

New York Employment Agency Laws

Seeking help from an employment agency to find a job?

Employment agencies in NYC must hold a Department of Consumer Affairs (DCA) license, and they must follow the law. Look for the agency's DCA license.

Employment Agency Law

Extracts from Article 11 of the General Business Law

§ 178. Action on bond

All claims or suits brought in any court against any licensed person may be brought in the name of the person damaged upon the bond deposited by such licensed person as provided in section one hundred seventy-seven and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. The commissioner may institute a suit against the bond on behalf of any person damaged. Where such licensed person has departed from the state with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service shall be made upon the surety in the manner provided for service of a summons. A copy of such summons shall be mailed to the last known post office address of the residence of the licensed person and the place where he conducted such employment agency, as shown by the records of the commissioner.

§ 181. Contracts, statements of terms and conditions, and receipts

It shall be the duty of every employment agency to give to each applicant for employment:

1. A true copy of every contract executed between such agency and such applicant, which shall have printed on it or attached to it a statement setting forth in a clear and concise manner the provisions of sections one hundred eighty-five, and one hundred eighty-six of this article.

2. For class "C" theatrical employment:

(a) Such contract in blank shall be first approved by the commissioner and his or her determination shall be reviewable by certiorari. Each contract shall include the gross commission or fees to be paid by the artist to the theatrical employment agency consistent with section one hundred eighty-five of this article attached, hereto. Each such contract shall also include the name, address, phone number and license number of the theatrical employment agency in addition to the name of the artist, the type of services covered by the contract, and all terms and conditions associated with the payment of such commission or fees. The theatrical employment agency shall keep on file a copy of each contract entered into with an artist and provide a copy of each contract to the artist.

(b) Separate from the contract, the agency shall provide to the artist, at the time of each audition or interview for specific employment, information as to the name and address of the person to whom the artist is to apply for such employment, the service to be performed, the anticipated rate of compensation, where such compensation is known prior to the audition or interview, and any other material terms and conditions of such employment that are known by the agency prior to the audition or interview. Such information may be provided by electronic communication.

3. For all other employment, including class "A" and "A-1" employment, each contract shall include, but not be limited to, the following: information as to the name and address of the person to whom the applicant is to apply for such employment, the name, the address, the mailing address, and the telephone number of the employer; the address or addresses of employment, the kind of service to be performed; the anticipated rate of wages or compensation; the anticipated hours of work per day and number of days to be worked per week; the agency's fee for the applicant based on such anticipated wages or compensation; any provision to the employee, and costs associated with that provision including housing, health insurance, healthcare, sick leave, holidays and retirement benefits; whether such employment is permanent or temporary, the anticipated period of employment, the name and address of the person authorizing the hiring of such applicant; and the cost of transportation if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in ten-point type signed by the job applicant.

4. (a) This paragraph shall apply to all classes of employment except for class "C" theatrical employment. The employment agency shall provide to each applicant, a separate document accompanying each contract summarizing the terms and conditions of the contract. This document shall be entitled "terms and conditions" and shall include the language that the document is not a contract and that such document is not legally binding. The terms and conditions shall be provided in plain and commonly understood terms and language which shall aid the job applicant in understanding the transaction and such document shall limit the use of technical terms whenever possible.

(b) The terms and conditions shall conform to any templates established by the commissioner and be made available to employment agencies in such manner as determined by the commissioner. In developing such templates, the commissioner shall afford the public an opportunity to submit comments on such templates.

(c) The commissioner may promulgate rules and regulations necessary to carry out the provisions of this section.

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

5. A receipt for any fee, deposit, consideration, or payment which such agency receives from such applicant, which shall have printed or written on it the name of the applicant, the name and address of the employment agency, the date and amount of such fee, deposit, consideration or payment or portion thereof for which the receipt is given, the purpose for which it was paid, and the signature of the person receiving such payment. If the applicant for employment has been recruited from outside the state for domestic or household employment the receipt shall have printed on it, or attached to it, a copy of section one hundred eighty-four of this article. Except as provided below for class "C" theatrical employment, the receipt shall also include, immediately above the place for signature of the person receiving payment, set off in a box and printed in bold capital letters, the following statement: "An employment agency may not charge you, the job applicant, a fee before referring you to a job that you

accept. If you pay a fee before accepting a job or pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days". For class "C" employment such receipt shall state: "A theatrical employment agency may not charge you, the artist, a fee before referring you to a job that you accept. A theatrical employment agency may charge you, the artist, a fee after an agency represents you in the negotiation or renegotiation of an original or pre-existing employment contract. If you pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days".

6. The completed original or duplicate-original copy of each such contract, statement of terms and conditions, receipts, and any other documents given to the applicant shall be retained by every employment agency for three years following the date on which the contract is executed or the payment is made, and shall be made available for inspection by the commissioner or his or her duly authorized agent or inspector, upon his or her request. Notwithstanding the other provisions of such contracts, the monetary consideration to be paid by the applicant shall not exceed the fee ceiling provided in subdivision eight of section one hundred eighty-five of this article.

§ 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 and 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, except for class "C" employment: **(a)** 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 **(b)** after an agency represents an artist in the negotiation or renegotiation of an original or pre-existing employment 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 the 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. An employment agency shall not require or accept a deposit or advance fee from any applicant.

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;

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	..... 2.5%
at least \$3000 but less than \$3500	..... 3%
at least \$3500 but less than \$4000	..... 3.5%
at least \$4000 but less than \$4500	..... 4%
at least \$4500 but less than \$5000	..... 4.5%
\$5000 or more	..... 5%

10. Notwithstanding any other provision of law to the contrary, no fee may be charged or collected for services rendered by an employment agency not licensed pursuant to section one hundred seventy-two of this article at the time such services were rendered. In an action to collect a fee, the court shall void all or any part of an agreement or contract with an employment agency that did not have a valid license at the time the contract was entered into or services were rendered; however, such contract shall not be considered void if a court finds a good faith effort by an employment agency to maintain its license despite clerical error or delay by the Department of Labor or the New York City Department of Consumer Affairs.

§ 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. 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.

What you need to know when using an employment agency

Know Your Rights!

Before you sign on the dotted line, read the Job Hunter's Bill of Rights at nyc.gov/dca and refer to the law for important information.

Fees and Refunds

You cannot be charged a fee unless the employment agency places you in a job. If you paid a fee before accepting a job or paid an amount not permitted by law, you may demand a refund, which you must receive within 7 days.

Contracts, Statements of Terms and Conditions, and Receipts

You must receive a copy of the signed contract with the agency, a statement of terms and conditions that summarizes the contract, and a receipt each time you make a payment. Keep all copies in a safe place.

Minimum Wage

You must be referred only to jobs that are current and available and pay at least the minimum wage as set by New York State and federal law. Visit nyc.gov/dca and labor.ny.gov.

Complaints

Contact **311** or visit nyc.gov/dca to file a complaint with DCA.

