

5991

2015-2016 Regular Sessions

I N   S E N A T E

June 17, 2015

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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:

1     Section 1. The opening paragraph and paragraph b of subdivision 12 of  
2     section 171 of the general business law, as added by a chapter of the  
3     laws of 2015 amending the general business law relating to employment  
4     agencies, as proposed in legislative bills numbers S.3415 and A.3702, is  
5     amended to read as follows:  
6     "Bona fide order" means a written order from an employer directed to  
7     an employment agency stating that the employer requests that the employ-  
8     ment agency refer one or more job applicants for a specific position or  
9     positions [within a specified and limited application period]. An  
10    employment agency must renew a bona fide order after forty-five days if  
11    it intends to refer an applicant for the position described in such bona  
12    fide order, and the employment agency must specify on the bona fide  
13    order the name of the representative of the prospective employer who  
14    authorized the renewal and the date on which the renewal was authorized.  
15    The bona fide order shall also include a written statement setting forth  
16    the terms and conditions of employment for the position described in the  
17    order; such written statement shall include, at a minimum, the following  
18    information:  
19        b. [the place or places] ADDRESSES of employment;  
20    S 2. Subdivisions 2, 3, 4 and 5 of section 181 of the general business  
21    law, as amended by a chapter of the laws of 2015 amending the general  
22    business law relating to employment agencies, as proposed in legislative  
23    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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1     2. (a) An employment agency shall issue a written statement of terms  
2 and conditions to each job applicant on each occasion that the agency  
3 refers the applicant to a potential employer. The written statement of  
4 terms and conditions shall be in English and in the language identified  
5 by the applicant as the primary language of such applicant. Every  
6 employment agency shall keep on file in its principal place of business  
7 for a period of three years a copy of each written statement of terms  
8 and conditions issued to each applicant that is signed and dated by the  
9 applicant. The statement of terms and conditions shall include, at a  
10 minimum, the following information: (i) the name of the employer, any  
11 "doing business as" names used by the employer, the physical address of  
12 the employer's main office or principal place of business, and a mailing  
13 address if different, the telephone number of the employer, plus such  
14 other information as the commissioner deems material and necessary; (ii)  
15 [the place or places] ADDRESSES of employment; (iii) the hours of work  
16 per day and number of days per week to be worked; (iv) the rate or rates  
17 of pay and basis thereof, whether paid by the hour, shift, day, week,  
18 salary, piece, commission, or other, allowances, if any, claimed as part  
19 of the minimum wage, including tip, meal, or lodging allowances; (v) the  
20 circumstances under which the employee will be paid a premium for work-  
21 ing in excess of an established number of hours per day, week, or month,  
22 or for working on designated nights, weekends, or holidays; (vi) the  
23 anticipated period of employment; (vii) any provision to the employee,  
24 and how long the provision will be provided by the employer, and any  
25 costs to the employee associated with the provision, including but not  
26 limited to, transportation to and from work, housing, health insurance  
27 or health care, paid sick or annual leave and holiday or holidays,  
28 pension or retirement benefits, personal protective equipment required  
29 for work, workers' compensation and information about the insurance  
30 policy and rules regarding reporting of accidents or injuries, and unem-  
31 ployment compensation; and (viii) the nature of the work to be performed  
32 by the employee.

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

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

47     (d) An employment agency shall not be penalized for errors or omis-  
48 sions in the non-English portions of any notice provided by the commis-  
49 sioner.

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

1 4.] A receipt for any fee, consideration, or payment which an agency  
2 receives from an applicant. The receipt shall have printed or written on  
3 it the name of the applicant, the name and address of the employment  
4 agency, the date and amount of such fee, consideration or payment or  
5 portion thereof for which the receipt is given, the purpose for which it  
6 was paid, and the signature of the person receiving such payment. The  
7 receipt shall also include immediately above the place for signature of  
8 the person receiving payment, set off in a box and printed in bold and  
9 in caps, the following statement: "An employment agency may not charge  
10 you, the job applicant, a fee before referring you to a job that you  
11 accept. If you pay a fee before accepting a job or pay a fee that other-  
12 wise violates the law, you may demand a refund, which shall be repaid  
13 within seven (7) days." The text contained in this box shall also be in  
14 English and in the language identified by each applicant as the primary  
15 language of such applicant.

16 [5.] 4. The original or duplicate-original copy of each written  
17 contract, each statement of terms and conditions required by subdivision  
18 two of this section, and each receipt required by subdivision [four]  
19 THREE of this section shall be retained by every employment agency for  
20 three years following the date on which the contract is executed. The  
21 records required under this subdivision shall be made available for  
22 inspection by the commissioner or his or her duly authorized agent or  
23 inspector, upon such request.

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

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

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

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

43 (3) Advertise in newspapers or otherwise, or use letterheads or  
44 receipts or other written or printed matter, unless such advertising or  
45 other matter contains the name and address of the employment agency, the  
46 word "agency"[,] and the agency's license number.

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

51 4. Complaints against any such licensed or unlicensed person [may]  
52 SHALL be made orally or in writing to the commissioner, or be sent in an  
53 affidavit form without appearing in person, and may be made by recog-  
54 nized employment agencies, trade associations, or others. The commis-  
55 sioner may hold a hearing on a complaint with the powers provided by  
56 section one hundred seventy-four of this article. If a hearing is held,

1 reasonable notice thereof, not less than five days, shall be given in  
2 writing to said person by serving upon the person either personally, by  
3 mail, or by leaving the same with the person in charge of his office, a  
4 concise statement of the facts constituting the complaint, and the hear-  
5 ing shall commence before the commissioner with reasonable speed but in  
6 no event later than two weeks from the date of the filing of the  
7 complaint. The commissioner when investigating any matters pertaining to  
8 the granting, issuing, transferring, renewing, revoking, suspending or  
9 cancelling of any license is authorized in his discretion to take such  
10 testimony as may be necessary on which to base official action. When  
11 taking such testimony he may subpoena witnesses and also direct the  
12 production before him of necessary and material books and papers. A  
13 daily calendar of all hearings shall be kept by the commissioner and  
14 shall be posted in a conspicuous place in his public office for at least  
15 one day before the date of such hearings. The commissioner shall render  
16 his decision within thirty days from the time the matter is finally  
17 submitted to him. The commissioner shall keep a record of all such  
18 complaints and hearings. In addition to the powers of the commissioner,  
19 the attorney general may bring an action against anyone who is alleged  
20 to have violated this article.

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

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

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

36 [9.] 8. If any provisions of this article or the application thereof  
37 to any person or circumstances is held unconstitutional, the remainder  
38 of the article and the application of that provision to other persons  
39 and circumstances shall not be affected thereby.

40 [10.] 9. If an employment agency fails to maintain records as required  
41 under this article, the credible testimony of an applicant shall form  
42 the proper basis for the calculation of unpaid wages and/or unlawful  
43 fees.

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