CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS
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**CONSENT JUDGMENT/ORDER**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

Violation Number: PL 1066764

– against –

PHILIPPINE NURSES & MEDICAL STAFFING, INC.
d/b/a PHILIPPINE PLACEMENT SERVICES LLC

Respondent.

----------**X**

PHILIPPINE NURSES & MEDICAL STAFFING, INC. d/b/a PHILIPPINE PLACEMENT SERVICES LLC, ("Respondent" or "Employment Agency") hereby consents to the terms of this Consent Judgment and Order ("CJO") with the New York City Department of Consumer Affairs ("DCA" or "the Department") to settle the above captioned violation.

1. The Respondent was duly served with the instant citation, dated July 8, 2010, which gave notice that Respondent was operating an unlicensed employment agency in violation of New York City Administrative Code Sections 20-101 et seq. (the "License Enforcement Law"), New York State General Business Law ("GBL") Section 170 et seq. and New York City Administrative Code ("Code") Sections 20-700 et seq. (the "Consumer Protection Law"), and Title 6 of the Rules of the City of New York ("Rules").

2. The citation stated that the Department would conduct a hearing on this matter on August 3, 2010.

3. J. Garth Foley, Esq., attorney, has appeared for Respondent,
[Name] [Title]
and is authorized to enter into this CJO on behalf of the Respondent.

4. Respondent agrees to immediately cease unlicensed activity.

5. Respondent agrees to obtain an employment agency license and/or an employment agency manager license as required by Sections 172 and 173 of the General Business Law.

6. Respondent shall comply fully with the License Enforcement Law, the GBL, the Consumer Protection Law, and the Rules of the City of New York.

A. Definitions

7. For the purposes of this CJO, the following definitions apply:

    a. "Clear and conspicuous" and "clearly and conspicuously" mean that the statement, representation, or term is so presented as to be easily readable, readily apparent, and understood by the audience to whom it is addressed. Factors to be considered for this purpose include, but are not limited to, clarity of language, relative type size, font, color contrast, location within an advertisement or other documents, and proximity to the statement or representation to which it applies.

    b. "Job applicant" means a person who is seeking employment placement by Respondent, whether permanent or temporary.

    c. "Advertisement" or "advertisements" mean all promotional materials, statements, visual descriptions, or other representations of any kind disseminated in print, orally, or electronically by or on behalf of Respondent to New York City consumers including, but not limited to, mailings, flyers, hand-outs, brochures, print advertisements, television advertisements, internet advertisements, and radio advertisements.

B. Documents Generally

8. Respondent shall state clearly and conspicuously the name, address, telephone number, and license number of the Employment Agency on every document, form, or publication it provides to the job applicant or requires the job applicant to complete including, but not limited to, any application, contract, or receipt used by the Employment Agency.

9. Respondent shall complete all documents and forms requiring a job applicant's signature fully, completely, and accurately in the job applicant's presence.

10. Respondent shall not ask job applicants to sign blank, incomplete, or partially incomplete forms or documents.

11. Respondent shall not alter completed forms after they have been signed by the job applicant without the job applicant's written consent.

12. Respondent shall provide to the job applicant a copy of all completed forms and documents and any other paperwork related to the services offered by Respondent at the time of the transaction.

13. Respondent shall issue all documents and forms including, but not limited to, applications, contracts and receipts, in English, Spanish, and/or in every language in which Respondent advertises and/or interacts with job applicants over the telephone, via email, and/or in person.

C. Application

14. Respondent shall write the word "Application" clearly and conspicuously at the top of all forms used as applications.

15. Respondent shall write the full name of the job applicant on the application form.

16. Respondent shall state on the application form the type of work it shall seek for or on behalf of job applicants.

17. Respondent shall not request information from any job applicant that is unrelated to the performance of the job he or she is seeking and/or is forbidden by New York City Administrative Code Section 8-101 et seq. ("the New York City Human Rights Law").

18. Respondent shall state clearly and conspicuously at the top of the application form or above the signature line, if any, in fourteen (14) point bold, non-compressed type face:

> 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.

