

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU**

In the Matter of:

THE INVESTIGATION BY ERIC T. SCHNEIDERMAN,  
ATTORNEY GENERAL OF THE STATE OF NEW YORK,  
OF

EXCELLENT EMPLOYMENT AGENCY,  
UNITED EMPLOYMENT AGENCY, and  
RODRIGO RUIZ

AOD No. 14-131

**ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW  
63(15)**

In January 2013, the Office of the Attorney General of the State of New York (“OAG”) began to investigate, pursuant to the provisions of Section 63(12) of the New York State Executive Law, whether Excellent Employment Agency (“Excellent”), United Employment Agency (“United”), and Rodrigo Ruiz (“Ruiz,” and together with Excellent and United, “Respondents”) engaged in unlawful discrimination against job seekers; referred job seekers to positions paying less than minimum wage; charged excessive or non-refundable referral fees; and failed to meet recordkeeping and other statutory requirements, in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*; the New York State Human Rights Law, N.Y. Exec. L. § 290 *et seq.*; the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*; the Minimum Wage Act, N.Y. Lab. L. § 650 *et seq.*; and Article 11 of the New York General Business Law, N.Y. Gen. Bus. L. § 170 *et seq.*

Numerous employment agencies have targeted immigrant communities in New York City with predatory business practices and discriminatory recruiting tactics, exploiting vulnerable workers seeking low-wage work. The OAG has found that

Respondents targeted such practices at job seekers in the immigrant and ethnic enclave of Jackson Heights, Queens, by referring them to below-minimum wage jobs, charging unlawful referral fees, and unlawfully discriminating against them based on their national origin, gender, and age. In addition, Respondents acceded to the discriminatory preferences of employers by making job referrals and assignments on the basis of a job applicant's national origin, gender or age.

This Assurance of Discontinuance contains the OAG's findings in connection with its investigation of Respondents and the resolution agreed to by the OAG and Respondents (together, the "Parties").

## **I.** **DEFINITIONS**

1. As used throughout this Assurance of Discontinuance, the terms set forth below shall mean as follows:
  - a. "Assurance" means this Assurance of Discontinuance.
  - b. "Ruiz" means Rodrigo Ruiz.
  - c. "Effective Date" means the date that this Assurance is signed into effect by an authorized representative of the OAG.
  - d. "Employment Agency Law" means Article 11 of the New York General Business Law, N.Y. Gen. Bus. L. § 170 *et seq.*
  - e. "Excellent" means both Excellent Employment Agency.
  - f. "Minimum Wage Act" means the Minimum Wage Act, N.Y. Lab. L. § 650 *et seq.*
  - g. "NYCHRL" means the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*

- h. “NYSHRL” means the New York State Human Rights Law, N.Y. Exec. L. § 290 *et seq.*
- i. “OAG” means Office of the Attorney General of the State of New York.
- j. “Parties” means OAG and Respondents.
- k. “Respondents” means Excellent, United, and Ruiz.
- l. “Title VII” means Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*
- m. “United” means United Employment Agency.

## **II.** **FINDINGS**

### **A.** **Applicable Laws**

- 2. Title VII provides that “[i]t shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his . . . sex, or national origin, or to classify or refer for employment any individual on the basis of his . . . sex, or national origin.” 42 U.S.C. § 2000e-2(b).
- 3. NYSHRL and NYCHRL provide that “[i]t shall be an unlawful discriminatory practice . . . [f]or an employment agency to discriminate against any individual” because of age, national origin, or sex “in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer.” N.Y. Exec. L. § 296(1)(b); N.Y.C. Admin. Code § 8-107(1)(b).
- 4. NYSHRL and NYCHRL further provide that “[i]t shall be an unlawful discriminatory practice . . . [f]or any . . . employment agency to print or circulate . . . any

statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination” as to age, national origin, or sex, “or any intent to make any such limitation, specification or discrimination.” N.Y. Exec. L. § 296(1)(d); N.Y.C. Admin. Code § 8-107(1)(d).

5. The Minimum Wage Act provides that “[n]o employment agency shall place or attempt to place any employee in an occupation at less than the wage applicable to such occupation under” the Minimum Wage Act. N.Y. Lab. L. § 664. The basic hourly minimum wage in New York State was \$7.25 between January 1, 2011, and December 30, 2013. As of December 31, 2013, the minimum wage is \$8.00. The minimum wage will rise to \$8.75 as of December 31, 2014, and \$9.00 as of December 31, 2015. 12 NYCRR § 146-1.2. For tipped food service workers (including wait staff, bussers, and bartenders), the hourly minimum wage may be as low as \$5.00, as long as the employer meets statutory requirements and the wages plus tips actually received equal or exceed the basic hourly minimum wage. For tipped service employees (including delivery persons), the hourly minimum wage may be as low as \$5.65, as long as the employer meets statutory requirements and the wages plus tips actually received equal or exceed the basic hourly minimum wage. 12 NYCRR § 146-1.3.
6. The Employment Agency Law prohibits an employment agency from sending “any person to an 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.” N.Y. Gen. Bus. L. § 187(5).
7. The Employment Agency Law also governs the referral fees that may be charged by an employment agency. An employment agency may collect an advance fee from an applicant for domestic or untrained work, but the fee cannot exceed 10% of the first full month’s salary where no meals or lodging are provided, 12% of the first full month’s salary where one meal per working day is provided, 14% of the first full month’s salary where two meals per working day are provided, or 18% where three meals and lodging per working day are provided. § 185(2), (4).
  8. Any excess over the lawful fee amount must be returned within seven days after receiving a demand therefor, and without demand immediately after the employment agency has been notified that employment has been obtained. §§ 185(3), 186(1).
  9. Even if not excessive, the entire advance fee must be returned immediately upon demand if at the time a demand is made employment has not yet been obtained. § 185(3).
  10. If a job applicant accepts employment and fails to report to work, the gross fee charged to such applicant shall not exceed 25% of the maximum lawful fee. If a job applicant accepts employment and reports for work, and such employment is terminated without fault of the employee, the gross fee charged to such employee shall not exceed 10% of the salary or wages actually received by such employee, and in no event shall such fee exceed the maximum lawful fee. § 186(2)-(3).

