employee is without employment, or should no placement be made, and the employee desires to return to the place from which he was recruited. The bond pursuant to section one hundred seventy-seven of this article shall secure performance of the aforementioned undertaking and that required by provision (2) above and the provisions of section one hundred seventy-eight concerning actions on bonds shall be applicable thereto; (4) give an applicant before being brought to this state a written statement on a form approved by the commissioner showing the nature and duties of the job for which the applicant is recruited, the anticipated wages, the amount of the agency fee based on such wages, the amount for transportation that the applicant will have to repay if such amount has been advanced by the agency, and the amount of any other advances or charges. The statement also shall indicate when such amounts are payable to the agency. A copy of such statement shall be kept on file by the agency, and the copy shall have indicated on it when and by whom the original statement was given to the applicant; (5) communicate from New

York state with the reference with which the agency is required to check, and no worker shall be induced, encouraged, invited or requested to come to New York state for employment unless communication shall have been made at least one day prior thereto; and (6) not require an applicant to pay the agency fee and any advances or charges at a rate greater than in four equal installments payable at the end of the first, second, third, and fourth weeks following the employment, notwithstanding the provisions of subdivisions two and three of section one hundred eighty-five, or any other provision of this chapter.

5. Notwithstanding the maximum fee schedule provided for in section one hundred eighty-five of this article, the maximum fee to be charged a job applicant for placement in employment under this section shall not exceed, as a percentage of the first full month's salary or wages the following:

where no meals or lodging are provided	15 %
where one meal per work day is provided	18 %
where two meals per work day are provided	21 %
where three meals per work day and lodging are provided and where the first full month's salary or wages is:	
less than \$130	26 %
at least \$130 but less than \$150	28 %
at least \$150 or more	30 %

5. Subsequent placement. If employment terminates within thirty days, and the agency is responsible for the placement of the employee with another employer within such thirty-day period, the agency may charge the maximum fee provided by subdivision four of this section. If such subsequent placement is made after such thirty-day period, the fee provisions of section one hundred eighty-five shall apply.

§ 184-a. Recruitment of domestic or household employees from outside the continental United States. 1. Purposes. The recruitment of domestic or household employees from outside the continental United States involves special problems and special services not encompassed in other sections of this article. This section is enacted to establish adequate regulation and to provide responsible practices and procedures for such recruitment and is in the interests of employers, employees, employment agencies and the public.

2. Application. a. The provisions of this section, and the applicable provisions of other sections of this article, shall apply to an employment agency which directly or indirectly recruits, supplies, or offers to recruit or supply, or participates in any manner in the recruitment or supply of any person who resides outside the continental

United States for employment within the continental United States as a domestic or household employee. The provisions of sections one hundred eighty-four and one hundred eighty-five, and of subdivisions two, three, and four of section one hundred eighty-six of this article, are excluded from the application of this section.

b. The term "continental United States" as used in this section means the forty-eight states on this continent and the District of Columbia, but does not include the state of Alaska.

3. Responsibilities. a. No such agency shall directly or indirectly supply or participate in the supply of any person who is under the age of eighteen years at the time of his emigration to the United States.

b. Such agency shall have the following additional responsibilities:

(1) Confirm the statements in the employee's application for employment relating to the age and references given, and fully and accurately inform the employer before the employer agrees to employ the applicant, of the applicant's statements relating to his qualifications, age, experience, references and related matters.

(2) Provide the applicant for employment with a statement of job conditions in a form approved by the commissioner. The statement shall fully and accurately describe the nature and terms of employment, including wages, hours of work, agency fee and the advances, if any, which are specifically authorized by this section. Such statement shall also clearly indicate when the applicant will be required to pay such fee, and advances. The statement shall be in the English language, and if the applicant's native language is other than English, the statement shall also be in such language. This statement shall be mailed to the applicant prior to the time the applicant signs an employment agreement. The agency shall keep on file a duplicate copy of such statement, which shall have indicated on it when and by whom it was mailed to the applicant, and the certificate of mailing shall be attached thereto.

(3) Reduce to writing any contractual agreement with the employer or with the employee.

(4) If the agency arranges for the employee's travel, it shall provide that the transportation be by common carrier. The agency shall meet or arrange for the employer to meet the employee at the port of arrival.

(5) a. Provide the employee with suitable meals and lodging solely at agency expense from the time the employee arrives until the beginning of employment, or at any time within ninety days after arrival, upon notice that the employee is without employment.

b. If the employer discharges the employee without giving the agency advance notice of at least three business days, the agency may charge the employer the actual cost of providing suitable meals and lodging incurred because of the failure to give such notice, but in no event for more than five consecutive calendar days. Such charge, however, may not be made where unusual circumstances would create an undue burden on the employer to provide meals and lodging to the employee after the

discharge of the employee.

c. If the employee unreasonably refuses to accept comparable employment offered by the agency, the obligation provided by this paragraph shall terminate.

(6) If within ninety days after arrival the employee (a) has become disabled and is unable to continue work as evidenced by a certificate from a doctor designated by the consulate of the country of his nationality; and (b) is in financial distress and wishes to return to the country from which he came, the agency shall provide return fare and a reasonable allowance for meals while traveling.

(7) If the employee is hospitalized within ninety days after arrival, and the employee is in financial distress and unable to meet the cost of hospitalization, the agency shall be responsible for reasonable hospitalization costs incurred during such ninety-day period, provided, however, that this responsibility shall be deemed to be met if the agency provides a basic twenty-one day hospitalization insurance policy approved by the commissioner. This provision shall in no way prevent an agency from requiring the employer to agree to provide the same basic twenty-one day hospitalization insurance policy for the employee, but the employee may not be required to pay the premium for such policy covering the first ninety days. Any person or organization damaged by the failure of an agency to comply with this paragraph or with paragraphs (5) and (6) of this subdivision may bring an action on the agency bond as provided in this article.