D. Contracts

19. Respondent shall provide every job applicant with a written contract that complies with Section 181 of the General Business Law and is substantially similar to the DCA "Model Contract" (see "Model Contract," attached as Exhibit A). This contract shall:

a. Have the word "Contract" written clearly and conspicuously at the top;

b. State the full name of the job applicant;

c. State the full name and title of the individual executing the contract on behalf of the Employment Agency;

d. State clearly and conspicuously the type of work the job applicant will perform and the job class as set forth in Sections 181 and 185 of the General Business Law;

e. Describe with specificity the services that the Employment Agency will provide to the job applicant under the CJO;

f. Set forth the amount, purpose and type of any fee or other charge the Employment

Agency collects from the job applicant at the time the parties enter into the contract or in the future, including but not limited to, fees that may be charged if the job applicant fails to appear for work or is terminated;

g. Set forth the payment schedule and form of fee payment charged by the Employment Agency; and

h. Include a copy of the provisions of Sections 185 and 186 of the General Business Law.

20. The contract shall be an individual document that is separate from any other document given to a job applicant.

21. The contract shall have a space for the job applicant and the individual executing the contract on behalf of the Employment Agency to sign and date the document.

22. Respondent shall place directly above the space reserved in the contract for the signature of the job applicant, in at least 14-point bold, uncompressed face type or larger, a notice stating:

> 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.

E. Receipts

23. Respondent shall provide job applicants with a written receipt for every deposit, fee or other charge it collects. The receipt shall comply with Section 181 of the General Business Law.

24. The receipt shall be substantially similar to the DCA "Model Receipt" (see "Model Receipt," attached as Exhibit B). It shall:

a. Have the word "Receipt" written clearly and conspicuously at the top;

b. State the full name of the job applicant;

c. State the nature or purpose and sum of the deposit, fee, or other charge, as required

by Section 181 of the General Business Law;

d. State the date that the Employment Agency collected the deposit, fee, or other charge;

e. Contain a written confirmation that any and all fees that the Employment Agency requires job applicants to pay are consistent with the law; and

f. Include the signature, printed name, and title of the person receiving the deposit, fee, or other charge on behalf of the Employment Agency.

25. The receipt shall be an individual document that is separate from any other document given to a job applicant.

26. Respondent shall state clearly and conspicuously on the receipt, in at least, 14-point bold, uncompressed face type or larger:

> 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.

F. Statement of Employee Rights Regarding Employment Agencies

27. Respondent shall give to job applicants who are seeking positions as domestic workers or household workers and all prospective employers, free of charge, a legible copy of the DCA "Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities" prior to any discussion with the job applicant (attached as Exhibit C).

28. Respondent shall keep on file in its principal place of business for a period of three (3) years a statement, signed by the job applicant and the employer of a domestic or household employee whom the Employment Agency placed with such employer, indicating that the employer has read and understands the DCA "Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities."

G. The Minimum Wage Act

29. Respondent shall not send job applicants to employers it knows, or should have known, to be in violation of the New York State Labor Law Article 19 "The Minimum Wage Act."

H. Limitation on Fees

30. Respondent shall not collect registration or application fees from any job applicant.

31. Respondent shall collect an advance fee or deposit only from job applicants who are seeking positions as domestic workers, household workers, manual workers, agricultural workers, skilled industrial workers, or mechanics, as defined by Section 185 of the General Business Law.

32. Respondent shall credit any advance fee or deposit to the job applicant's total fee or payment.

33. Respondent shall not charge job applicants a fee that exceeds the maximum limits set forth by Section 185 of the General Business Law.

34. Respondent shall not require job applicants to purchase any additional or incidental services or products including, but not limited to, photographs, training courses, or subscriptions to manuals.

35. Respondent shall maintain at the premises of the Employment Agency a log book of all fees, deposits and other monies charged or collected (collectively "payments"). Each entry in the log book shall include the name of the job applicant, the amount of the payment, the date the payment is received, the purpose of the payment, the date the job applicant is placed in a job, if any, and the date the payment is refunded, if any. Respondent shall make this log book available for inspection at the offices of the Department or at the Employment Agency's place of business during business hours.

I. Refunds

36. Respondent shall make any refund required under the General Business Law to a job applicant within seven (7) days after a job applicant requests a refund, regardless of whether the job applicant requests the refund orally or in writing.

37. Respondent shall refund any deposit or fee if the job applicant is not placed in a job within 45 days of the date that the contract is signed. Where possible, the refund shall be made in the same form as the payment. This provision shall not limit in any way a job applicant's rights under Section 186 of the General Business Law.

J. Signage

38. Respondent shall display conspicuously in the main room of its place of business, a poster provided by the Department ("DCA poster") containing Sections 185 and 186 of the General Business law and consumer tips in place of the law card required by Section 188 of the General Business Law. The Department shall provide the DCA poster to Respondent upon its obtaining an employment agency license.