11. The Employment Agency Law also sets forth the recordkeeping requirements for employment agencies. An employment agency must maintain a register of employer and applicant information containing certain statutorily required information with respect to each applicant that is referred to a job and each employer to whom an applicant is referred. § 179.
12. An employment agency must enter into a job referral contract with any applicant referred to a job, must retain all such contracts for a statutorily prescribed period, and must give the applicant a copy of the contract, which must include a statement setting forth in a clear and concise manner the provisions of sections 185 and 186 of the General Business Law. § 181(1), (4).
13. An employment agency must create a receipt for any fee charged to an applicant, and must provide to the applicant a copy of the receipt, which must contain certain statutorily prescribed information. § 181(3)-(4).

**B.**  
**Background**

14. Ruiz manages and operates two employment agencies: Excellent and United. “Excellent Employment Agency” and “United Employment Agency” are trade names under which Ruiz is certified to transact business.
15. Excellent is located at 88-14 Roosevelt Avenue, 1st Floor, Jackson Heights, New York. Excellent is also known as Excellent Agencia de Empleos.
16. United is located at 89-04 Roosevelt Avenue, 2nd Floor, Jackson Heights, New York. United is also known as Unidos Agencia de Empleo.
17. Ruiz operates Excellent and United and trains and supervises secretaries, who assist him by interacting with employers and job applicants, including speaking in

Spanish when necessary. Ruiz also reviews and maintains Excellent's and United's records.

18. Excellent and United are located in Jackson Heights, where there are significant Hispanic and Asian immigrant communities. According to the U.S. Census Bureau's 2012 American Community Survey Five-Year Estimates, over 60% of the population of Jackson Heights is foreign-born, with the vast majority emigrating from Latin America. The largest national origin groups among the Hispanic population are Ecuadorian, Colombian, Mexican, Dominican, and Puerto Rican.
19. Excellent and United solicit business from job applicants by local in-person marketing. For example, Excellent distributes Spanish-language business cards stating that the agency has restaurant, deli, cashier, grocery, and retail jobs available. United distributes similar Spanish-language flyers. Over half of Excellent's and United's customers are Spanish speakers. Most of Excellent's and United's customers seek job placement in the food service industry or other untrained work.

### **C. Violations of Law**

20. Respondents violated Title VII, NYSHRL, and NYCHRL by discriminating against job applicants on account of national origin.
21. The OAG reviewed documents and evidence which revealed that during interviews, Respondents systematically asked applicants to provide their national origin and recorded this information. For example, all of Respondents' job

contracts had handwritten notes on the reverse side—such as “Guatemala,” “Mexico,” or “El Salvador”—reflecting the applicant’s national origin.

22. In addition, the OAG reviewed evidence which revealed that Respondents would match applicants to jobs based on their national origin when they received such requests from employers. If an employer requested that referred applicants be of a certain national origin, Respondents would accommodate the discriminatory requests of these employers by using their handwritten notes on the job contracts to refer applicants.
23. National origin was not a bona fide occupational qualification for any of these jobs, most of which were in the food service industry. *See* 42 U.S.C. § 2000e-2(b); N.Y. Exec. L. § 296(1)(b), (d); N.Y.C. Admin. Code § 8-107(1)(b), (d).
24. Respondents violated Title VII, NYSHRL, and NYCHRL by discriminating against job seekers on account of gender.
25. The OAG reviewed documents and evidence which revealed that Respondents regularly received listings for positions from employers that requested a specified gender. Respondents noted these preferences in their records in order to match applicants to jobs where employers had requested applicants of a specific gender. For example, Respondents’ job register reflected employer requests such as “Helper Boy,” “Helper Lady,” “soup guy,” “Salad girl,” and “Salad man.”
26. The vast majority of applicants actually placed in such jobs were of the gender preferred by the employer.

27. Gender was not a bona fide occupational qualification for any of these jobs, most of which were in the food service industry. *See* 42 U.S.C. § 2000e-2(b); N.Y. Exec. L. § 296(1)(b), (d); N.Y.C. Admin. Code § 8-107(1)(b), (d).
28. Respondents violated Title VII, NYSHRL, and NYCHRL by discriminating against job seekers on account of age.
29. The OAG reviewed documents and evidence which revealed that during interviews, Respondents systematically asked applicants to provide their age and recorded this information. For example, all of Respondents' job contracts had handwritten notes on the reverse side—such as “21 years” or “39 years”—reflecting the age of job applicants.
30. In addition, the OAG reviewed evidence which revealed that Respondents would match applicants to jobs based on their age when they received such requests from employers. If an employer required that referred applicants be of a certain age or age range, Respondents would consult their handwritten notes on the job contracts and refer only applicants of the requested age or age range.
31. Age was not a bona fide occupational qualification for any of these jobs, most of which were in the food service industry. *See* 42 U.S.C. § 2000e-2(b); N.Y. Exec. L. § 296(1)(b), (d); N.Y.C. Admin. Code § 8-107(1)(b), (d).
32. Respondents violated the Minimum Wage Act and the Employment Agency Law by referring applicants to jobs paying less than the applicable minimum hourly wage. *See* N.Y. Lab. L. § 664; 12 NYCRR §§ 146-1.2 to -1.3; N.Y. Gen. Bus. L. § 187(5).