(8) Comply with all of the applicable laws and regulations of the country from which the employee is recruited.

(9) If prior to the arrival of the employee in the United States, either the employee or the employer cancels the employment agreement, the agency shall notify in writing the central immigration office of the New York state department of labor within ten days of receiving notice of the cancellation.

4. Fees and disbursements. a. Circumstances permitting fees. Such agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract, the form of which has been approved by the commissioner, and unless the agency has been responsible for the employment of the employee.

b. Maximum fee. (1) The total maximum fee that such agency may charge for any placement shall not exceed eleven percent of the employee's agreed or anticipated first full year's wages, and of this total maximum fee not more than twenty-five percent may be charged the employee. Nothing herein shall be construed as prohibiting an agency from making an agreement with an employer under which the employer agrees to pay the total maximum fee provided by this subdivision, but in such event, no fee shall be charged the employee.

(2) If the agreement between the employer and employee provides for an additional wage payment on completion of the contract of employment, and

if such additional payment is payable to the employee on a monthly pro-rata basis in the event that the employment terminates for any reason before the completion of the contract, such additional payment may be considered part of the employee's first full year's wages.

(3) If an employee is provided meals or lodging, the value of such meals or lodging shall not be included in determining the employee's first full year's wages.

c. Deposits or advance fee. An agency may require an employer to pay a deposit or advance the fee before an employee is employed, and such deposit or advance shall be offset against the fee charged the employer.

d. Employer's cancellation fee. The agency shall be entitled to a fee from the employer not exceeding twenty-five dollars if the employer cancels his job order before the acceptance of the job offer by the employee. If the cancellation occurs after such acceptance and before certification for alien employment by the appropriate governmental agency, the fee shall not exceed fifty dollars. If the cancellation occurs after such acceptance and after such certification, the fee shall not exceed seventy-five dollars. No cancellation fee, however, shall be payable if within a reasonable time after the employer placed his job order the agency failed to make reasonable efforts to supply a job applicant to the employer.

e. Employee's payments; when payable. The agency fee charged to the employee and any advances made to the employee for transportation, visa fee and medical examination, and such other advances as are specifically authorized by the commissioner, shall be payable at a rate not greater than six equal installments, at the end of each of the first six months of employment. If the employer, on behalf of the employee, advances the employee's agency fee or other authorized costs, the contract between the employer and the agency shall provide that the employee is not required to repay the employer the money advanced at a rate greater than such six equal monthly installments.

f. Termination of employment. (1) Notwithstanding any other provision of this section, if the employment terminates for any reason within ninety days, the following fees may be charged the employer and may be charged the employee:

(a) Fifty percent of the maximum fee provided by paragraph b of this subdivision, and (b) If the employment terminates after thirty days, an additional fee computed by prorating the remaining fifty percent of the maximum fee on the basis of the number of days worked during such sixty-day period.

(2) If after termination, subsequent placements are made by the agency to such employer or of such employee, the total termination fees payable by such employer and such employee shall not exceed the maximum fees provided by paragraph b of this subdivision for the initial placement.

g. Subsequent placement with another employer. If employment terminates within ninety days and the agency is responsible for the

placement of the employee with another employer within such ninety-day period, the maximum fee that the agency may charge for such subsequent placement shall be the fee provided by paragraph b of this subdivision. If such subsequent placement is made after such ninety-day period, the fee provisions of section one hundred eighty-five of this article shall apply to such placement, notwithstanding subdivision two of this section.

h. Employee's refusal of employment. Notwithstanding any other provision of this section, if the employee after arrival in this country, refuses to accept the employment for which he was recruited or another comparable position offered by the agency, he shall pay an agency fee of not to exceed twenty-five dollars, and shall remain personally responsible to his employer for any and all advances made in his behalf.

i. Limitations and charges. Except for the advances specifically provided in paragraph e of this subdivision, an agency shall not directly or indirectly make any charge or require any advances whatever. Such prohibited charges include, but are not limited to attorney's fees and finance charges.

5. Emigrant agent. a. Such agency shall furnish to the commissioner the names and addresses of all emigrant agents it utilizes. Only a duly licensed emigrant agency may be utilized, directly or indirectly, by the employment agency if such emigrant agent is required to be licensed in the place where he is recruiting employees.

b. Any fee paid to an emigrant agent shall be considered part of the maximum fee which an agency may charge as provided by this section.

6. Registers. In addition to the entries prescribed in section one hundred seventy-nine of this article, such agency shall enter in its register the following information: (a) the last home address and birth date of all applicants for employment who were recruited by the agency; (b) the name and address of the emigrant agent, if any, through whom such applicant was obtained; (c) the fee, if any, paid to the emigrant agent by the agency, job applicant or employer which shall be separately stated; (d) the charges or advances made to the job applicant for agency fee, transportation and visa fee, and such charges or advances shall be separately listed and the total indicated; and (e) the manner in which the employee's age and references were confirmed.

7. Recordkeeping. Such agency shall retain for inspection: (a) copies of all forms prepared or received on behalf of an employee and submitted to any governmental agency in connection with immigration requirements; and (b) copies of executed contracts between the agency and the employer and between the agency and the employee. The copies shall be retained on the premises of the agency for three years.

§ 185. Fees. 1. Circumstances permitting fee. An employment agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract with a job applicant, except for class "A" and "A-1" employment, and except after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer. The maximum fees provided for herein for all types of placements or employment may be charged to the job applicant and a similar fee may be charged to the employer provided, however, that with regard to placements in class "B" employment, a fee of up to one and one-half times the fee charged to the job applicant may be charged to the employer. By agreement with an employment agency, the employer may voluntarily assume payment of the job applicant's fee. The fees charged to employers by any licensed person conducting an employment agency for rendering services in connection with, or for providing employment in classes "A", "A-1" and "B", as hereinafter defined in subdivision four of this section where the applicant is not charged a fee shall be determined by agreement between the employer and the employment agency. No fee shall be charged or accepted for the registration of applicants for employees or employment.

