S T A T E O F N E W Y O R K

5991

2015-2016 Regular Sessions

I N S E N A T E

June 17, 2015

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to employment agencies; and to repeal subdivision 1-a of section 185 of the general business law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph and paragraph b of subdivision 12 of section 171 of the general business law, as added by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, is amended to read as follows:

"Bona fide order" means a written order from an employer directed to an employment agency stating that the employer requests that the employment agency refer one or more job applicants for a specific position or positions [within a specified and limited application period]. An employment agency must renew a bona fide order after forty-five days if it intends to refer an applicant for the position described in such bona fide order, and the employment agency must specify on the bona fide order the name of the representative of the prospective employer who authorized the renewal and the date on which the renewal was authorized. The bona fide order shall also include a written statement setting forth the terms and conditions of employment for the position described in the order; such written statement shall include, at a minimum, the following information:

b. [the place or places] ADDRESSES of employment;

S 2. Subdivisions 2, 3, 4 and 5 of section 181 of the general business law, as amended by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, are amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. (a) An employment agency shall issue a written statement of terms and conditions to each job applicant on each occasion that the agency refers the applicant to a potential employer. The written statement of terms and conditions shall be in English and in the language identified by the applicant as the primary language of such applicant. Every employment agency shall keep on file in its principal place of business for a period of three years a copy of each written statement of terms and conditions issued to each applicant that is signed and dated by the applicant. The statement of terms and conditions shall include, at a minimum, the following information: (i) the name of the employer, any "doing business as" names used by the employer, the physical address of the employer's main office or principal place of business, and a mailing address if different, the telephone number of the employer, plus such other information as the commissioner deems material and necessary; (ii) [the place or places] ADDRESSES of employment; (iii) the hours of work per day and number of days per week to be worked; (iv) the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other, allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; (v) the circumstances under which the employee will be paid a premium for working in excess of an established number of hours per day, week, or month, or for working on designated nights, weekends, or holidays; (vi) the anticipated period of employment; (vii) any provision to the employee, and how long the provision will be provided by the employer, and any costs to the employee associated with the provision, including but not limited to, transportation to and from work, housing, health insurance or health care, paid sick or annual leave and holiday or holidays, pension or retirement benefits, personal protective equipment required for work, workers' compensation and information about the insurance policy and rules regarding reporting of accidents or injuries, and unemployment compensation; and (viii) the nature of the work to be performed by the employee.

(b) The commissioner shall prepare templates that comply with the requirements of paragraph (a) of this subdivision. Each such template shall be [dual-language, including English and one additional language. The commissioner shall determine, in his or her discretion, which languages to provide in addition to English,] PROVIDED IN ENGLISH AND IN THE DISCRETION OF THE COMMISSIONER, OTHER LANGUAGES IN ADDITION TO ENGLISH, based on the size of the New York state population that speaks each language and any other factor that the commissioner shall deem relevant. All such templates shall be made available to employment agencies in such manner as determined by the commissioner.

(c) When a job applicant identifies as his or her primary language a language for which a template is not available from the commissioner, the employment agency shall comply with this subdivision by providing that employee an English-language statement.

(d) An employment agency shall not be penalized for errors or omissions in the non-English portions of any notice provided by the commissioner.

3. [Every employment agency shall keep on file in its principal place of business for a period of three years a statement, signed by the employer of every applicant whom the employment agency has placed, indicating that the employer has read and understood the statement of terms and conditions required by subdivision two of this section and that the employer has received a copy of that statement.

4.] A receipt for any fee, consideration, or payment which an agency receives from an applicant. The receipt 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, 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. The receipt shall also include immediately above the place for signature of the person receiving payment, set off in a box and printed in bold and in caps, the following statement: "An employment agency may not charge you, the job applicant, a fee before referring you to a job that you accept. If you pay a fee before accepting a job or pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven (7) days." The text contained in this box shall also be in English and in the language identified by each applicant as the primary language of such applicant.

[5.] 4. The original or duplicate-original copy of each written contract, each statement of terms and conditions required by subdivision two of this section, and each receipt required by subdivision [four] THREE of this section shall be retained by every employment agency for three years following the date on which the contract is executed. The records required under this subdivision shall be made available for inspection by the commissioner or his or her duly authorized agent or inspector, upon such request.

S 3. Subdivision 1-a of section 185 of the general business law is REPEALED.

S 4. Subdivision 3 of section 185 of the general business law, as amended by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, is amended to read as follows:

3. Deposits, advance fees. Notwithstanding any other provisions of this section, an employment agency shall not require or accept a deposit or advance fee from any applicant. [Any deposit or advance fee collected by an employment agency prior to October first, two thousand fifteen, must be refunded to the applicant by November first, two thousand sixteen, if: (a) such deposit or advance fee did not lead to the job applicant obtaining employment through the employment agency or (b) the deposit or advance fee was not applied to the job applicant's account for services rendered by the employment agency.]

S 5. Subdivision 3 of section 187 of the general business law, as amended by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, is amended to read as follows:

(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, the word "agency"[,] and the agency's license number.

S 6. Subdivision 4 of section 189 of the general business law, as amended by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, is amended to read as follows:

4. Complaints against any such licensed or unlicensed person [may] 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 person by serving upon the 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. In addition to the powers of the commissioner, the attorney general may bring an action against anyone who is alleged to have violated this article.

S 7. Subdivisions 7, 8, 9 and 10 of section 189 of the general business law, as added by a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, are amended to read as follows:

7. [Any person aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against any employment agency or persons alleged to have violated the provisions of this article. The court shall have jurisdiction to restrain violations of this section and to order all appropriate relief, including enjoining the conduct of any person or employment agency; ordering payment of damages, costs and reasonable attorneys' fees to the aggrieved individual by the person or entity found to be in violation of this article.

8.] The remedies provided in this article are not exclusive and shall be in addition to any other remedies or procedures provided in any other law.

[9.] 8. If any provisions of this article or the application thereof to any person or circumstances is held unconstitutional, the remainder of the article and the application of that provision to other persons and circumstances shall not be affected thereby.

[10.] 9. If an employment agency fails to maintain records as required under this article, the credible testimony of an applicant shall form the proper basis for the calculation of unpaid wages and/or unlawful fees.

S 8. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2015 amending the general business law relating to employment agencies, as proposed in legislative bills numbers S.3415 and A.3702, takes effect.