33. Respondents violated the Employment Agency Law by charging excessive advance fees. Respondents charged a flat advance fee of \$120, which did not vary depending on the anticipated wage of the job or whether meals or lodging are provided. N.Y. Gen. Bus. L. § 185(2), (4).
34. Respondents violated the Employment Agency Law by failing to provide refunds of advance fees as required by law. Respondents did not provide any refund if an employee had worked more than seven days at a job, notwithstanding the amount of salary or wages actually earned. Respondents have never refunded the excessive portion of any fee charged. §§ 185(3), 186(2)-(3).
35. In addition, the OAG's investigation revealed that, while Respondents' job referral contract set forth in writing that applicants have a right to a refund of the referral fee, Respondents' staff told job applicants that the fee was not fully refundable, and regularly failed to provide applicants with a copy of the contract setting forth Respondents' purported refund policy.
36. Respondents violated the Employment Agency Law by failing to comply with certain recordkeeping requirements, including the requirement to note the purpose of the advance fee on receipts, and by failing to provide applicants with a copy of the job referral contract. §§ 179, 181(1), (3)-(4).

### **III.** **PROSPECTIVE RELIEF**

**WHEREAS**, Respondents are subject to Title VII, NYSHRL, NYCHRL, the Minimum Wage Act, and the Employment Agency Law, which prohibit Respondents' conduct as described herein;

**WHEREAS**, New York State Executive Law § 63(12) prohibits repeated or persistent illegal acts in the transaction of business;

**WHEREAS**, the OAG seeks to protect immigrant communities in New York City from predatory and discriminatory business practices by employment agencies, and to ensure that immigrant communities have equal access to the labor market;

**WHEREAS**, Respondents' have targeted immigrant communities with predatory and discriminatory business practices;

**WHEREAS**, Respondents have cooperated with the OAG's investigation by voluntarily producing relevant information and providing sworn testimony, and agree to continue to work cooperatively with the OAG;

**WHEREAS**, Respondents neither admit nor deny the OAG's Findings set forth in Paragraphs 2–36;

**WHEREAS**, Respondents desire to avoid the expense of further investigation and litigation;

**WHEREAS**, the OAG is willing to accept the terms of this Assurance pursuant to New York State Executive Law § 63(15) and to discontinue its investigation of Respondents; and

**WHEREAS**, the Parties believe that the obligations imposed by this Assurance are prudent and appropriate;

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between Respondents and the OAG as follows:

**A.**  
**General Injunction**

37. Respondents agree to comply fully with the obligations and conditions of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*; the New York State Human Rights Law, N.Y. Exec. L. § 290 *et seq.*; the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*; the Minimum Wage Act, N.Y. Lab. L. § 650 *et seq.*; and Article 11 of the New York General Business Law, N.Y. Gen. Bus. L. § 170 *et seq.*, in the operation of Excellent Employment Agency, United Employment Agency, and any other employment agency that Ruiz owns or operates, including any successor employment agencies.

**B.**  
**Non-Discrimination**

38. Respondents shall not consider an applicant's race, color, national origin, age, creed, gender, disability, marital status, partnership status, sexual orientation, or alienage or citizenship status in making referrals for employment.

39. Respondents shall ensure that any advertisement, notice, business card or other solicitation states that Respondents are committed to ensuring equal employment opportunity and/or include a copy of the Equal Employment Opportunity logo.

40. Respondents shall not collect information in writing or otherwise regarding an applicant's race, color, national origin, age, creed, gender, disability, marital status, partnership status, sexual orientation, or alienage or citizenship status.

41. Respondents agree that if any employer contacts Respondents seeking to have an applicant referred to a position for which there is a specification, preference, or limitation as to applicants on account of race, color, national origin, age, creed,

gender, disability, marital status, partnership status, sexual orientation, or alienage or citizenship status, Respondents shall:

- a. provide a statement, in writing or otherwise, that indicates Respondents' commitment to ensuring equal employment opportunity and commitment to non-discrimination;
- b. reject all requests for any such referrals;
- c. record such contacts in their register pursuant to Paragraph 50, with a notation that no referral was made due to an apparent violation of anti-discrimination laws; and
- d. inform the OAG in writing within seven (7) days of receiving such a specification, preference, or limitation, including a copy of any document or form reflecting the request and including contact information for the employer.

**C.**  
**Wage and Hour**

42. Respondents shall not refer any applicant to an employer that pays less than the applicable minimum wage and overtime.
43. To ensure that they comply with Paragraph 42, Respondents shall obtain from all employers seeking job applicants for the anticipated wage rate (including whether tips will be received), daily hours of work, and weekly work schedule for any job that such employer desires to have filled by referrals from Excellent or United.
44. Respondents agree that if any employer contacts Respondents seeking to have an applicant referred to a position that pays less than the minimum wage or does not pay overtime, Respondents shall:

- a. provide a statement, written or otherwise, that indicates Respondent's commitment to complying with applicable Minimum Wage Law requirements;
- b. reject all requests for any such referrals;
- c. record such contacts in their register pursuant to Paragraph 50, with a notation that no referral was made due to an apparent violation of wage and hour laws; and
- d. inform the OAG in writing within seven (7) days of receiving such a request, including a copy of any document or form reflecting the request and proposed hourly wage and including contact information for the employer.