2. Size of fee; payment schedule. The gross fee charged to the job applicant and the gross fee charged to the employer each shall not exceed the amounts enumerated in the schedules set forth in this section, for any single employment or engagement, except as hereinabove provided; and such fees shall be subject to the provisions of section one hundred eighty-six of this article. Except as otherwise provided herein, an employment agency shall not require an applicant while employed in the continental United States, and paid weekly to pay any fee at a rate greater than in ten equal weekly instalments each of which shall be payable at the end of each of the first ten weeks of employment, or if paid less frequently, in five equal installments, each of which shall be payable at the end of the first five pay periods following his employment, or within a period of ten weeks, whichever period is longer. An employer's fee shall be due and payable at the time the applicant begins employment, unless otherwise determined by agreement between the employer and the agency.

3. Deposits, advance fees. Notwithstanding any other provisions of this section, an employment agency may not require a deposit or advance fee from any applicant except an applicant for class "A" or class "A1" employment, and only to the extent of the maximum fees hereinafter provided. Such deposit or advance fee shall be offset against any fee charged or accepted when such employment is obtained. Any excess above the lawful fee shall be returned without demand therefor, immediately after the employment agency has been notified that such employment has been obtained; and all of such deposit or advance fee shall be returned

immediately upon demand therefor, if at the time of the demand such employment has not been obtained.

4. Types of employment. For the purpose of placing a ceiling over the fees charged by persons conducting employment agencies, types of employment shall be classified as follows:

Class "A"--domestics, household employees, unskilled or untrained manual workers and laborers, including agricultural workers;

Class "A1"--non-professional trained or skilled industrial workers or mechanics;

Class "B"--commercial, clerical, executive, administrative and professional employment, all employment outside the continental United States, and all other employment not included in classes "A", "A1", "C" and "D";

Class "C"--theatrical engagements;

Class "D"--nursing engagements as defined in article one hundred thirty-nine of the education law.

5. Fee ceiling: For a placement in class "A" employment the gross fee, including the deposit if any, shall not exceed, in percentage of the first full month's salary or wages, the following:

where no meals or lodging are provided 10 %
where one meal per working day is provided 12 %
where two meals per working day are provided 14 %
where three meals and lodging per working day are provided 18 %

Where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period shorter than one month, the gross fee shall not exceed ten per cent, twelve per cent, fourteen per cent or eighteen per cent respectively of the salary or wages actually paid.

6. Fee ceiling: For a placement in Class "A1" employment the gross fee shall not exceed one week's wages where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period for ten weeks or more. Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than ten weeks, the gross fee shall not exceed ten per cent of the wages or salary actually received.

7. Fee ceiling: For a placement in Class "B" employment the gross fee shall not exceed, in percentage of the first full month's salary or wages, the following:

where such first full month's salary or wages is

less than \$750 25 %
at least \$ 750 but less than \$ 950 35 %

at least \$ 950 but less than \$1150	40 %
at least \$1150 but less than \$1350	45 %
at least \$1350 but less than \$1500	50 %
at least \$1500 but less than \$1650	55 %
at least \$1650 or more	60 %

Provided however, that where the placement is for employment in which the applicant will be paid on a straight commission basis or on the basis of a drawing account plus commissions, the gross fee shall be based on percentages in the above schedule applied to an amount equivalent to one-twelfth of the estimated first year's earnings, as estimated by the employer.

Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than four months the gross fee shall not exceed fifty percent of the fee prescribed in the schedule in this subdivision or ten percent of the wages or salary actually received, whichever is less.

8. Fee ceiling: For a placement in class "C" employment the gross fee shall not exceed, for a single engagement, ten per cent of the compensation payable to the applicant, except that for employment or engagements for orchestras and for employment or engagements in the opera and concert fields such fees shall not exceed twenty per cent of the compensation.

9. Fee ceiling: For a placement in class "D" employment the gross fee shall not exceed, for a single engagement, the following:

(1) for private nursing duty, five per cent of the salary or wages received each week through the first ten weeks of that engagement only, and such fee shall be due and payable at the end of each such week;

(2) for any other nursing duty, the amount of the first week's salary or wages unless the first year's computed salary or wages to be derived for at least one year's employment is twenty-five hundred dollars or more, in which event the gross fee shall not exceed, in percentage of such salary or wages, the following:

where such first year's salary or wages is	
at least \$2500 but less than \$3000	2 1/2 %
at least \$3000 but less than \$3500	3 %
at least \$3500 but less than \$4000	3 1/2 %
at least \$4000 but less than \$4500	4 %
at least \$4500 but less than \$5000	4 1/2 %
\$5000 or more	5 %

§ 185-a. Domestic dayworkers who are transported to the place of employment. 1. Purposes. The lack of adequate local transportation in

certain suburban and urban communities of the state has caused employment agencies to provide transportation to daily domestic workers, to and from their places of employment. This service rendered by the employment agencies has resulted in assured and continued employment on a regular basis for domestic workers who do not wish to sleep-in and for continuous and certain household employees for householders desiring day domestic workers only. This section is enacted to provide adequate compensation for such services, to encourage their continuation and to establish adequate regulations.

2. Application. a. The provisions of this section, and the applicable provisions of other sections of this article, shall apply to an employment agency which makes placements of domestic workers in households where the domestic employee is supplied with at least one meal, and where the agency transports the domestic worker to and from the employment agency or a location selected by the employment agency by a vehicle under the sole control and operation of the employment agency, all at no charge to the domestic employee.

b. The term placement as used in this section means a single day's employment pursuant to the employment agreement.

