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**CIVIL CODE - CIV**

**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 2. Employment Agencies [1812.503 - 1812.5095]** ( *Chapter 2 added by Stats. 1989, Ch. 704, Sec. 2.*  )

**1812.503.** (a) Every employment agency subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be three thousand dollars (\$3,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the employment agency in performance of the contract with the jobseeker, by the employment agency or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No employment agency shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the employment agency and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any employment agency fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the employment agency shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to any amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivision (f) or (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment agency, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the employment agency by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of an employment agency or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. This written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of an employment agency or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(l) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

*(Amended by Stats. 2002, Ch. 784, Sec. 15. Effective January 1, 2003.)*

**1812.504.** (a) Every employment agency shall give a written contract to every jobseeker from whom a fee or deposit is to be received, whether directly or indirectly. The original of the contract shall be given to the jobseeker at the time the jobseeker signs the contract and before the employment agency accepts any fee or deposit or the jobseeker becomes obligated to pay any such fee or deposit. The contract shall contain all of the following:

(1) The name, address, and telephone number of the employment agency, and, if the employment agency has more than one office or location, the address and telephone number of the principal office or location providing services to the jobseeker.

(2) The name and address of the person giving the order for help, the date and consecutive number of the receipt of the order by the agency, and its manner of transmission.

(3) The name of the jobseeker, the name and address of the person to whom the jobseeker is sent for employment, and the address where the jobseeker is to report for employment.

(4) The date and consecutive number of the contract.

(5) The amount of the fee to be charged and to be collected from the jobseeker, including a statement that if the employment is terminated, the fee may not exceed gross earnings of the jobseeker in that employment, and the amount of the fee paid or advanced by the prospective employer and by whom paid or advanced.

(6) The kind of work or employment.

(7) The daily hours of work; the wages or salary, including any consideration or privilege; the benefits; and any other conditions of employment.

(8) If any labor trouble exists at the place of employment, that fact shall be stated in the contract.

(9) A contract expiration date which shall not be later than 180 days from the date of the referral or signing of the contract, whichever occurs first; however, a domestic agency operating as a registry may enter into a continuing contract subject to termination by written notice by either the domestic worker or the agency.

(10) Any other term, condition, or understanding agreed upon between the agency and the jobseeker.

(11) The following statement, with the caption in type no smaller than 10-point boldfaced type and the remainder in a size no smaller than that generally used throughout the contract, and in full capitals, boldface, or italics:

RIGHT TO REFUND

"If you pay all or any portion of a fee and fail to accept employment, the employment agency shall, upon your request, return the amount paid to you within 48 hours after your request for a refund.

"If you leave employment for just cause or are discharged for reasons other than misconduct connected with your work within 90 days from the starting date of employment, the agency shall reduce your fee to that payable for temporary employment and shall refund any excess paid within 10 days of your request for a refund.

"No fee larger than that for temporary employment may be charged to you for employment lasting 90 days or less unless the agency's fee schedules, contracts, and agreements provide for a further charge if you leave employment without just cause or are discharged for misconduct in connection with your work.

"If any refund due is not made within the time limits set forth above, the employment agency shall pay you an additional sum equal to the amount of the refund."

(b) All contracts shall be dated and shall be made and numbered consecutively, both copies to be signed by the jobseeker and the person acting for the employment agency. The original shall be given to the jobseeker and one copy shall be kept on file at the employment agency.

(c) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

(d) When a referral is made by telephone the agency shall execute the contract or receipt in triplicate and shall mail the original and duplicate to the jobseeker on the day the referral is made, with instructions that they be signed by the jobseeker and the duplicate returned to the agency. The date of mailing the contract or receipt to the jobseeker shall be entered thereon by the agency. The same contract or receipt shall not be used for more than one referral.

(e) For purposes of this section, a "domestic agency operating as a registry" means a domestic agency that engages in the business of obtaining and filling commitments for domestic help.