**D.**  
**Fees and Advance Fees**

45. Respondents agree not to charge any gross fee (including any advance) for placement of domestics, household employees, unskilled or untrained manual laborers, or agricultural workers in excess of the fee ceiling described at N.Y. Gen. Bus. L. § 185(5), which, in relevant part, limits such fees to:

- a. 10% of the first full month's salary or wages, where no meals or lodging are provided;
- b. 12% of the first full month's salary or wages, where one meal per working day is provided;
- c. 14% of the first full month's salary or wages, where two meals per working day are provided; or
- d. 18% of the first full month's salary or wages, where three meals and lodging per working day are provided.

46. To ensure that they comply with Paragraph 45, Respondents shall ask all employers seeking job applicants whether lodging is provided and how many meals per working day are provided at any job that such employer desires to have filled by referrals from Excellent or United.

47. Respondents shall:

- a. immediately upon demand return in full any advance fee to an applicant who has, at the time of such demand, not obtained employment;
- b. return any portion of a fee or advance fee in excess of the lawful amount within seven days after receiving a demand therefor;
- c. if no demand is made, return any portion of a fee or advance fee in excess of the lawful amount immediately after Excellent or United has been notified that the applicant has obtained employment;
- d. if an applicant accepts employment and fails to report to work, return any portion of the fee or advance fee charged that exceeds 25% of the maximum lawful fee; and
- e. if an applicant accepts employment and reports for work and thereafter such employment is terminated without fault of the employee, return any portion of the fee or advance fee charged that exceeds the lower of the maximum lawful fee or 10% of the salary or wages actually received by such employee.

**E.**

**Form of Records and Notices to Applicants**

48. Respondents shall use a job referral contract, the form of which is attached to this Assurance as **Exhibit A**.

- a. Respondents shall keep all job referral contracts for a period of at least three years from the date of execution.
  - b. Respondents shall provide each applicant with a copy of his or her job referral contract.
49. Respondents shall provide a receipt, the form of which is attached to this Assurance as **Exhibit B**, to each applicant for all deposits and fees charged.
- a. Respondents shall keep a copy of each receipt for three years following the date of such receipt.
  - b. Respondents must record on the receipt the following information:
    - i. the name of the applicant;
    - ii. the name and address of the employment agency;
    - iii. the date and amount of the fee or deposit;
    - iv. the purpose of the fee or deposit; and
    - v. the signature of the person receiving the fee or deposit.
50. Respondents agree to maintain a register of applicants and employers, the form of which is attached to this Assurance as **Exhibit C**.
- a. Respondents must record in the register the following information:
    - i. the date of the application for employment; the date the applicant started work; 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;
    - ii. the name and address of every employer from whom a fee is received or charged or to whom Respondents refer 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 anticipated rate of wages, and the amount of the fee or deposit charged.

51. Respondents shall provide each applicant referred to a job with a referral form, the form of which is attached to this Assurance as **Exhibit D**.

a. Respondents must record on the job referral form the following information:

- i. the name and address of the person to whom the applicant is to apply for such employment;
- ii. the kind of service to be performed;
- iii. the anticipated rate of wages or compensation (including whether tips will be received);
- iv. the agency's fee for the applicant based on such anticipated wages or compensation;
- v. whether such employment is permanent or temporary;
- vi. the name and address of the person authorizing the hiring of such applicant; and
- vii. the cost of transportation if the services are required outside of the city, town or village where such agency is located.

52. Respondents shall provide each applicant referred to a job with a compliance form, the form of which is attached to this Assurance as **Exhibit E**.

a. The compliance form for each referred applicant shall set forth:

- i. the applicant name, employer name, positions, and receipt number;
- ii. the anticipated hourly wage (including any credit for tips);
- iii. a certification by Excellent or United that the anticipated hourly wage to be paid by the employer not be below the applicable minimum wage;
- iv. the anticipated first month's wages;
- v. whether lodging is provided by the employer;
- vi. how many meals per workday are provided by the employer;
- vii. the amount of any fee or advance fee paid by the applicant;

- viii. a certification by Excellent or United that the fee or advance fee amount is not above the applicable maximum fee or advance fee limits; and
  - ix. a certification by Excellent or United that the position to which the applicant was referred was not offered on discriminatory terms.
- b. The compliance form must be signed by the applicant and by a representative of Excellent or United.
  - c. A copy of the compliance form shall be kept in the compliance file, pursuant to Paragraph 57.

#### **IV.** **TRAINING**

53. Respondents shall complete a training session, of no less than two hours, on the requirements of the New York equal employment opportunity laws, anti-discrimination requirements, and wage and hour laws within one month of the Effective Date. This training shall be provided by a third party at Respondents' expense and shall be subject to the approval of the OAG.
54. Respondents shall provide training on the requirements of New York equal employment opportunity laws, anti-discrimination requirements, and New York wage and hour laws to any and all new employees hired subsequent to the training provided by the OAG within one week of their hire date.
55. A certification showing completion of the training required pursuant to paragraph 53 and a copy of attendance sheets from any training conducted pursuant to paragraph 54 shall be provided to the OAG within 7 days of the completion of the training.