3. Responsibilities. a. Every employment agency making placements pursuant to the provisions of this section shall transport employees to householders in a vehicle under the sole control and operation of the employment agency. Such vehicle shall be operated in compliance with applicable laws governing occupancy, insurance and safety.

b. Such agency shall be responsible for the transportation of the employee to the point of origination at the conclusion of the working day. If the point of origination shall be other than the office of the employment agency or the home of the employee, notice thereof shall be given to the commissioner for his approval prior to its utilization.

4. Maximum fee. a. Notwithstanding any other provision of this article, the maximum fee that may be charged by such agency for a placement of this type of employment shall be charged to the employer only, and shall not exceed an amount based on the daily wage paid to the employee, the following:

Where such daily wage is	
at least \$11.00 but less than \$12.00	\$4.00
at least \$12.00 but less than \$13.00	\$4.25
at least \$13.00 but less than \$14.00	\$4.50
at least \$14.00 but less than \$15.00	\$4.75
at least \$15.00 but less than \$16.00	\$5.00

For each additional dollar of daily wage beginning at \$16.00, an additional fee of 25 cents may be charged; for each dollar of daily wage less than \$11.00 the fee shall be reduced by 25 cents. The value of meals shall not be included in determining the employee's wages.

b. No charge shall be made to either employee or householder for any transportation provided hereunder.

c. Notwithstanding any other provision of this article a written contract with either the domestic employee or employer shall not be required in order for the agency to charge or collect a fee.

5. Registers. Such agency shall enter in the same or separate registers approved by the commissioner, the following information, instead of the register entries prescribed in section one hundred seventy-nine of this article.

(1) The name, address and date of first application for employment of each domestic worker, and the name and address of at least one of the former employers or persons to whom such applicant is known;

2. The name and address of every employer from whom a fee is received or charged, the name of each domestic employee employed by the employer, the date of employment, the fee charged or received from the employer and the rate of wages or salary agreed upon.

6. Statement of job conditions. Each agency shall give each employee and employer a statement of job conditions in a form approved by the commissioner. The statement to the employee shall fully and accurately describe the nature and terms of employment, including wages, numbers of hours of work, responsibility of the agency for transportation, and the responsibility of the employer for the payment of the fee and to provide the employee with one meal. The statement to the employer shall include the foregoing, and in addition the agency fee and the responsibility of the employer to provide the employee with one meal. Such statement as aforesaid shall be given prior to the first placement by the agency and need not be repeated unless changed.

§ 186. Return of fees. 1. Excessive fee: Any employment agency which collects, receives or retains a fee or other payment contrary to or in excess of the provisions of this article, shall return the fee or the excess portion thereof within seven days after receiving a demand therefor.

2. Failure to report: If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed twenty-five per cent of the maximum fee allowed by section one hundred eighty-five of this article, provided however, if the applicant remains with his same employer, the fee shall not exceed fifty per cent. If a job applicant accepts employment and fails to report for work, no fee shall be charged to the employer.

3. Termination without employee's fault. If a job applicant accepts employment and reports for work, and thereafter such employment is terminated without fault of the employee, the gross fee charged to such employee and to the employer each shall not exceed ten percent of the salary or wages received by such employee, and in no event shall such

fee exceed the maximum fee allowed by section one hundred eighty-five of this article. However, if such employee is a domestic or household employee recruited from a state outside of this state the fee of the employer shall not exceed thirty-three and one-third percent of the wages or salary actually earned.

4. Termination under all other circumstances: If a job applicant accepts employment and reports for work, and thereafter such employment is terminated under any other circumstances, the gross fee charged to such employee and the employer each shall not exceed fifty per cent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article.

§ 187. Additional prohibitions. An employment agency shall not engage in any of the following activities or conduct:

(1) Induce or attempt to induce any employee to terminate his employment in order to obtain other employment through such agency, provided, however, that this provision shall not apply to an employee not placed in employment by the employment agency who is offered an executive administrative or professional position where the first year's compensation is \$12,000.00 or more or procure or attempt to procure the discharge of any person from his employment.

(2) Publish or cause to be published any false, fraudulent or misleading information, representation, promise, notice or advertisement.

(3) Advertise in newspapers or otherwise, or use letterheads or receipts or other written or printed matter, unless such advertising or other matter contains the name and address of the employment agency and the word "agency".

(4) Direct an applicant to an employer for the purpose of obtaining employment without having first obtained a bona fide order therefor; however, a qualified applicant may be directed to an employer who has previously requested that he regularly be accorded interviews with applicants of certain qualifications if a confirmation of the order is sent to the employer. Likewise an employment agency may attempt to sell the services of an applicant to an employer from whom no job order has been received as long as this fact is told to the applicant before he is directed to the employer. Any applicant who is referred to an employer contrary to the provisions of this subdivision without obtaining employment thereby, shall be reimbursed by the employment agency for all ordinary and necessary travel expenses incurred by the applicant as a result of such referral, within twenty-four hours of making a demand therefor.

(5) Send or cause to be sent any person to any employer where the employment agency knows, or reasonably should have known, that the

prospective employment is or would be in violation of state or federal laws governing minimum wages or child labor, or in violation of article sixty-five of the education law relating to compulsory education or article four of the labor law, or, that a labor dispute is in progress, without notifying the applicant of such fact, and delivering to him a clear written statement that a labor dispute exists at the place of such employment, or make any referral to an employment or occupation prohibited by law.

(6) Send or cause to be sent any person to any place which the employment agency knows or reasonably should have known is maintained for immoral or illicit purposes; nor knowingly permit persons of bad character, prostitutes, gamblers, procurers or intoxicated persons to frequent such agency.

(7) Compel any person to enter such agency for any purpose by the use of force.