39. Respondent shall display conspicuously in the main room of its place of business the Licensing poster as required by Section 1-03 of the Rules.

40. Respondent shall duplicate and display in the main room of its place of business, the DCA poster and the Licensing poster in English, Spanish, and/or in every language in which the Employment Agency advertises and/or interacts with job applicants over the telephone, via email, and/or in person.

K. Advertising

41. Respondent shall not advertise its Employment Agency unless and until Respondent has a valid license from the Department.

42. Respondent shall state its DCA license number and the requirements of paragraph 8 in every advertisement or other publication.

43. Respondent shall not advertise in a manner that has the capacity, tendency, or effect of deceiving or misleading a person seeking employment with regard to the services provided by the Employment Agency.

44. Respondent shall not express, directly or indirectly, in any advertisement or other publication any limitation, specification, or discrimination that is unrelated to the performance of the job being publicized in violation of the New York City Human Rights Law.

45. Respondent shall comply with Section 5-09 of the Rules by disclosing clearly and conspicuously all material conditions, exclusions, and limitations in immediate proximity to the services or jobs advertised, including whether job applicants must pay fees.

46. Respondent shall maintain, on-site, for the Department's inspection, a copy all advertisements for one year from the date the advertisement is published or otherwise disseminated.

L. Records Disposal – Privacy Concerns

47. Respondent shall dispose of records containing personal identifying information such as social security numbers, driver's license numbers, non-driver identification card numbers, mother's maiden name, financial services account numbers or codes, savings account numbers or codes, checking account numbers or codes, debit card numbers or codes, automated teller machine numbers or codes, electronic serial numbers, and/or personal identification numbers by:

    a. Shredding the records before disposal;

b. Destroying the personal identifying information contained in the record; and/or

c. Modifying the record to make the personal identifying information unreadable.

48. Respondent shall immediately notify the Department, the job applicant and the police of any breach of security or unauthorized possession of personal identifying information that compromises the security, confidentiality, or integrity of such information.

49. Respondent shall shorten (truncate) the account information on electronically printed credit and debit card receipts given to job applicants. Respondent shall not include more than the last five digits of the credit card number and shall delete the card's expiration date.

50. Nothing in this CJO shall be construed as waiving or abrogating Respondent's responsibilities under federal, state or local law concerning record-keeping or record maintenance.

M. Compliance and Training

51. DCA shall be the sole and final arbiter of the validity of job applicants' claims for restitution and the amount of any restitution to be paid to job applicants.

52. Respondent shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within twenty (20) days of receipt of copies of said complaints, but in all instances, it shall respond in writing to the Department regarding such consumer complaints within twenty (20) days of receipt of any complaints as required by Section 1-13 of the Rules. If the complaint(s) cannot be resolved, Respondent shall submit the resolution of the complaint(s) to the administrative tribunal of this Department.

53. Respondent shall provide the complete amount of restitution due, as determined by the Department, within 14 days of written notice from the Department of the amount of the insufficiency.

54. Respondent shall provide all Employment Agency Managers, as defined by Sections 172 and 173 of the General Business Law, with a copy of this CJO and shall ensure that all Employment Agency Managers are familiar with and in compliance with the Licensing Manual (containing provisions of the Employment Agencies Law) and this CJO.

55. If Respondent has two or fewer employees, Respondent shall ensure that all employees are familiar with and in compliance with the Licensing Manual (containing provisions of the Employment Agencies Law) and this CJO. If Respondent has three or more employees, Respondent shall conduct an annual training to ensure that all employees are familiar with and in compliance with the Licensing Manual and this CJO.

56. Respondent shall ensure that all employees are familiar with and in compliance with the duty to respond to consumer complaints and any request for information from the

Department in a timely fashion.

57. Respondent shall train and require all employees to disclose clearly on the telephone, the name of Respondent, as licensed by the Department, prior to any discussion with the job applicant.

58. Respondent shall train all new employees on the requirements of the Employment Agencies Law and this CJO within two (2) days of the employees' start date.

59. Respondent shall maintain for inspection by the Department files of all consumer complaints it receives from any state or local agency, including the Department, in a manner that is organized and readily accessible.

60. Respondent shall not have a financial or economic interest in a corporation or employer with whom job applicants are placed. Respondent shall not divide a fee received from a job applicant with an employer or any member of an employer's staff.