**V.**  
**RECORD KEEPING AND MONITORING**

56. For the term of the Assurance, Respondents shall retain all records relating to their obligations hereunder. The OAG shall have the right to review and copy such records upon request.
57. In addition to the records Respondents are required to maintain pursuant to the Employment Agency Law, Respondents must maintain a compliance file for the duration of this Assurance. The compliance file shall contain the records required by Paragraph 52 of this Assurance.
58. Respondents shall make an annual report to the OAG on its progress in fulfilling the goals of the Assurance. Each such report shall list any complaints against Respondents by job applicants, including the name and contact information of the complainant and a summary of the complaint. Respondents shall submit this report each year for the term of the Assurance within thirty (30) days of the anniversary of the Effective Date.

**VI. COMPLIANCE TESTING**

59. The OAG may take steps to monitor Respondent's compliance with the terms of this Assurance by conducting site visits at any of the Respondents' offices to determine whether Respondents are conducting their business in a non-discriminatory manner and in accordance with the law.

**VII.**  
**MONETARY RELIEF**

60. In consideration of the making and execution of this Assurance, and within twenty (20) business days of the Effective Date, Respondents agree that they will pay to the State of New York \$5,000 in penalties, fees, and costs.

61. Payment will be made by certified or bank check, bearing the AOD No. 14-131,  
payable to: “New York State Department of Law” and forwarded to:

Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
Attn: Mayur Saxena  
Assistant Attorney General

**VIII.**  
**SCOPE OF THE ASSURANCE, JURISDICTION, AND**  
**ENFORCEMENT PROVISIONS**

62. The OAG has agreed to the terms of this Assurance based on, among other things, the representations that Respondents made to the OAG and the OAG’s own findings from the factual investigation as set forth in Findings outlined in Paragraphs 2–36 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.
63. This Assurance shall expire three (3) years after the Effective Date, except that the OAG may, in its sole discretion, extend the Assurance term upon a good-faith determination that Respondents have not complied with this Assurance, which non-compliance the OAG will discuss and attempt to resolve with Respondents in good faith before making such determination.
64. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

65. Upon execution by the Parties to this Assurance, the OAG shall discontinue the instant investigation except as otherwise related to the enforcement of the terms of this Assurance.
66. This Assurance binds Respondents and its principals, directors, beneficial owners, officers, shareholders, successors, assigns, "d/b/a" companies, subsidiaries, affiliates, and any other business entities whom any such individuals may hereafter form or control.
67. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents agree not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph affects Respondents' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Respondents.
68. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.
69. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

70. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
71. To the extent not already provided under this Assurance, Respondents agree to, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
72. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

Office of the Attorney General

Mayur Saxena  
Assistant Attorney General  
Civil Rights Bureau  
Office of the New York State Attorney General  
120 Broadway, 3rd Floor  
New York, NY 10271  
Tel.: (212) 416-8250  
Fax: (212) 416-8074  
Email: Civil.Rights@ag.ny.gov

Excellent Employment Agency, United Employment Agency, and Rodrigo Ruiz

Rodrigo Ruiz  
89-04 Roosevelt Avenue, 2<sup>nd</sup> Floor  
Jackson Heights, New York 11372  
Tel.: (718) 473-4054  
Email: fernandro@live.com

Any changes in the person to whom communications should be specifically directed shall be made in advance of the change.

73. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Respondents shall make no representation to the contrary.
74. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.
75. If a court of competent jurisdiction determines that Respondents have breached this Assurance, Respondents shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.
76. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to New York State Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
77. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

~~June~~ <sup>July</sup> 7, 2014: IN WITNESS THEREOF, this Assurance is executed by the Parties hereto on

Excellent and United Employment Agency

By: Rodrigo Ruiz

Rodrigo Ruiz

By: Rodrigo Ruiz.

**ERIC T. SCHNEIDERMAN**

Attorney General of the State of New York

By: Kristen Clarke 7/7/14  
Kristen Clarke  
Bureau Chief

By: [Signature]  
Mayur Saxena  
Assistant Attorney General

Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

# EXHIBIT A

# Contract

## Employment Agency Information

Name of Employment Agency \_\_\_\_\_

Telephone Number \_\_\_\_\_ License Number \_\_\_\_\_

Name of Agency Staff or Salesperson \_\_\_\_\_

Address \_\_\_\_\_

## Job Applicant Information

Name of Job Applicant \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

## Type of Work and Fees (Check only one and complete section.)

Agency can only charge a fee for job placement. This means the Agency can only charge you a fee after it gets you a job. Agency **CANNOT** charge a fee for:

- setting up interviews
- trainings
- reviewing resumes
- any services besides placing Applicant in a job
- photographs

**Domestic/household work and unskilled/untrained manual work**

(Classes A, A\*, A\*\*, A\*\*\* depending on whether Agency recruited Applicant in another state or country)

- Agency can charge a deposit or advance fee (unless Applicant is recruited from Hawaii, Alaska, another country).
- By law, Agency must refund the deposit or advance fee if Applicant is not placed in a job.
- If Applicant is placed in a job, advance fees or deposits must be credited to the Applicant's fee.
- Was an advance fee or deposit paid? Yes \_\_\_\_\_ No \_\_\_\_\_
- If Yes, amount of fee: \$ \_\_\_\_\_

**Trained or skilled industrial workers or mechanics (non-professional) (Class A1)**

Agency may charge a deposit or advance fee.

- Agency can charge a deposit or advance fee (unless Applicant is recruited from Hawaii, Alaska, another country).
- By law, Agency must refund the deposit or advance fee if Applicant is not placed in a job.
- If Applicant is placed in a job, advance fees or deposits must be credited to the Applicant's fee.
- Was an advance fee or deposit paid? Yes \_\_\_\_\_ No \_\_\_\_\_
- If Yes, amount of fee: \$ \_\_\_\_\_

**Theatrical (e.g., actors, singers, models) (Class C)**

By law, Agency cannot charge any deposit or advance fee.