(8) Engage in any business on the premises of the employment agency other than the business of operating an employment agency, except as owner, manager, employee or agent, the business of furnishing services to employers through the employment of temporary employees.

(9) Receive or accept any valuable thing or gift as a fee or in lieu thereof, nor divide or share, either directly or indirectly, the fees herein allowed, with contractors, subcontractors, employers or their agents, foremen or any one in their employ, or if the contractors, subcontractors or employers be a corporation, any of the officers, directors or employees of the same to whom applicants for employment are sent.

(10) Require applicants for employees or employment to subscribe to any publication or incidental service or contribute to the cost of advertising.

(11) Make or cause to be made or use any name, sign or advertising device bearing a name which may be similar to or may reasonably be confused with the name of a federal, state, city, county or other government agency.

(12) Refuse to return on demand of an applicant any baggage or personal property belonging to such applicant.

(13) Charge an applicant any fee for a placement in a job which the agency advertised or represented to the job applicant to be a fee-paid job.

(14) Refer an applicant to a specified bank or credit organization for purposes of obtaining a loan.

§ 188. Copies of law to be posted. Every licensed person shall post in a conspicuous place in the main room of such agency sections one hundred seventy-eight, one hundred eighty, one hundred eighty-one, one hundred eighty-five, and one hundred eighty-six, of this article, which shall be

printed in large type in languages in which persons commonly doing business with such office can understand. Such poster shall also contain the name and address of the commissioner charged with the enforcement of this article in the place where the agency is located.

§ 189. Enforcement of provisions of this article. 1. This article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law shall be enforced by the commissioner of labor, except that in the city of New York this article and such sections shall be enforced by the commissioner of consumer affairs of such city.

2. To effectuate the purposes of this article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law, the commissioner or any duly authorized agent or inspector designated by such commissioner, shall have authority to inspect the premises, registers, contract forms, receipt books, application forms, referral forms, reference forms, reference reports and financial records of fees charged and refunds made of each employment agency, which are essential to the operation of such agency, and of each applicant for an employment agency license, as frequently as necessary to ensure compliance with this article and such sections; but in no event shall any employment agency be inspected less frequently than once every eighteen months. The commissioner shall also have authority to subpoena records and witnesses or otherwise to conduct investigations of any employer or other person where he or she has reasonable grounds for believing that such employer or person is violating or has conspired or is conspiring with an employment agency to violate this article or such sections.

3. To effectuate the purposes of this article, the commissioner may make reasonable administrative rules within the standards set in this article. Before such rules shall be issued, the commissioner shall conduct a public hearing, giving due notice thereof to all interested parties. No rule shall become effective until fifteen days after it has been filed in the office of the department of state, if it is a rule of the industrial commissioner, or in the office of the clerk of the city of New York, if it is a rule of the commissioner of licenses of such city, and copies thereof shall be furnished to all employment agencies affected at least fifteen days prior to the effective date of such rule.

4. Complaints against any such licensed person shall be made orally or in writing to the commissioner, or be sent in an affidavit form without appearing in person, and may be made by recognized employment agencies, trade associations, or others. The commissioner may hold a hearing on a complaint with the powers provided by section one hundred seventy-four of this article. If a hearing is held, reasonable notice thereof, not less than five days, shall be given in writing to said licensed person

by serving upon the licensed person either personally, by mail, or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and the hearing shall commence before the commissioner with reasonable speed but in no event later than two weeks from the date of the filing of the complaint. The commissioner when investigating any matters pertaining to the granting, issuing, transferring, renewing, revoking, suspending or cancelling of any license is authorized in his discretion to take such testimony as may be necessary on which to base official action. When taking such testimony he may subpoena witnesses and also direct the production before him of necessary and material books and papers. A daily calendar of all hearings shall be kept by the commissioner and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The commissioner shall render his decision within thirty days from the time the matter is finally submitted to him. The commissioner shall keep a record of all such complaints and hearings.

5. Following such hearing if it has been shown that the licensed person or his agent, employee or anyone acting on his behalf is guilty of violating any provision of this article or is not a person of good character and responsibility, the commissioner may suspend or revoke the license of such licensed person and/or levy a fine against such licensed person for each violation not to exceed five hundred dollars. Whenever such commissioner shall suspend or revoke the license of any employment agency, or shall levy a fine against such agency, said determination shall be subject to judicial review in proceedings brought pursuant to article seventy-eight of the civil practice law and rules. Whenever such license is revoked, another license or agency manager permit shall not be issued within three years from the date of such revocation to said licensed person or his agency manager or to any person with whom the licensee has been associated in the business of furnishing employment or engagements. Deputy commissioners, or other officials designated to act on behalf of the commissioner, may conduct hearings and act upon applications for licenses, and revoke or suspend such licenses, or levy fines.

§ 190. Penalties for violations. Any person who violates and the officers of a corporation and stockholders holding ten percent or more of the stock of a corporation which is not publicly traded, who knowingly permit the corporation to violate sections one hundred seventy-two, one hundred seventy-three, one hundred seventy-six, one hundred eighty-four, one hundred eighty-four-a, one hundred eighty-five, one hundred eighty-five-a, one hundred eighty-six, or one hundred eighty-seven of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one thousand dollars, or imprisonment for not more than one year, or both, by any

court of competent jurisdiction. The violation of any other provision of this article shall be punishable by a fine not to exceed one hundred dollars or imprisonment for not more than thirty days. Criminal proceedings based upon violations of these sections shall be instituted by the commissioner and may be instituted by any persons aggrieved by such violations.

§ 191. Definition. Whenever used in this article: "employer fee paid employment agency" means any person who on behalf of employers procures or attempts to procure employees for "Class B" employment (as defined in section one hundred eighty-five of this article) and who in no instance charges a fee directly, or indirectly, to persons seeking such employment even though a fee may be charged to employers seeking the services of such employees, and who engages in no activity constituting the operation of an employment agency as defined in section one hundred seventy-one of this chapter and who in no instance enters into any arrangement through which the employer fee paid employment agency receives remuneration or any other thing of value from any person, firm or corporation which collects fees from applicants.

