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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 2.91. EMPLOYMENT AGENCY, EMPLOYMENT COUNSELING, AND JOB LISTING SERVICES ACT [1812.500 - 1812.544] (*Title 2.91 added by Stats. 1989, Ch. 704, Sec. 2.*)

CHAPTER 1. General Provisions [1812.500 - 1812.502] (*Chapter 1 added by Stats. 1989, Ch. 704, Sec. 2.*)

1812.500. This title shall be known and cited as the Employment Agency, Employment Counseling, and Job Listing Services Act.
(*Added by Stats. 1989, Ch. 704, Sec. 2.*)

1812.501. (a) (1) "Employment agency" or "agency" means:

(A) Any person who, for a fee or other valuable consideration to be paid, directly or indirectly by a jobseeker, performs, offers to perform, or represents it can or will perform any of the following services:

- (i) Procures, offers, promises, or attempts to procure employment or engagements for others or employees for employers.
- (ii) Registers persons seeking to procure or retain employment or engagement.
- (iii) Gives information as to where and from whom this help, employment, or engagement may be procured.
- (iv) Provides employment or engagements.

(B) Any person who offers, as one of its main objects or purposes, to procure employment for any person who will pay for its services, or that collects dues, tuition, or membership or registration fees of any sort, if the main object of the person paying those fees is to secure employment.

(C) Any person who, for a fee or other valuable consideration, procures, offers, promises, provides, or attempts to procure babysitting or domestic employment for others or domestics or babysitters for others.

(2) "Employment agency" or "agency" shall not include any employment counseling service or any job listing service.

(b) (1) "Employment counseling service" means any person who offers, advertises, or represents it can or will provide any of the following services for a fee: career counseling, vocational guidance, aptitude testing, executive consulting, personnel consulting, career management, evaluation, or planning, or the development of résumés and other promotional materials relating to the preparation for employment. "Employment counseling service" shall not include persons who provide services strictly on an hourly basis with no financial obligation required of the consumer beyond the hourly fee for services rendered. An "employment counseling service" does not include the functions of an "employment agency" as defined in subdivision (a).

(2) "Employment counseling service" does not include:

(A) Businesses that are retained by, act solely on behalf of, and are compensated solely by prior or current employers that do not require any "customer" to sign a contract and do not in any way hold any "customer" liable for fees.

(B) (i) Any provider of vocational rehabilitation in which the counseling services are paid for by insurance benefits, if the counseling is provided as a result of marital dissolution or separation proceedings to prepare one of the spouses for reentry into the job market and if the fees are paid by some party other than the person receiving the counseling services.

(ii) The exemption provided in this subparagraph does not apply to any vocational rehabilitation counselor who receives any payments directly from the individual customer receiving the counseling.

(C) Any person who engages solely in the preparation of résumés and cover letters, provided that the résumé writing service does not advertise or hold itself out as offering other job seeking or placement services and does not charge more than three hundred dollars (\$300) for any résumé, cover letter, or combination of both to any single customer in any individual transaction.

(D) Any public educational institution.

(E) Any private educational institution established solely for educational purposes that, as a part of its curriculum, offers employment counseling to its student body and conforms to the requirements of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code.

(F) A psychologist or psychological corporation licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, providing psychological assessment, career or occupational counseling, or consultation and related professional services within his, her, or its scope of practice.

(G) An educational psychologist licensed pursuant to Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, providing counseling services within his or her scope of practice.

(c) "Job listing service" means any person who provides, offers, or represents it can or will provide any of the following services, for a fee or other valuable consideration to be paid, directly or indirectly, by the jobseeker in advance of, or contemporaneously with, performance of these services: matches jobseekers with employment opportunities, providing or offering to provide jobseekers lists of employers or lists of job openings or like publications, or preparing résumés or lists of jobseekers for distribution to potential employers.

(d) A "nurses' registry" as defined in subdivision (b) of Section 1812.524 is an employment agency. However, unless otherwise provided for in this title, a nurses' registry shall not be required to comply with Chapter 2 (commencing with Section 1812.503) regulating employment agencies but, instead, shall be required to comply with Chapter 7 (commencing with Section 1812.524).

(e) "Jobseeker" means a person seeking employment.

(f) "Employer" means any individual, company, partnership, association, corporation, agent, employee, or representative for whom or for which an employment agency or job listing service attempts to obtain an employee or to place a jobseeker.

(g) "Job order" means any written or oral instruction, direction, or permission granted by an employer or its agent to an employment agency or job listing service to refer jobseekers for a specified job.

(h) "Domestic agency" means any agency that provides, or attempts to provide, employment by placement of domestic help in private homes.