**Nursing (Class D)**

By law, Agency cannot charge any deposit or advance fee.

**All other work, including commercial, clerical, executive, administrative and professional employment and employment outside the continental United States (Class B)**

By law, Agency cannot charge any deposit or advance fee.

## Fees

### Fee for Job Placement

(See attached Sections 185 and 186 for maximum fees Agency can charge by law.)

- Check here if the fee will be paid by the employer.
- Flat Placement Fee Total Amount: \$ \_\_\_\_\_
- Percent of Salary: \_\_\_\_\_ % of \_\_\_\_\_ Months or Weeks (circle one)

### Fee Payment Schedule

The fee shall be paid:

- in ten equal weekly installments payable at the end of each of the first ten weeks.
- in five equal installments payable at the end of each of the first five pay periods.
- other \_\_\_\_\_

**Note:** By law, Agency cannot require Applicant to pay the fee any faster. Any other payment plan must give Applicant MORE time to pay.

## Important Terms and Requirements

**RECEIPTS:** Agency will provide Applicant with a separate, written receipt for every deposit, fee or other charge collected by it, advance or otherwise.

**FEE AMOUNTS:** The maximum fees that Agency can charge are limited by law depending on the job. Agency shall not charge fees inconsistent with Sections 185 and 185-a of the General Business Law. See attached fee schedule for more information.

**REFUND OF FEES:** Agency must RETURN IN FULL all fees, deposits or other payments within seven (7) days of Applicant's request for a refund if Agency has not placed Applicant in a job. If Applicant has been placed in a job, refund amounts shall be consistent with Section 186 of the General Business Law (attached).

**FEE WHEN APPLICANT FAILS TO APPEAR FOR WORK OR IS TERMINATED:** Agency shall not charge any fees inconsistent with Section 185 of the General Business Law in the event that the Applicant fails to report to work or is terminated, regardless of the circumstances.

**STATEMENT OF APPLICANT'S RIGHTS:** Agency will provide a Household or Domestic Applicant with a "Statement of Employee Rights."

**LEGITIMATE EMPLOYMENT:** Agency will only send Applicant to legitimate job listings obtained from the employer that reflect current job openings. Agency will contact the employer and verify the availability of the job before referring Applicant.

**WORK CONDITIONS:** Agency will provide the following information prior to placement: (1) the hours per week the job applicant is expected to work; (2) whether the job applicant will be paid on a weekly, bi-weekly, or monthly basis; and (3) whether there are any health and/or safety risks involved and what steps may be taken to prevent or control those risks.

**NOTICE TO JOB APPLICANT -- READ BEFORE SIGNING**

**Do not sign this contract before you have read it or if any spaces are left blank. The employment agency must give you a signed copy of this contract at the time you sign it.**

**IMPORTANT: It is against the law for the employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. YOU ARE ENTITLED TO A REFUND. IF A REFUND IS NOT MADE WITHIN SEVEN (7) DAYS OR YOU HAVE A COMPLAINT OR NEED MORE INFORMATION, CALL 3-1-1.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employment Agency Representative's Signature

\_\_\_\_\_  
Date

**EMPLOYMENT AGENCY LAW**

**§ 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 (a) 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; and (b) for class "C" employment: (i) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or (ii) after an agency represents an artist in the negotiation or renegotiation of an original or preexisting contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class "C" employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth in a clear and concise manner that provisions of this section and section one hundred eighty-six of this article. 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, and except for class "C" employment, 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 installments 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;

*(See § 184 for requirements concerning out-of-state domestic 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%

**§ 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.

# Contrato

## Información de la Agencia de Empleo

Nombre de la Agencia de Empleo \_\_\_\_\_

Número de teléfono \_\_\_\_\_ Número de Licencia \_\_\_\_\_

Nombre del vendedor o representante de la Agencia \_\_\_\_\_

Dirección \_\_\_\_\_

## Información del Solicitante de Trabajo

Nombre del Solicitante de trabajo \_\_\_\_\_

Número de teléfono \_\_\_\_\_

Dirección \_\_\_\_\_

## Tipo de Trabajo y Honorarios (Marque un casillero solamente y complete la sección.)

La agencia solamente puede cobrar un honorario por la colocación en un empleo. Esto quiere decir que la Agencia solamente puede cobrarle un honorario después de que le encuentra un trabajo. La Agencia NO PUEDE cobrar un honorario por:

- concertar entrevistas
- capacitaciones
- revisar su currículo vitae
- cualquier servicio aparte de colocar al Solicitante en un empleo
- fotografías

### Trabajo doméstico/de casa y obra de mano sin capacitación o habilidades

(Clases A, A\*, A\*\*, A\*\*\* dependiendo si la Agencia reclutó al Solicitante en otro estado o país)

- La Agencia puede cobrar un depósito o un honorario por adelantado (a menos que el Solicitante sea reclutado de Hawai, Alaska, otro país).
- Por ley, la Agencia debe reembolsar el depósito u honorario anticipado si al Solicitante no se le encuentra empleo.
- Si al Solicitante se le coloca en un empleo, el depósito u honorario adelantado debe abonarse al honorario del Solicitante.
- ¿Se pagó un depósito u honorario por adelantado? Sí \_\_\_\_\_ No \_\_\_\_\_
- Si respondió sí, monto del honorario: \$ \_\_\_\_\_

### Mecánicos o trabajadores industriales con habilidades o capacitación (no profesional) (Clase A1)

La Agencia puede cobrar un depósito u honorario por adelantado.