*(Amended by Stats. 1996, Ch. 102, Sec. 1. Effective January 1, 1997.)*

**1812.505.** (a) (1) An employment agency shall provide a copy of the agency's jobseeker fee schedule and payment terms to any jobseeker from whom a fee or deposit is to be received, prior to the jobseeker being interviewed by a counselor. The jobseeker fee schedule shall indicate the percentage of both the projected annual and first month's total gross earnings represented by those fees.

(2) In the schedule, the various employments or salary ranges by which the fee is to be computed or determined shall be classified, and in each class the maximum fee shall be fixed and shall include the charges of every kind rendered by the agency in each case or transaction on behalf of the prospective employee. Changes in the schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the agency.

(3) A copy of the schedule in effect shall be kept posted in the employment agency in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the employment agency, retrospectively, for a period of one year.

(b) No fee charged or collected shall be in excess of the fee as scheduled.

(c) No employment agency shall accept, directly or indirectly, a registration fee of any kind.

(d) No employment agency may take from a jobseeker a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

(e) The employment agency shall give a receipt to every jobseeker from whom a deposit is received. No other deposit or prepayment of any kind may be required by an agency. If the jobseeker accepts employment, the deposit shall be applied to the fee to be paid by the jobseeker.

(f) (1) If a jobseeker leaves employment for just cause or is discharged for reasons other than misconduct connected with the jobseeker's work within 90 days from the starting date of employment, the agency shall reduce the fee payable by the jobseeker to that payable for temporary employment under subdivision (g) and shall refund any fee paid in excess of that amount.

(2) No charge may be made to or obligation to pay incurred by any jobseeker beyond that authorized by subdivision (g) for employment lasting 90 days or less, unless the agency's fee schedules, contracts, and agreements specifically provide for a further charge if the jobseeker leaves employment without just cause or is discharged for misconduct in connection with his or her work, and then only if lack of just cause or misconduct exists. Otherwise, the agency shall retain or charge only the fee for temporary employment for any employment lasting 90 days or less from the starting date of employment.

(3) Notwithstanding subdivision (a) and this subdivision, in no instance in which the employment accepted is subsequently terminated shall the fee charged or obligation to pay incurred by a jobseeker be greater than the total gross earnings of the jobseeker in that employment. This provision shall be stated in all agency contracts issued pursuant to Section 1812.504.

(g) The fee payable by the jobseeker for temporary employment shall not exceed  $\frac{1}{90}$  of the fee for permanent employment for each consecutive calendar day during the period that the jobseeker is employed or compensated as though employed.

(h) (1) If a jobseeker accepts employment in which the jobseeker is to be paid on the basis of straight commissions, or a drawing account against commissions, or either a drawing account or salary plus commissions, the fee payable by the jobseeker may be predicated upon the projected total gross earnings during the first year of employment as estimated by the employer.

(2) Upon the conclusion of a jobseeker's first 12 months of employment, a computation of his or her actual total gross earnings may be provided by the jobseeker to the agency, and, predicated upon appropriate proof of earnings, an adjustment in the fee shall be made in which either the agency shall refund to the jobseeker any excess fee paid by him or her or the jobseeker shall pay to the agency any deficiency thereon.

(3) If the jobseeker's employment is terminated prior to the conclusion of the first 12 months of employment, the actual total gross earnings of the jobseeker for the period of employment shall be projected to 12 months on a pro rata basis as though the jobseeker had been employed for the entire period of 12 months, and a computation shall be made thereon. The fee paid or payable by the jobseeker shall be predicated upon that computation as though the jobseeker had been so employed.

(i) If an employment agency sends a jobseeker for employment and the jobseeker accepts employment other than that position specified in the bona fide order for employment to which the jobseeker was sent, but with the same employer, then the agency shall be entitled to a fee for the employment of the jobseeker, payable by the jobseeker, computed under the terms of the fee schedule in effect in the agency at the time of referral, provided that the jobseeker accepts employment within 180 days of the date of referral. The expiration date of the referral shall be stated in the contract.

In interagency disputes concerning the earning of a fee for placement of a jobseeker, the fee shall be earned by the agency responsible for the jobseeker being placed. A reasonable effort shall be made by the billing agency that it is entitled to the fee. The jobseeker shall be responsible for only one full fee for any single placement, and that fact shall be so stated in the contract.

