



# Independent Democratic Conference & Assemblyman Francisco Moya



## Introduction

The American Dream is predicated on the belief that hard work and perseverance equals a better quality of life. This dream has drawn immigrants to the United States from across the globe for centuries. Pioneers from everywhere on earth have crossed oceans and continents, armed with little more than the hope for a better life, to make their homes here and become a part of our American community.

Nowhere is this more true than right here in New York State, gateway to the country and the home of Ellis Island and the Statue of Liberty. New York City itself boasts the largest immigrant population of any city in the United States, one which has only continued to grow in recent years. In fact, New York City's immigrant population has more than doubled over the last four decades. Immigrants now make up 37 percent of the city's total population and have accounted for nearly all of the city's population growth since 1970. The Office of the State Comptroller estimates that 44% of New York City's workforce, some 1.9 million residents, are immigrants, generating \$210 billion in economic activity (31% of Gross City Product).<sup>1</sup>

Unfortunately, many immigrants arrive on our shores to find the land of opportunity rife with stumbling blocks. Nowhere are these obstacles more prevalent than in the search for economic opportunity. An already vulnerable community, these immigrant populations are prime targets for predatory employment agencies, who prey on people looking for work. Fraudulent employment agencies take advantage of unwitting, inexperienced job seekers, many of whom have little knowledge of their rights. These predatory enterprises lure in would-be workers with the promise of legitimate employment, charge them a fee before finding them a job, and then point them towards positions that never existed. Often, the victims do not know the laws that protect them against these practices, and, to make matters worse, cannot afford to lose the fee they paid, let alone seek legal redress for their grievances.

Many of the victims defrauded in this manner not only have limited understanding of the law, but as immigrants may not be native English speakers. Desperation to find work, combined with this lack of knowledge and ability to communicate, makes immigrants a prime targets for this type of predatory behavior. These very same characteristics, however, also mean that the State must do more to intervene and stop these abusive practices in the first place.

To determine how frequent these predatory tactics are used across the city, the Independent Democratic Conference in partnership with members of the Justice for Job Seekers Campaign and Assemblyman Moya, conducted an undercover investigation into employment agencies across New York City. The findings show that New York State must act to update its regulation of these agencies.

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<sup>1</sup> [The Role of Immigrants in the New York City Economy](http://osc.state.ny.us/reports/immigration/NYC_Immigration_Rpt_8-2014.pdf), State Comptroller's Office, November 2013  
[http://osc.state.ny.us/reports/immigration/NYC\\_Immigration\\_Rpt\\_8-2014.pdf](http://osc.state.ny.us/reports/immigration/NYC_Immigration_Rpt_8-2014.pdf)

## Key Findings

- Only 36% of employment agencies visited posted their licenses as required by law.
- 72% of employment agencies reported that they did not require a contract with job seekers, as required by law.
- 46% of agencies guaranteed job seekers placement despite being prohibited from doing so by law.
- 38% of agencies required advance fees from applicants in order to place them into work, but also indicated that the fees were non-refundable, in contravention of the law.

### *Employment Agencies in New York*

There is no question that employment agencies serve a legitimate purpose connecting workers with potential employers and often offer additional services such as resume writing assistance or job-skills training. While employment agencies have been regulated in New York since the 1970s, the recent economic recession has led to the proliferation of both legitimate and fraudulent agencies. The New York State Department of Labor has 87 agencies licensed throughout New York State, from White Plains to Buffalo.<sup>2</sup> The New York City Department of Consumer Affairs (DCA), where employment agencies operating within city limits must register, has 335 entries in its list.<sup>3</sup>

These are only the legitimately licensed agencies, however. Advocates estimate that the actual number of employment agencies operating in New York is closer to 1,000, and that the majority of unlicensed operators are engaging in fraudulent and predatory practices. In fact, between 2013 and 2014, 92% of complaints to DCA reported unlicensed unemployment agency activity.<sup>4</sup> The overwhelming majority of complaints filed during this time addressed non-delivery of goods or services, breach of contract, refund policies, and misrepresentation regarding unlicensed employment activity.<sup>5</sup>

Data gathered through a Freedom of Information Act request from DCA indicate that complaints overall have significantly increased, from 328 complaints filed in 2013 to 940 complaints in 2014.<sup>6</sup> The data also shows that residents across New York City are impacted. Over the last two years, the following communities reported the highest number of complaints to DCA:<sup>7</sup>

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<sup>2</sup> New York State Department of Labor

<https://labor.ny.gov/workerprotection/laborstandards/PDFs/EmploymentAgenciesListing.pdf>

<sup>3</sup> New York City Department of Consumer Affairs <https://a858-elpaca.nyc.gov/CitizenAccess/>

<sup>4</sup> *Employment Agency Complaints & Violations in New York City: 2010-2014*, Summary Report Prepared by LatinoJustice PRLDEF for New Immigrant Community Empowerment (NICE) and The Justice For Job Seekers Campaign (April 2015)

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

- **QUEENS HOT SPOTS:** Roosevelt Avenue, Corona/Jackson Heights, Elmhurst, Woodside (23-41 Complaints per zip code)
- **BROOKLYN HOT SPOTS:** Flatbush, East Flatbush, East New York, Bensonhurst, Sheepshead Bay (14-20 Complaints per zip code)
- **BRONX HOT SPOTS:** West Bronx, University Heights, Port Morris, Morris Heights, Melrose, Castle Hill (23-41 Complaints per zip code)
- **NORTHERN MANHATTAN HOT SPOTS:** Washington Heights, East Harlem (14-20 Complaints Per Zip Code)

Despite the meteoric rise in complaints, these figures do not accurately reflect the problem since it has been the experience of many community leaders on this issue that a majority of the victims of these scams are immigrants and low-wage workers, who fear retaliation or being blacklisted by agencies or who may not be aware of their rights to make a complaint.