- La Agencia puede cobrar un depósito o un honorario por adelantado (a menos que el Solicitante sea reclutado de Hawai, Alaska, otro país).
- Por ley, la Agencia debe reembolsar el depósito u honorario anticipado si al Solicitante no se le encuentra empleo.
- Si al Solicitante se lo coloca en un empleo, el depósito u honorario adelantado debe abonarse al honorario del Solicitante.
- ¿Se pagó un depósito u honorario por adelantado? Sí \_\_\_\_\_ No \_\_\_\_\_
- Si respondió sí, monto del honorario: \$ \_\_\_\_\_

### Teatrales (es decir, actores, cantantes, modelos) (Clase C)

Por ley, la Agencia no puede cobrar ningún depósito u honorario por adelantado.

### Enfermería (Clase D)

Por ley, la Agencia no puede cobrar ningún depósito u honorario por adelantado.

### Todos los otros tipos de trabajos, incluyendo comercial, secretarial, ejecutivo, administrativo y profesional y empleos fuera de Estados Unidos continental (Clase B)

Por ley, la Agencia no puede cobrar ningún depósito u honorario por adelantado.

## Honorarios

### Honorarios por Colocación en un Empleo

(Ver las Secciones 185 y 186 adjuntas para los honorarios máximos que, por ley, puede cobrar la Agencia.)

- Marque aquí si el honorario va a ser pagado por el empleador.
- Honorario fijo de colocación      Monto total: \$ \_\_\_\_\_
- Porcentaje del salario: \_\_\_\_\_% de \_\_\_\_\_ meses o semanas (marque uno con un círculo)

### Plan de Pago de Honorarios

El honorario deberá pagarse:

- en diez cuotas semanales iguales, pagaderas a fines de cada una de las primeras diez semanas.
- en cinco cuotas iguales, pagaderas al final de cada uno de los primeros cinco periodos de pago.
- otro \_\_\_\_\_

**Nota:** Por ley, la Agencia no puede pedirle al Solicitante que pague las cuotas más rápido. Cualquier otro plan de pago debe darle al Solicitante MÁS tiempo para pagar.

## Condiciones y Requisitos Importantes

**RECIBOS:** La Agencia le proveerá al Solicitante un recibo impreso, individual, por cada depósito, honorario u otro cargo que recaude ésta, ya sea por adelantado o no.

**MONTOS DE LOS HONORARIOS:** Los montos máximos que la Agencia puede cobrar están limitados por ley, dependiendo del trabajo. La Agencia no deberá cobrar ningún honorario que no esté en cumplimiento con las Secciones 185 y 185-a de la Ley Comercial General. Ver el plan de honorarios adjunto para más información.

**REEMBOLSO DE HONORARIOS:** La Agencia debe REEMBOLSAR EL MONTO TOTAL de todos los honorarios, depósitos u otros pagos dentro de siete (7) días de recibir la petición de devolución del Solicitante si la Agencia no le ha encontrado un trabajo al Solicitante. Si al Solicitante se le ha colocado en un trabajo, los montos de reembolso deberán estar de acuerdo con la Sección 186 de la Ley Comercial General (adjunto).

**HONORARIOS CUANDO EL SOLICITANTE NO SE PRESENTA AL TRABAJO O ES DESPEDIDO:** La Agencia no deberá cobrar ningún honorario que no esté de acuerdo con la Sección 185 de la Ley Comercial General en el caso que el Solicitante no se presente al trabajo o sea despedido, sin importar las circunstancias.

**DECLARACIÓN SOBRE LOS DERECHOS DEL SOLICITANTE:** La Agencia deberá proveerle a un Solicitante de Trabajo doméstico o de casa una "Declaración de los Derechos del Empleado".

**EMPLEO LEGÍTIMO:** La Agencia solamente deberá enviar al Solicitante a los listados de oferta de trabajo legítimos de un empleador que reflejen los trabajos que están actualmente disponibles. La Agencia deberá contactarse con el empleado y verificar la disponibilidad del trabajo antes de enviar al Solicitante.

**CONDICIONES DE TRABAJO:** La Agencia deberá entregar la siguiente información antes de la colocación: (1) las horas por semana que deberá trabajar el Solicitante; (2) si al solicitante se le va a pagar en forma semanal, cada dos semanas o mensualmente; y (3) si conlleva riesgos para la salud y/o seguridad y qué medidas se pueden tomar para evitar o controlar esos riesgos.

**AVISO AL SOLICITANTE DE TRABAJO – LEA ESTO ANTES DE FIRMAR**

**No firme este contrato antes de leerlo o si algún espacio se deja sin llenar. La agencia de empleo debe darle una copia firmada de este contrato al momento en que usted lo firma.**

**IMPORTANTE: Es ilegal que una agencia de empleo cobre un honorario por la solicitud o el registro. La agencia solamente puede cobrar un depósito si usted está solicitando ciertos tipos de empleo. USTED TIENE DERECHO A UN REEMBOLSO. SI NO SE HACE EL REEMBOLSO DENTRO DE SIETE (7) DÍAS, TIENE UNA QUEJA O NECESITA MÁS INFORMACIÓN, LLAME AL 3-1-1.**