(j) (1) No employment agency shall divide fees with an employer, an agent, or other employee of an employer or person to whom help is furnished.

(2) No employment agency shall charge any jobseeker a fee for accepting employment with such employment agency or any subsidiary of that agency.

(3) No employment agency shall charge any jobseeker a fee when help is furnished to an employer, an agent, any employee of an employer, a member, or person who has a financial interest in the employment agency.

*(Added by Stats. 1989, Ch. 704, Sec. 2.)*

**1812.506.** (a) If a jobseeker paying or becoming obligated to pay a fee, or making a deposit on a fee for placement fails to accept employment, the employment agency shall, upon request by the jobseeker, repay the amount of the deposit or fee to the jobseeker. Unless the deposit is returned within 48 hours after request, the employment agency shall pay to the jobseeker an additional sum equal to the amount of the deposit. A notice to this effect shall be inserted in all contracts between the agency and the jobseeker, and in all receipts given to the jobseeker for cash payment in advance of employment, and in the schedule of fees posted in the office of the agency.

(b) (1) All employment provided by any employment agency to any jobseeker from whom a fee is to be received shall be considered permanent only if it lasts longer than 90 days. If a jobseeker leaves the job or is discharged within the first 90 days of employment, the agency shall make a refund or reduction of the fee to the temporary fee amount unless the agency's fee schedules, contracts, and agreements specifically provide for a further charge if the jobseeker leaves employment without just cause or is discharged for misconduct in connection with his or her work.

(2) "Just cause" or "discharge for reasons other than misconduct" includes, but is not limited to, the following:

(A) Wages or salary less than that agreed upon between the jobseeker and the employer.

(B) Receiving a payroll check which is not honored by the bank upon which it was drawn.

(C) Working hours, working days, or working shifts significantly different than those agreed upon between the jobseeker and the employer.

(D) Receiving a work assignment, subsequent to accepting the job, which is substantially different from that agreed upon between the jobseeker and the employer.

(E) Being assigned to a job location different from that which was agreed upon between the jobseeker and the employer.

(F) The jobseeker's lack of physical ability to perform duties connected with the position agreed upon between the jobseeker and the employer unless the provisions of subparagraph (E) of paragraph (3) apply.

(G) A lockout or strike causing loss of pay.

(H) The jobseeker's lack of physical ability to perform duties connected with the position unless the provisions of subparagraph (E) of paragraph (3) apply.

(J) The jobseeker's entry into active service in the armed forces.

(K) Physical or economic destruction of the business.

(L) The death of the jobseeker (any refund in that case shall be paid to the estate of the jobseeker).

(3) "Lack of just cause" or a discharge for "misconduct" includes, but is not limited, to:

(A) Abandonment of the job by the jobseeker.

(B) Conviction of the jobseeker, subsequent to employment, of a crime when conviction temporarily or permanently prevents the jobseeker from fulfilling the terms of employment.

(C) Willful violation of lawful company policies or rules by the jobseeker.

(D) Willful failure to perform lawful duties appropriate to employment by the jobseeker.

(E) Acts of the jobseeker constituting misrepresentation or withholding of information directly related to education, work experience, responsibility, physical ability, or training, that would have caused the employer to refuse employment.

(c) (1) Except as otherwise provided in subdivision (a), a refund when due shall be made within 10 working days after request therefor from the jobseeker.

(2) Alternatively, if the decision of the agency is not to make a refund, the agency shall notify the jobseeker in writing, within the 10-day working period specified in paragraph (1), as to the specific reasons why the refund is not being made.

(3) If the agency fails to properly notify the jobseeker pursuant to paragraph (2) or fails to tender a refund within the time allowed, the agency shall be liable to the jobseeker in the amount of an additional sum equal to the amount of the refund.

*(Added by Stats. 1989, Ch. 704, Sec. 2.)*

**1812.507.** (a) No employment agency shall accept a fee from any jobseeker, or send any jobseeker for employment, without having obtained, orally or in writing, a bona fide job order for employment.