(i) "Deposit" means any money or valuable consideration received by an employment agency or job listing service from a jobseeker for referring the jobseeker to a position of employment prior to the jobseeker's acceptance of a position.

(j) "Fee" means:

(1) Any money or other valuable consideration paid, or promised to be paid, for services rendered or to be rendered by any person conducting an employment agency, employment counseling service, or job listing service under this title.

(2) Any money received by any person in excess of that which has been paid out by him or her for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(k) "Registration fee" means any charge made, or attempted to be made, by an employment agency for registering or listing an applicant for employment, for letter writing, or any charge of a like nature made, or attempted to be made without having a bona fide order for the placement of the applicant in a position.

(l) "Person" means any individual, corporation, partnership, limited liability company, trust, association, or other organization.

(m) This section shall become operative on January 1, 1997.

(Amended by Stats. 2006, Ch. 538, Sec. 52. Effective January 1, 2007.)

1812.502. (a) This title does not apply to any person who provides any of the services described in subdivision (a) of Section 1812.501 and who charges fees exclusively to employers for those services. The exemption from regulation provided by this subdivision does not apply to any person who provides babysitting or domestic employment for others. This subdivision does not apply to an employment counseling service as defined in subdivision (b) of Section 1812.501.

(b) This title shall not apply to any nonprofit corporation, organized for the purpose of economic adjustment, civic betterment, and the giving of vocational guidance and placement to its members, or others, including employment counseling services, when all of the following conditions exist:

(1) None of the directors, officers, or employees thereof receive any profit other than a nominal salary for services performed for the organization or corporation.

(2) No fee is charged for those services, though a voluntary contribution may be requested.

(3) Membership dues or fees charged are used solely for maintenance of the organization or corporation.

(c) Nothing in this title shall apply to a nonprofit corporation which has been formed in good faith for the promotion and advancement of the general professional interests of its members and which maintains a placement service principally engaged in securing employment for such members with the state or any county, city, district or other public agency under contracts providing employment for one year or longer, or any nonprofit corporation exempted by subdivision (b).

(d) This title shall not apply to a labor organization as defined in Section 1117 of the Labor Code, a newspaper of general circulation, bona fide newsletter, magazine, trade or professional journal, or other publication of general circulation, the main purpose of which is dissemination of news, reports, trade or professional information, or information not intended to assist in locating, securing, or procuring employment or assignments for others.

(e) As used in this title, "employment agency" or "agency" does not include a nursing school, business school, or vocational school, except that if such a school charges a fee for placement, the school shall be an employment agency within the meaning of this title.

(f) (1) A job listing service which meets the requirements specified in paragraph (2) or (3) shall not be subject to any of the following: Sections 1812.515, 1812.516, 1812.517, and 1812.518; subdivisions (a) and (b), and paragraph (3) of subdivision (c), and subdivision (d) of Section 1812.519; paragraph (2) of subdivision (b), and subdivisions (c), (d), (e), and (f) of Section 1812.520; and Section 1812.521.

(2) A job listing service shall be exempt pursuant to paragraph (1) if it complies with all of the following:

(A) Does not provide, offer, or imply the offer of, services related to employment.

(B) Does not offer or sell lists of employers or job openings to jobseekers on an in-person basis.

(C) Maintains records of all its advertisements, identified by date and publication, and the sources of information used for the preparation of lists of employers and job openings, from which can be determined the accuracy of any statistics regarding success rate or similar statistics used in its advertising, promotional materials, or oral or written statements to jobseekers.

(D) Identifies, on each list of employers and job openings, its general source of information for jobs included on that list when the source of information is a publication or other public record.

(E) Provides, at or before the time of delivery of the list, a prominent written statement to the jobseeker granting the jobseeker a right to return the list for an immediate refund of the purchase price during a stated period of time which expires not less than 10 days from the date of delivery of the list. The list shall be deemed returned upon delivery to the address from which it was obtained or upon deposit in the mail properly addressed to that address, with postage prepaid.

(3) A job listing service shall be exempt pursuant to paragraph (1) if it complies with all of the following:

(A) A majority interest in the job listing service is owned by one or more colleges or universities, or alumni associations affiliated therewith, and each college or university is accredited by both (i) an accrediting agency recognized as such by the United States Department of Education and (ii) a member organization of the Council of Postsecondary Accreditation.

(B) The job listing service provides services related to employment exclusively for jobseekers who are the alumni of colleges or universities specified in subparagraph (A).

(C) The job listing service does not require, as a condition to receiving employment services, that the applicant have completed courses or examinations beyond the requirements for graduation from the college or university specified in subparagraph (A).

(D) More than 50 percent of the annual revenues received by the job listing service are derived from paid subscriptions of prospective employers.

(Amended by Stats. 1990, Ch. 1256, Sec. 4.)