N. Fines and Consequences of Breach of Assurance

61. Respondent shall pay to the Department, by the date of October 31, 2010, the full amount of $1,500.00 plus 1.5% interest via a bank check, certified check, or money order made payable to "the NYC Department of Consumer Affairs" according to the due dates and installment amounts in the Payment Schedule/Agreement attached to this CJO in resolution of PL 106764.

62. By entering into a payment plan, Respondent agrees to the following terms:

    a. Interest calculated at 1.5% interest per month is added to the remaining principal balance.

    b. If Respondent pays the full amount of the above-referenced fine within thirty (30) calendar days, the 1.5% interest will be waived.

    c. If Respondent's first payment is late, Respondent will be assessed a late fee of $50.00.

    d. If any of Respondent's subsequent payments are late, Respondent will be assessed a late fee of $100.00 above the initial $50.00 fee, and the balance due under this Assurance will be automatically accelerated so that the entire balance becomes due immediately.

63. If Respondent sends in a payment by check that is returned by the bank for insufficient funds, Respondent will be assessed a bounced check charge (equivalent to the full amount that the bank charges the Department), and the balance due under this CJO will be automatically accelerated so that the entire balance becomes due immediately.

64. Respondent acknowledges that any material breach of a provision of this CJO by Respondent or its agents shall, if proven: (i) be deemed grounds for automatic revocation of Respondent's license; (ii) be assessed at the maximum penalties allowed by law as knowing violations of the law pursuant to the License Enforcement Law, the Consumer Protection Law, the Employment Agencies Law, and the Rules; (iii) be deemed a separate, knowing violation of the Consumer Protection Law; and (iv) be deemed proof that any person with an equity interest of 10 percent or more, or significant managerial responsibility for the operation of Respondent's business, is not possessed of the integrity, honesty, and fair dealing required of persons who hold a license issued by the Department.

65. If Respondent does not immediately cease its illegal unlicensed activity, the Department, without any further notice to the Respondent, shall be entitled to impose fines of up to $100 per day for each day of unlicensed activity, and to seal said premises, and/or remove, seal or otherwise make inoperable items or goods sold, offered for sale, available for public use or utilized in the operation of the unlicensed activity. It is hereby agreed that there shall be a presumption of continuous unlicensed activity from the date of the execution of this Consent Judgment/Order for the purpose of imposing fines.

66. Respondent hereby agrees to waive any further right to a hearing and appeal on the above citation under Section 20–104 of the New York City Administrative Code, and stipulates that, by signing this CJO, it has been duly served with a padlock posting order pursuant to Section 20–105 of the New York City Administrative Code, thereby waiving any further service of a notice or an order.

67. The Department agrees that by executing this CJO, the Department waives the right to bring charges against Respondent for any violations of the Licensing Law, the Employment Agencies Law, the Consumer Protection Law, and the Rules arising from Respondent's advertising as an unlicensed employment agency to New York City consumers.

[this space intentionally left blank]

68. This agreement does not resolve any consumer complaints filed against Respondent.

69. If Respondent files a license application and it is denied, the Department will have the authority to proceed as indicated above.

70. If Respondent obtains, or at the time of this CJO has already obtained a license for an employment agency and if payment is not made in accordance with the above paragraphs, the Respondent understands that its license will be revoked.

Agreed to for Respondent

PHILIPPINE NURSES & MEDICAL STAFFING, INC.
d/b/a PHILIPPINE PLACEMENT SERVICES LLC, by:

Gloria F. Estabillo
[Print Name]

CEO / President
[Title]

Signature

July 12, 2010
Date

Accepted for Jonathan Mintz,
Commissioner of Consumer Affairs
for the City of New York by:

[redacted]

Settlement Officer
Research & Investigations

First Deputy Director, R+I

[redacted]

7/28/10
Date

Please remit payment and a signed copy of this CJO to: New York City Department of Consumer Affairs
Research and Investigations Division, 42 Broadway, 8th Floor, New York, New York 10004

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.**

# EXHIBIT A

# MODEL CONTRACT

# 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 • reviewing resumes • photographs • trainings and/or • any services besides placing Applicant in a job.