(b) An agency shall identify itself as an employment agency to the employer in all instances in which it contacts an employer for the purpose of soliciting a job order. All job orders shall be recorded in writing. A job order for employment shall be considered to have been given by an employer to an employment agency under the following conditions:

(1) The employer, or his or her agent, orally or in writing, registers a request or gives permission that the agency recruit or refer jobseekers who meet the employer's stated job specifications and the employer furnishes such information as required by subdivision (a) of Section 1812.504. A job order is valid for the referral of any qualified jobseeker until it is filled or canceled by the employer, and may serve as the basis for agency advertising. The agency is required to recontact the employer within 30 days to ensure that the position is still vacant prior to any additional advertising or referral of jobseekers.

(2) When an agency has brought the qualifications of a specific jobseeker to the attention of an employer and the employer has expressed interest in that jobseeker either by agreeing to interview the jobseeker, or by requesting that the agency furnish him or her with the jobseeker's resumé or other written history or data, or by initiating direct contact with the jobseeker as a result of information furnished by the agency, that action by the employer shall constitute a job order only for the jobseeker discussed and is not valid for advertisement, unless the contact by the agency resulted in a job order for a specific position sufficient under paragraph (1). If the employer has no position open but merely wishes to explore the possible employment of the jobseeker and the jobseeker is to be responsible for the placement fee, that fact shall be indicated on the jobseeker's referral contract.

(c) No employment agency shall refer a jobseeker to a job knowing or having reason to know that:

- (1) The job does not exist or the jobseeker is not qualified for the job.
- (2) The job has been described or advertised by or on behalf of the agency in a false, misleading, or deceptive manner.
- (3) The agency has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.

*(Added by Stats. 1989, Ch. 704, Sec. 2.)*

**1812.508.** (a) No employment agency shall make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the agency will provide to jobseekers.

(b) (1) No employment agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of an employment agency shall contain the correct name of the employment agency and one of the following:

(A) The street address of the agency's place of business.

(B) The correct telephone number of the agency at its place of business.

(3) Every employment agency, except a nurses' registry shall use, as part of its name, either the designation "agency" or "personnel service."

(4) No employment agency shall give any false information or make any false promises or representations concerning an engagement or employment to any jobseeker who registers or applies for an engagement or employment or help.

(5) No employment agency shall, by its name, advertisement, or any other representation, represent itself to be a home health agency, as defined by subdivision (a) of Section 1727 of the Health and Safety Code, or to perform the services of a home health agency. An employment agency shall provide a written disclosure to each individual receiving nursing services in his or her place of residence stating that it does not perform the services of a home health agency and clearly describing that it is an employment agency only and that any complaints against personnel providing nursing services who are neither licensed nor certified shall be submitted to the local district attorney, complaints against certified nursing assistants and certified home health aides providing nursing services shall be submitted to the local district attorney and the State Department of Health Services, and complaints against licensed personnel providing nursing services shall be submitted to the local district attorney and the Department of Consumer Affairs. The address and telephone number of each agency and board to which complaints are required to be submitted shall be provided by the employment agency to all patients prior to the time they are under the care of any nursing services personnel.

(6) Any person may refer complaints concerning employment agencies to the proper law enforcement agency for action.

(c) (1) Where an employment agency job advertisement includes a description of the placement fee associated with the advertised job, the employment agency shall describe the placement fee in a manner which either clearly indicates whether or not a jobseeker shall be responsible for the placement fee or in accordance with the following terms and provisions:

(A) "FEE" means the jobseeker pays the entire placement fee.

(B) "NO FEE" means the jobseeker pays no portion of the placement fee.

(2) Where "NO FEE" jobs are advertised and the agency also administers placement for "FEE" jobs, the advertisement shall state "ALSO FEE JOBS" in type of equal size, prominence, and boldness as "NO FEE" notations.

(3) A group job advertisement which includes a description of the placement fee shall describe the placement fee either separately for each job, or by use of the proper term as a heading under which all applicable jobs shall be listed. All those headings shall be in type and of the same size, prominence, and boldness.

(d) Special requirements not usually associated with a job shall be specified in any advertisement. When the location of the position advertised is more than 50 miles from the employment agency office responsible for the advertisement, it shall state either the location or that the job is "nonlocal." Special benefits of the job, if advertised, shall be specifically described and substitute terms or symbols such as "extras" or "+" shall not be sufficient.