§ 192. Prohibited activities. An employer fee paid employment agency shall not engage in any of the following activities or conduct:

1. Direct an applicant to an employer for the purpose of obtaining employment without having first obtained a bona fide order therefor; however, a qualified applicant may be directed to an employer who has previously requested that it regularly be accorded interviews with applicants of certain qualifications if a confirmation of the order is sent to the employer. Likewise an agency may attempt to sell the services of an applicant to an employer from which no job order has been received as long as this fact is told the applicant before the applicant is directed to the employer. Any applicant who is referred to an employer contrary to the provisions of this subdivision without obtaining employment thereby, shall be reimbursed by the agency for all ordinary and necessary travel expenses incurred by the applicant as a result of such referral, within twenty-four hours of making a demand therefor.

2. Send or cause to be sent any person to any employer where the agency knows, or reasonably should have known, that the prospective employment is or would be in violation of state or federal laws governing minimum wages or child labor, or in violation of article sixty-five of the education law relating to compulsory education or article four of the labor law, or, that a labor dispute is in progress, without notifying the applicant of such fact, and delivering to him or her a clear written statement that a labor dispute exists at the place

of such employment, or make any referral to an employment or occupation prohibited by law.

3. Require applicants for employment to subscribe to any publication or incidental service or contribute to the cost of advertising.

4. Make or cause to be made or use any name, sign or advertising device bearing a name which may be similar to or may reasonably be confused with the name of a federal, state, city, county or other government agency.

§ 193. Penalties for violation. Any person violating the provisions of section one hundred ninety-two of this article shall be guilty of a class A misdemeanor and shall be subject to a fine not to exceed one thousand dollars or imprisonment for not more than one year or both.

Criminal proceedings based upon violations may be instituted by the commissioner or may be instituted by any person aggrieved by such violation.

§ 194. Employment agency fees; reimbursement from employee to employer prohibited. 1. As used in this section:

(a) "Commissioner" means the commissioner of labor.

(b) "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy or common carrier by rail, motor, water, air or express company doing business or operating within the state. The term "employer" shall not include a governmental agency.

(c) "Employee" means any person employed for hire by any employer in any employment.

2. No employer or its agent shall require, request, suggest or knowingly permit any employee of such employer to reimburse the employer for the cost of a fee paid by the employer to an employment agency or to an employer fee paid employment agency or to make any other payment on account of the employee's termination or resignation from employment.

3. (a) If the commissioner determines that an employer or its agent has violated a provision of this section, the commissioner shall issue to the employer an order which shall describe the alleged violation. In addition to directing reimbursement to the employee and requiring the further payment to the employee of a sum in the amount equal to payment requested or received from that employee, such order may direct payment to the commissioner for deposit in the treasury of the state of a further sum as a civil penalty not to exceed five hundred dollars.

(b) Any order issued under paragraph (a) of this subdivision shall be deemed a final order of the commissioner and not subject to review by any court or agency unless within thirty days following service of the order the employer files a petition with the industrial board of appeals

for a review of the order.

(c) Provided that no proceeding for administrative or judicial review pursuant to this chapter shall then be pending and that the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner, or the decision of the industrial board of appeals containing the amount found to be due including the civil penalty, if any. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(d) The civil penalty provided for in this section shall be in addition to and may be imposed with any other remedy or penalty provided for in this chapter.

4. No agreement by an employee or prospective employee to reimburse an employer for the cost of a fee of an employment agency or an employer fee paid employment agency or to become liable to the employer for any payment on account of the employee's termination or resignation from employment shall be enforceable.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included as a handout in this packet. The New York City Law and Rules are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

**LAWS OF NEW YORK
ARTS AND CULTURAL AFFAIRS
TITLE M: THEATRICAL EMPLOYMENT CONTRACTS; SAFETY PRECAUTIONS
FOR CERTAIN PERFORMERS; PERFORMING ARTISTS
ARTICLE 37 - THEATRICAL EMPLOYMENT CONTRACTS; SAFETY
PRECAUTIONS FOR CERTAIN PERFORMERS**

§ 37.01. Definitions. As used in sections 37.03 and 37.05 of this article:

1. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office or the agent or employee of the foregoing.
2. "Fee" means anything of value, including any money or other valuable consideration charged, collected, received, paid or promised for any service, or act rendered or to be rendered by an employment agency, including but not limited to money received by such agency or its emigrant agent which is more than the amount paid by it for transportation, transfer of baggage, or board and lodging on behalf of any applicant for employment.
3. "Theatrical employment agency" means any person (as defined in subdivision one hereof) who procures or attempts to procure employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling or other entertainments or exhibitions or performances, but such term does not include the business of managing such entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.
4. "Theatrical engagement" means any engagement or employment of a person as an actor, performer or entertainer in employment described in subdivision three of this section.

§ 37.03. Theatrical employment; contracts. Every licensed person who

shall procure for or offer to an applicant a theatrical engagement shall have executed in duplicate a contract or deliver to the parties as herein set forth a statement containing the name and address of the applicant; the name and address of the employer of the applicant and of the person acting for such employer in employing such applicant; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant; if a vaudeville engagement, the name of the person by whom the transportation is to be paid, and if by the applicant, either the cost of transportation between the places where said entertainment or services are to be given or rendered, or the average cost of transportation between the places where such services are to be given or rendered; and if a dramatic engagement, the cost of transportation to the place where the services begin, if paid by the applicant; and the gross commission or fees to be paid by said applicant and to whom. Such contracts or statements shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. Forms of such contract and statement in blank shall be first approved by the commissioner and his determination shall be reviewable by certiorari. One of such duplicate contracts or of such statements shall be delivered to the person engaging the applicant and the other shall be retained by the applicant. The licensed person procuring such engagement for such applicant shall keep on file or enter in a book provided for that purpose a copy of such contract or statement.

