



Jonathan Mintz
Commissioner

[REDACTED]
Staff Attorney
[REDACTED]

42 Broadway
9th Floor
New York, NY 10004

[REDACTED]
nyc.gov/consumers

May 1, 2013

BY E-MAIL

(e-mail response to [REDACTED])

[REDACTED]
[REDACTED]
[REDACTED]

RE: Employment Agency for Rehabilitation Professionals

Dear [REDACTED]:

This is in response to your inquiry in which you asked whether your agency needs to be licensed by the Department of Consumer Affairs (DCA) as an Employment Agency to: a) directly hire temporary rehabilitation professionals and b) place rehabilitation professionals and healthcare human resource managers with medical facilities which pay a fee to your agency. The answer is no. You have also asked whether your agency needs to be licensed by DCA as an Employment Agency to place home healthcare workers in private homes. The answer to that question is yes.

Article 11 of the New York General Business Law (GBL) Section 171(2)(a) requires "any person...who, for a fee procures or attempts to procure: (1) employment or engagements for persons seeking employment or engagements, or (2) employees for employers seeking the services of employees." Employers who hire applicants seeking employment are not included in this definition and do not require licensing. Your agency therefore does not need an Employment Agency license to directly hire temporary employees.

In addition to acting as employer for some applicants, your agency will also be providing job placement services for rehabilitation professionals and healthcare human resource managers for a fee that will be paid by the employer. Your agency does not require an Employment Agency license to conduct this business.

GBL Section 171(e)(4) provides that an "employer fee paid employment agency" as defined by GBL Section 191, is not subject to the licensing requirement for employment agencies. GBL Section 191 defines an "employer fee paid employment agency" as "any person who on behalf of employers procures or attempts to procure employees for 'Class B' employment...and who,



in no instance charges a fee directly, or indirectly to persons seeking such employment even though a fee may be charged to employers.” “Class B” employment is defined by GBL Section 185(4) as “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’.” The rehabilitation professionals and healthcare human resources managers your agency will be placing qualify as “Class B” employment. Although your agency does not require an Employment Agency License to conduct this business, your agency must comply with the laws relevant to employer fee paid employment agencies, which are available at: nyc.gov/BusinessToolbox.

You also stated that your agency may, in the future, place home health care attendants in private homes. Applicants who are placed in private homes are classified as “Class A” employment, specifically as “household employees.” GBL Section 171(e) exempts from licensing “any organization operated by or under the exclusive control of a bona fide nonprofit educational, religious, charitable or eleemosynary institution.” If your agency does not qualify for this exemption and places applicants in “Class A” employment for a fee, regardless if the applicant or employer pays the fee, your agency must obtain an Employment Agency License from the DCA.

Thank you for your inquiry.

Sincerely,

A large black rectangular redaction box covering the signature of the staff attorney.

Staff Attorney