(e) An advertised salary shall be based upon the starting salary contained in the job order. An advertised range of starting salaries shall be specified by preceding the minimum salary and maximum salary by the terms "from" and "to" respectively. When the job order contains only the maximum amount of a salary range, that advertised salary shall be preceded by the word "to." If a maximum salary is dependent upon the jobseeker's experience, the advertised salary may be described by listing the minimum salary and the term "up Depending on Experience" or "up D.O.E." The words "open" and "negotiable" or words or symbols of like import shall not be used as a substitute for the salary. If an advertised salary is based in whole or in part on commissions, that fact shall be indicated in the advertisement.

(f) All employment agencies shall maintain a record of all advertised jobs, correlated to show the date and the publication in which the advertisement appeared and the job order number of each job advertised, retrospectively for a period of one year.

*(Amended by Stats. 1990, Ch. 761, Sec. 1.)*

**1812.509.** (a) No employment agency shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Part 27 (commencing with Section 48000) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every employment agency shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No employment agency shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

(d) No babysitting, domestic, or other employment agency which procures babysitting or domestic employment for employers shall refer babysitters or domestics for any employment without first conducting a personal interview of the jobseeker and making a reasonable effort to verify the experience or training of the jobseeker.

(e) No employment agency that procures temporary employment for long-term health care employers shall refer certified nurse assistants or licensed nursing staff as defined in Section 1812.540, for any employment without first conducting a personal interview of the individual, verifying the experience, training, and references of the individual, and verifying that the individual is in good standing with the appropriate licensing or certification board, including verification that the individual has successfully secured a criminal record clearance.

*(Amended by Stats. 2001, Ch. 326, Sec. 1. Effective January 1, 2002.)*

**1812.5093.** (a) Every employment agency that refers a child care provider to an employer who is not required to be a licensed child day care facility pursuant to Section 1596.792 of the Health and Safety Code shall provide the employer with all the following:

(1) A description of the child care provider trustline registry established pursuant to Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code that provides criminal history checks on child care providers.

(2) An explanation of how an employer may obtain more information about the child care provider trustline registry.

(3) A statement that an employment agency is prohibited by law from placing a child care provider unless the provider is a trustline applicant or a registered child care provider.

(4) An explanation of how the employer may verify the prospective child care provider's trustline registry registration.

(b) Receipt of the information required to be provided pursuant to subdivision (a) shall be verified in writing by the employer.

*(Added by Stats. 1998, Ch. 287, Sec. 1. Effective January 1, 1999.)*

**1812.5095.** (a) For purposes of this section, the term "employment agency" means an employment agency, as defined in paragraph (3) of subdivision (a) of Section 1812.501, or a domestic agency, as defined in subdivision (h) of Section 1812.501.

(b) An employment agency is not the employer of a domestic worker for whom it procures, offers, refers, provides, or attempts to provide work, if all of the following factors characterize the nature of the relationship between the employment agency and the domestic worker for whom the agency procures, offers, refers, provides, or attempts to provide domestic work:

(1) There is a signed contract or agreement between the employment agency and the domestic worker that contains, at a minimum, provisions that specify all of the following:

(A) That the employment agency shall assist the domestic worker in securing work.



(B) How the employment agency's referral fee shall be paid.

(C) That the domestic worker is free to sign an agreement with other employment agencies and to perform domestic work for persons not referred by the employment agency.

(2) The domestic worker informs the employment agency of any restrictions on hours, location, conditions, or type of work he or she will accept and the domestic worker is free to select or reject any work opportunity procured, offered, referred, or provided by the employment agency.

(3) The domestic worker is free to renegotiate with the person hiring him or her the amount proposed to be paid for the work.

(4) The domestic worker does not receive any training from the employment agency with respect to the performance of domestic work. However, an employment agency may provide a voluntary orientation session in which the relationship between the employment agency and the domestic worker, including the employment agency's administrative and operating procedures, and the provisions of the contract or agreement between the employment agency and the domestic worker are explained.