§ 37.05. Theatrical employment; financial investigations and security.

A theatrical employment agent shall investigate whether or not any employer (person, firm or corporation) who is offering employment to an applicant for employment, has defaulted in the payment of salaries, fees or other compensation to any performer or group of performers or has left stranded any performing companies or individuals or groups, during the five years preceding the date of the application. An agent shall not procure or undertake to procure employment or engagements on the part of any performer or groups of performers for an employer who has failed to pay salaries, fees or other compensation, or who has left stranded any performer or groups of performers or any performing companies or individuals during the five years preceding the date of the application, unless such employer (person, firm or corporation) shall provide sufficient security for the direct benefit of the performer or performers and in an amount ample to pay the performer or performers their full compensation for the specified employment or engagement designated in the employment or engagement contract. The provisions of this section shall not apply to employment or engagements in modeling.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included as a handout in this packet. The New York City Law and Rules are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

**RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER M: EMPLOYMENT AGENCIES**

§5-241 Records.

It shall be the duty of each licensed agency to keep its financial records on a monthly or quarterly basis and such records shall be brought up to date not later than thirty(30) days after the expiration of such period. All such records shall be kept at the principal place of business for a period of three (3) years and shall be made available for inspection during normal business hours to the Commissioner of Consumer Affairs of the City of New York, or his duly authorized representatives.

§5-242 Applications for License—Corporation.

(a) A corporate applicant for a license shall list on the original application, or a renewal application, the names and addresses of all its officers and all stockholders holding ten percent (10%) or more of the stock of said corporation. A true and certified copy of the minutes electing such officers shall be attached to the application.

(b) The licensee shall notify the Department of Consumer Affairs within thirty (30) days in writing of any change of its officers or principal stockholders. In the event of a change of officers a true and certified copy of the minutes shall be attached to such notification.

§5-243 Trade Name and Partnership Certificates.

(a) If the applicant conducts business under a trade name or if the applicant is a partnership, then the application for a license must be accompanied by a copy of the trade name or partnership certificate duly certified by the Clerk of the County in whose office said certificate is filed.

(b) Such trade name shall not be similar or identical to that of any existing licensed agency.

§5-244 Fingerprinting.

(a) Every applicant for a license, if he is a natural person, shall be fingerprinted in the office of the Department and the fingerprints shall be filed with and made part of the original application.

(b) If the applicant is a partnership each member thereof shall be fingerprinted and the fingerprints shall be filed with and made a part of the original application. In the event of a change in the members of a partnership, each new member shall appear at the office of the Department within thirty (30) days after such change, be fingerprinted, and the fingerprints shall be filed with and made a part of the application.

(c) If the applicant is a corporation, all the officers and all stockholders holding ten percent (10%) or more of the stock of the corporation shall be fingerprinted, and the fingerprints shall be filed with and made part of the original application. In the event of any change of officers or stockholders of any corporate licensee, such new officers or stockholders shall appear at the office of the Department within thirty (30) days after such change, be fingerprinted, and the fingerprints shall be filed and be made part of the licensee's application.

(d) Whenever an applicant for a license does not have the required two years' experience, then the manager so designated shall be fingerprinted and the fingerprints shall be filed with and made a part of the original application.

§5-245 Premises.

(a) An agency may share premises, provided that the sharing is with an unrelated entity or with an entity permitted by New York General Business Law §187(8). The agency shall not directly or indirectly suggest to an applicant that he or she purchase the services or products of the entity sharing the premises. For purposes of this section, "unrelated" shall mean that no exchange of the proceeds or sharing of profits in any form takes place between the agency and the entity, and that they do not have any officers, directors, partners, shareholders, principals, managers, executives, administrators, salespersons, or job-placement counselors in common.

(b) Every room of an employment agency shall be properly and adequately lighted and ventilated.

(c) The premises of every licensed agency shall be kept in a suitable and sanitary condition.

(d) Every employment agency shall be provided with running water and suitable and adequate washing facilities. Where both males and females are employed or dealt with in such agency, separate facilities shall be provided for each sex.

§5-246 Referral Cards.

(a) Whenever a licensed agency refers an applicant for a position to an employer where it reasonably knows or should have known that a labor dispute is in progress, then it shall be the duty of the licensee to deliver to the applicant a statement in large and bold lettering, to the effect that the employees in such place of employment are engaged or involved in a labor dispute.

(b) Whenever a licensed agency shall refer an applicant for employment to an employer who has agreed to pay to the agency the fee for the employee, or where the agency has agreed not to charge said applicant a fee for such referral, then the referral card shall clearly set forth the terms under which the employer has agreed to pay the fee for the applicant or the terms under which the applicant shall not be required to pay the fee.

§5-247 Recruitment of Domestic or Household Employees from Without the State.

(a) No employment agency shall recruit domestic or household employees outside the State of New York as provided in §184 of the General Business Law without notifying the Commissioner of Consumer Affairs of the City of New York in writing.

(b) Every employment agency engaged in such recruitment shall keep on file in its principal place of business for a period of three (3) years a written record indicating or setting forth the name and address of the premises where such applicant is lodged and a receipt, signed by the applicant, setting forth the number of meals and the date and place where such meals were served to the applicant.

§5-248 Prohibited Practices.

(a) No employment agency shall discriminate against any individual because of his age, race, creed, color, national origin, religion, or sex, in receiving, classifying, disposing or otherwise acting upon applications for its services, in referring an applicant or applicants to an employer or employers or with respect to any guidance, training or apprenticeship program.