\_\_\_\_\_  
Firma del Solicitante

\_\_\_\_\_  
Fecha

\_\_\_\_\_  
Firma del Representante de la Agencia de Empleo

\_\_\_\_\_  
Fecha

**EMPLOYMENT AGENCY LAW**

**§ 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 (a) 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; and (b) for class "C" employment: (i) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or (ii) after an agency represents an artist in the negotiation or renegotiation of an original or preexisting contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class "C" employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth in a clear and concise manner that provisions of this section and section one hundred eighty-six of this article. 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, and except for class "C" employment, 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 installments 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;

*(See § 184 for requirements concerning out-of-state domestic 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%

**§ 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.

# EXHIBIT B

# Receipt

Employment Agency Information (to be completed by Employment Agency)		
Name of Employment Agency _____		
Telephone Number _____ License Number _____		
Name of Agency Staff or Salesperson _____		
Address _____ _____		
Name of Applicant:		Date:
Name of Employer (if known):		
Address of Employer:		Telephone:
E-mail Address, if available:		
Job Title:	Salary:	Employment Class:
Amount of Fee:		
Purpose of Fee:		
<p><b>It is against the law for the employment agency to charge a registration or application fee. The agency can only collect a deposit if you are applying for certain types of jobs. YOU ARE ENTITLED TO A REFUND. IF A REFUND IS NOT MADE WITHIN SEVEN (7) DAYS OR YOU HAVE A COMPLAINT OR NEED MORE INFORMATION, CALL 3-1-1.</b></p>		

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

I confirm that any and all fees the Employment Agency requires Applicant to pay are consistent with the law.

\_\_\_\_\_  
Employment Agency Representative's Signature

\_\_\_\_\_  
Date

# Recibo

Información de la Agencia de Empleo (a ser completada por la Agencia de Empleo)		
Nombre de la Agencia de Empleo _____		
Número de teléfono _____ Número de Licencia _____		
Nombre del vendedor o representante de la Agencia _____		
Dirección _____ _____		
Nombre del Solicitante:		Fecha:
Nombre del Empleado (si se sabe):		
Dirección del Empleador:		Teléfono:
Correo electrónico, si se tiene disponible:		
Cargo:	Salario:	Clase de Empleo:
Monto del honorario:		
Propósito del honorario:		
<b>Es ilegal que una agencia de empleo cobre un honorario por la solicitud o el registro. La agencia solamente puede cobrar un depósito si usted está solicitando ciertos tipos de empleo. USTED TIENE DERECHO A UN REEMBOLSO. SI NO SE HACE EL REEMBOLSO DENTRO DE SIETE (7) DÍAS, TIENE UNA QUEJA O NECESITA MÁS INFORMACIÓN, LLAME AL 3-1-1.</b>		

\_\_\_\_\_  
Firma del Solicitante

\_\_\_\_\_  
Fecha

Ratifico que todos y cualquier honorario que la Agencia de Empleo le pida pagar al Solicitante son conforme a la ley.

\_\_\_\_\_  
Firma del Representante de la Agencia de Empleo

\_\_\_\_\_  
Fecha

# EXHIBIT C

## Employer Request

File No.	Date of Request	Employer Name & Address	Positions Available	Rate(s) of Wages	Fee Received from Applicant	Fee Received from Employer	Notes

## Job Applicant

Date Sent	Date Hired	Applicant Name & Address	Fee Paid Date(s) & Receipt Number(s)	Fee Amount(s)	Notes

# EXHIBIT D

# Referral Form

Applicant Name \_\_\_\_\_

Receipt No. \_\_\_\_\_

Referred to \_\_\_\_\_  
(Employer Name & Address)

Report to \_\_\_\_\_  
(Manager/Owner Name & Telephone No.)

Position \_\_\_\_\_

Rate of Pay \_\_\_\_\_

Days Per Week \_\_\_\_\_

Hours Per Day \_\_\_\_\_

Start Date \_\_\_\_\_

Other Information:

# EXHIBIT E

# Compliance Form

Applicant Name \_\_\_\_\_

Receipt No. \_\_\_\_\_

Employer Name \_\_\_\_\_

Position \_\_\_\_\_

Employment Agency certifies that the position to which the applicant is being referred was not offered on discriminatory terms. *See* 42 U.S.C. § 2000e-2(b); N.Y. Exec. L. § 296(1)(b), (d); N.Y.C. Admin. Code § 8-107(1)(b), (d).

Anticipated Hourly Wage \_\_\_\_\_

Employment Agency certifies that the anticipated hourly wage is not below the applicable minimum wage. *See* N.Y. Lab. L. § 664; 12 NYCRR § 146-1.2 to -1.3.

Anticipated First Month's Wages \_\_\_\_\_

Lodging provided by employer: Yes / No

Meals per workday provided by employer: 0 / 1 / 2 / 3

Amount of fee charged \_\_\_\_\_

Employment Agency certifies that the total fee is not above the limits set forth in the employment agency laws. *See* N.Y. Gen. Bus. L. § 185(2), (4).

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Employment Agency

You may file a complaint against an employment agency with any of the following:

**For employment agencies located in New York City:**

New York City Department of Consumer Affairs

43 Broadway

New York, NY 10004

Tel.: 3-1-1

[www.nyc.gov](http://www.nyc.gov)

**For employment agencies located outside of New York City:**

New York State Department of Labor

State Office Building Campus, Rm. 500

Albany, NY 12240

Tel.: 518-457-9000

[www.labor.state.ny.us](http://www.labor.state.ny.us)

**For employment agencies located in or outside of New York City:**

New York State Office of the Attorney General

Civil Rights Bureau

120 Broadway, 23<sup>rd</sup> Floor

New York, NY 10271

Tel.: 212-416-8250

[www.ag.ny.gov](http://www.ag.ny.gov)