(5) The domestic worker performs domestic work without any direction, control, or supervision exercised by the employment agency with respect to the manner and means of performing the domestic work. An employment agency shall not be deemed to be exercising direction, control, or supervision when it takes any of the following actions:

(A) Informs the domestic worker about the services to be provided and the conditions of work specified by the person seeking to hire a domestic worker.

(B) Contacts the person who has hired the domestic worker to determine whether that person is satisfied with the agency's referral service.

(C) Informs the domestic worker of the time during which new referrals are available.

(D) Requests the domestic worker to inform the employment agency if the domestic worker is unable to perform the work accepted.

(6) The employment agency does not provide tools, supplies, or equipment necessary to perform the domestic work.

(7) The domestic worker is not obligated to pay the employment agency's referral fee, and the employment agency is not obligated to pay the domestic worker if the person for whom the services were performed fails or refuses to pay for the domestic work.

(8) Payments for domestic services are made directly to either the domestic worker or to the employment agency. Payments made directly to the employment agency shall be deposited into a trust account until payment can be made to the domestic worker.

(9) The relationship between a domestic worker and the person for whom the domestic worker performs services may only be terminated by either of those parties and not by the employment agency that referred the domestic worker. However, an employment agency may decline to make additional referrals to a particular domestic worker, and the domestic worker may decline to accept a particular referral.

(c) The fee charged by an employment agency for its services shall be reasonable, negotiable, and based on a fixed percentage of the job cost.

(d) An employment agency referring a domestic worker to a job shall inform that domestic worker, in writing, on or before the signing of the contract pursuant to paragraph (1) of subdivision (b), that the domestic worker may be obligated to obtain business permits or licenses, where required by any state or local law, ordinance, or regulation, and that he or she is not eligible for unemployment insurance, state disability insurance, social security, or workers' compensation benefits through an employment agency complying with subdivision (b). The employment agency referring a domestic worker shall also inform that domestic worker, if the domestic worker is self-employed, that he or she is required to pay self-employment tax, state tax, and federal income taxes.

(e) An employment agency referring a domestic worker to a job shall verify the worker's legal status or authorization to work prior to providing referral services in accordance with procedures established under federal law.

(f) An employment agency referring a domestic worker to a job shall orally communicate to the person seeking domestic services the disclosure set forth below prior to the referral of the domestic worker the following disclosure statement:

"(Name of agency) is not the employer of the domestic worker it referred to you. Depending on your arrangement with the domestic worker, you may have employer responsibilities."

Within three business days after the employment agency refers a domestic worker to the person seeking domestic services, the following statement printed in not less than 10-point type shall be mailed to the person seeking domestic services:

"(Name of agency) is not the employer of the domestic worker it referred to you. The domestic worker may be your employee or an independent contractor depending on the relationship you have with him or her. If you direct and control the manner and means by



which the domestic worker performs his or her work you may have employer responsibilities, including employment taxes and workers' compensation, under state and federal law. For additional information contact your local Employment Development Department and the Internal Revenue Service."

(g) An employment agency referring a domestic worker to a job shall not specify that a worker is self-employed or an independent contractor in any notice, advertisement, or brochure provided to either the worker or the customer.

(h) Every employment agency referring a domestic worker to a job and who is not the employer of the domestic worker being referred, shall in any paid telephone directory advertisement or any other promotional literature or advertising distributed or placed by such an employment agency, on or after January 1, 1995, insert the following statement, in no less than 6-point type which shall be in print which contrasts with the background of the advertisement so as to be easily legible:

"(Name of agency) is a referral agency."

(i) An employment agency may not refer, in its advertising, soliciting, or other presentments to the public, to any bond required to be filed pursuant to this chapter.

(j) An employment agency may not refer, in its advertising, soliciting, or other presentments to the public, to any licensure acquired by the agency.

(k) Any violation of this section with the intent to directly or indirectly mislead the public on the nature of services provided by an employment agency shall constitute unfair competition which includes any unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising. Any person or entity that engages in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation.

*(Amended by Stats. 1994, Ch. 1081, Sec. 1. Effective January 1, 1995.)*