(b) No employment agency shall:

(1) print or circulate or cause to be printed or circulated any statement, advertisement or publication, or

(2) use any form of application for employment, or

(3) use any business name, trade name or display name, or

(4) make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, religion, or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(c) No employment agency engaged in securing or obtaining positions for applicants in the modeling field shall directly or indirectly refer any applicant to a particular school or course for modeling, nor induce, suggest, or encourage choice of such school or course.

§5-249 Definitions of GBL §171 Terms.

As used in §171 of GBL Art. 11, the following terms shall have the meanings indicated: **Applicant.** "Applicant" means a person seeking employment.

Employment agency. (1) "Employment agency" shall include all persons who, for a fee, render vocational guidance or counseling services, and who directly or indirectly represent, by any means, that:

- (i) they obtain or attempt to obtain employment for an applicant; or
- (ii) they will or may arrange interviews with employers for an applicant; or
- (iii) they have or may make contacts with employers which may improve an applicant's chances to obtain employment; or
- (iv) they have knowledge of job openings or positions which is not available to the public; or
- (v) they have knowledge of job openings or positions which cannot be obtained with reasonable effort from other sources; or
- (vi) they maintain or sell a list or lists of job openings or positions unless all of the information contained in the list or lists appears in, and is part of, a newspaper or other publication in general circulation, and this fact is disclosed to consumers.

(2) "Employment agency" also shall include all persons who, for a fee, render vocational guidance or counseling services, and who directly or indirectly represent, by any means, that:

- (i) they provide information about job search techniques or job search strategies; or
- (ii) they assist an applicant in any attempt to present to employers the availability or qualifications, or both, of the applicant for a position or class of positions. Such representations include, but are not limited to, representations that they "market" or "promote" applicants.

Person. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office, or the agent or employee of the foregoing.

Vocational guidance or counseling services. "Vocational guidance or counseling services" means services which consist of one or more oral presentations and which:

- (1) provide information concerning the qualifications generally required for one or more positions or class of positions; or
- (2) assess, or attempt to assess, the suitability of a person seeking employment for one or more positions or class of positions; or
- (3) provide information concerning the availability of one or more positions or class of positions.

§5-250 **Display of Sign.**

Every licensee must post conspicuously at his or her place of business a sign, at least 12 inches by 18 inches in dimension with letters at least 1-inch high, reading as follows:

§5-251 **Display of License.**

Every licensee must post conspicuously his or her license at the licensee's place of business. A licensee may post a copy of the license at the licensee's place of business only if the original is available at such place of business for inspection by any person.

§5-252 Notice of Hearing and Subpoena Duces Tecum.

A licensee must appear in person at the Department to answer a notice of hearing or a subpoena duces tecum served upon that licensee. If the licensee is an individual, he or she must appear; if a partnership, one of its general partners must appear; and if a corporation, one of its officers must appear. A notice of hearing or subpoena duces tecum may be served by ordinary mail addressed to the licensee's place of business. They may also be served by ordinary mail addressed to the residence of an individual licensee; the residence of a general partner of a partnership licensee; or the residence of an officer or principal stockholder of a corporate licensee.

§5-253 Change of Address.

A licensee shall notify the Department in writing of any change of address within 10 days of the change. This requirement applies to the address of the licensed business, and to the resident addresses of: individual licensees; all partners of partnership licensees; and the officers and principal stockholders of corporate licensees.

§5-254 Judgments.

A licensee or license applicant must satisfy any outstanding judgment against him or her that has been obtained by a consumer and that relates to activities for which a license is required:

- (a) within thirty (30) days from the date of entry of the judgment; or
- (b) if the judgment has been stayed or appealed, within thirty (30) days from the date the stay is lifted or the appeal decided; or
- (c) according to a payment schedule the parties agree upon.

§5-255 Response to Consumer Complaints.

A licensee or license applicant must respond in writing to the Department about any consumer complaint sent to the licensee or applicant by the Department. The response must be made within 20 days of the date the complaint is sent to the licensee or applicant and must set forth the licensee's or applicant's position regarding the transaction which is the subject of the complaint, including the facts which the licensee or applicant believes justify its position. The licensee or applicant must respond to subsequent communications from the Department concerning the complaint within 10 days after receiving a communication.

§5-256 Proof of Surety Bond.

No license or renewal shall be issued unless the licensee or applicant submits proof that every bond required by the Department for the license is in effect and does not expire prior to the end of the licensing period. Except where otherwise provided, all such bonds must allow any person aggrieved by the bondholder's breach of the conditions of the bond to proceed against the bond.

§5-257 Lost or Mutilated Licenses.

(a) *Lost license.* A licensee shall immediately report, in an affidavit, the loss of a license issued to him or her by the Department, requesting the issuance of a new license. Replacement licenses are issued at the discretion of the Department.

(b) *Mutilated license.* Should a license issued by the Department to any licensee become mutilated or otherwise illegible, the holder of the license shall promptly surrender it to the Department and request the issuance of a new license. The request shall be made upon a form provided by the Department.

(c) *Fee.* A fee of fifteen dollars (\$15) shall be charged for the issuance of a replacement license. This fee shall be paid when the affidavit for a lost license is filed or when a mutilated or otherwise illegible license is surrendered and a request for the issuance of a new license is filed. This fee will be refunded should the Department decide not to issue the replacement license.

§5-258 Late Renewal Fee.

Any licensee who files for a license renewal more than one (1) month, but less than three (3) months, after the expiration date of the license must pay to the Department, in addition to any other fees or penalties provided by law, the sum of \$20 or 20 percent of the license fee, whichever is greater.

Any licensee who files for a license renewal more than three (3) months after the expiration date of the license must pay to the Department, in addition to any other fees or penalties provided by law, the sum of \$50 or 30 percent of the license fee, whichever is greater.