☐ **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.
  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.
  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 reflects 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

NYC Department of Consumer Affairs

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

**2. SIZE OF FEE; PAYMENT SCHEDULE.** The gross fee charged to the job applicant and the gross fee charged to the employer each shall not exceed the amounts enumerated in the schedules set forth in this section, for any single employment or engagement, except as hereinabove provided; and such fees shall be subject to the provisions of section one hundred eighty-six of this article. Except as otherwise provided herein, an employment agency shall not require an applicant while employed in the continental United States, and paid weekly to pay any fee at a rate greater than in ten equal weekly 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

# MODEL RECEIPT

# RECEIPT

## EMPLOYMENT AGENCY INFORMATION

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:<br><br>Email Address, If Available | | Telephone: |
| Job Title: | Salary: | Employment Class: |
| Amount Of Fee: | | |
| Purpose Of Fee: | | |

**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

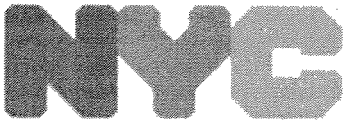
I confirm that any and all fees the Employment Agency requires Applicant to pay are consistent with the law.

_____ _____

Employment Agency Representative's Signature Date

EXHIBIT C

# STATEMENT OF EMPLOYEE RIGHTS AND EMPLOYER RESPONSIBILITIES




# Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities

This handout describes some of the basic rights of domestic or household employees and some responsibilities that their employers must fulfill. Please note that this document does not list every employee right or employer responsibility covered by state and federal law. For more information about a specific right or responsibility, you should contact the relevant state or federal agency listed below.

## If you have additional questions for the Department of Consumer Affairs, call 3-1-1 (or 212-New-York outside New York City).

**Minimum Wage:** All employees are entitled to be paid at least the minimum wage of $7.25 per hour.

**Overtime:** Employees who work overtime are entitled to be paid at one and one-half times the regular rate of pay. Household employees who live outside the worksite are entitled to this overtime rate after working 40 hours per week. Employees who live at the worksite are entitled to this overtime rate after working 44 hours per week.

**Timely Payment:** Employees must be paid their full salary on a weekly basis, and within seven calendar days of the concluding workweek. Employers must also provide a statement that shows the employee's gross wages, deductions and net wages.

**Time Off:** Employees are entitled to at least one day off (24 consecutive hours) every week.

**Meals and Lodging:** There are minimum standards for meals and lodging which, in part, provide that employees who work a six-hour shift are entitled to a meal break of at least 30 minutes during the course of the shift.

**Notice:** Employers must notify employees at the time of hiring of the rate of pay and regular payday. Additionally, employers must notify employees in writing of the employer's policy on sick leave, vacation, personal leave, holidays and hours of work. Employers must also notify employees in writing of the date of termination from employment and the date of cancellation of employee benefits, not more than five working days after the date of termination from employment.

**Record Keeping:** Employers must maintain accurate records for three years, showing the hours worked, the rate of pay, the deductions taken from wages and the name, address and date of birth of every employee.

**Social Security:** Social Security and Medicare taxes must be paid for all employees earning more than $1,400 annually. Employees must pay half of the amount due, or 7.65% of the gross wages, which is to be deducted from wages earned. Additionally, employers must pay half of the amount due, or 7.65% of the gross wages, which is to be paid from the employer's own funds. Employers must obtain an employer i.d. number from the Social Security Administration and must keep an accurate accounting of tax deductions.

**Income Taxes:** Employers are not required to withhold income taxes from an employee's wages unless the employee asks the employer to do so in writing and both parties agree.

**Workers' Compensation:** Employers must buy workers' compensation coverage for employees who work more than 40 hours per week. Workers' Compensation provides compensation for injuries or death that occur during the course of employment. Employers cannot deduct the cost of these payments from the employee's salary.

**Disability Insurance:** Employees who suffer an injury or become sick or pregnant outside of the workplace qualify for disability payments up to 50% of the employee's average weekly salary. Employers are required to purchase this insurance coverage and cannot deduct the cost of these payments from the employee's salary.

**Unemployment Insurance:** Employees who earn more than $500 in a quarter of a calendar year are covered by unemployment insurance if they lose their jobs. Employers must make quarterly unemployment insurance payments following a formula set by the New York State Department of Taxation and Finance. Employers cannot deduct the cost of these payments from the employee's salary.

**No Retaliation:** Employers are prohibited from retaliating against employees who assert their rights under state and federal law.

If you have questions about these rights or responsibilities and how they apply to you, contact the following government agencies:

**U.S. Department of Labor: 212-264-8185**
**U.S. Social Security Administration: 212-264-2500**
**Internal Revenue Service: 1-800-829-1040**
**New York State Department of Labor: 212-352-6551**
**New York State Workers' Compensation Board: 718-802-6933**