### *Current Law in New York State Governing Employment Agencies*

New York’s current laws governing employment agencies are outdated and insufficient to protect job seekers. Currently, employment agencies are governed by sections 170-194 of Article 11 of New York State’s general business law:<sup>8</sup>

#### **Existing Employment Agency Regulations**

- Employment agencies must be licensed by the New York State Department of Labor. Agencies operating within New York City must be licensed with the NYC Department of Consumer Affairs instead.
- All agencies must post their license conspicuously on their business premises.
- Agencies are not allowed to engage in any business on their premises other than that of the employment agency.
- Except in the case of A and A1 laborers, agencies can only charge a fee in accordance with a signed contract, and after successful placement.
  - **In the case of A and A1 laborers, agencies may charge a fee before placement, but they must refund it 100% upon demand as long as a position has not been secured.**
- Agencies must provide detailed receipts for all fees paid.
- Agencies must provide a copy of any contract signed, in both English and the native language of the applicant (if other than English).
- Agencies may not refer applicants to a position which violates minimum wage or labor laws.
- Agencies cannot publish or advertise false, misleading, or fraudulent information or promises (meaning that they cannot guarantee successful placement).
- Violations of these regulations may result in a fine of no more than \$500 each.

<sup>8</sup> Laws of New York, General Business, Article 11: Employment Agencies  
[http://www.nyc.gov/html/dca/downloads/pdf/employment\\_agency\\_statelaws\\_rules.pdf](http://www.nyc.gov/html/dca/downloads/pdf/employment_agency_statelaws_rules.pdf)

Unfortunately, based on the what was uncovered by the investigation conducted by the Independent Democratic Conference in partnership with the Justice for Job Seekers Campaign and Assemblyman Moya, as they exist now, many of the existing employment agency regulations are actually incentivizing the exploitation of low-wage and low skill workers; are failing to deter rampant abuse; and do not provide adequate paths for victims who suffer from these predatory activities to seek redress. This is why Senators Klein and Savino have introduced Senate Bill S. 3415, with companion Assembly legislation introduced by Assemblyman Moya (A. 3702), which will close the loopholes leading to rampant exploitation and predatory practices.

### *The Exploitation of Low Wage and Low Skill Workers*

In order to protect job seekers from being scammed by agencies that fail to connect them with employment, currently the law prohibits agencies from charging the applicant a fee prior to placement. However, Section 185 of Article 11 of New York State's General Business Law provides an exemption to that rule for Class A and A1 workers – low-wage and low-skill workers who are the most vulnerable.

Class A employment in New York State includes “domestics, household employees, unskilled or untrained manual workers or laborers, and agricultural workers.”<sup>9</sup> Class A1 employees are “non-professional trained or skilled industrial workers or mechanics.”<sup>10</sup> This broad class of workers is one that is predominantly made up of immigrants. The State Comptroller estimates that 83% of maids and housekeepers and 75% of construction workers in New York City, for example, are immigrants.<sup>11</sup>

For all classes of employee other than A and A1, applicants pay agencies only after they are successfully placed in a job. Therefore, the only protections currently in place for these low-wage workers is that the agency must refund advance fees as long as a job has not been secured, **but only at the request of the applicant.** While it is likely that many of those applying for A or A1 employment do not know enough about New York's laws to understand that they can request this refund, advocates also report that many job seekers are refused a refund even when they ask.

### *Failure to Deter Rampant Abuse*

While the vast majority of infractions go unreported, even those that do come under the scrutiny of state or city officials do not carry with them penalties harsh enough to serve as an effective deterrent. Violations in New York State are punishable by a maximum fine of \$500 apiece, a paltry sum when many agencies scam hundreds of dollars out of each victim. In fact, in 2014 alone, the record number of 940 complaints filed through DCA yielded only \$360,410 in fines

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> The Role of Immigrants in the New York City Economy, p.3

and penalties.<sup>12</sup> This small and optional punishment has proven ineffective, as fraudulent practices by employment agencies proliferate.

Many other states that regulate their employment agencies impose much harsher penalties than New York does upon violators. Nevada, for example, imposes a fine of \$5,000 per violation, while New Jersey fines first offenders \$2,000 and \$5,000 for subsequent violations. Texas, California, Nevada, Maryland, and Illinois all charge violators with a misdemeanor, and Hawaii's \$1,000 fine is accompanied by up to 6 months of jail time.<sup>13</sup> New York State is significantly behind the curve when it comes to deterring abusive employment agencies.

### ***Failure to Provide Adequate Paths for Victims to Achieve Justice***

For victims who are struggling to find a job, the fees charged by fraudulent agencies represent a significant portion of their available resources, and many must save for weeks to be able to afford them. Unfortunately though, Article 11 of the New York State General Business Law does not give aggrieved individuals the right to bring enforcement actions against violators. While the law does not explicitly prohibit victims from bringing lawsuits against scammers, case law holds that they do not have private right of action.<sup>14</sup>

As a result, victims cannot reclaim their money through the legal system, and are incapable of bringing a lawsuit against agencies that have not only defrauded them of their hard-earned savings but have also compounded the hardships they face. Instead, victims must rely on overburdened state agencies to address abuse, ensuring that even if they do get some modicum of restitution, it is a long time in coming. Their chances of restitution, in fact, have decreased as complaints to DCA have risen over the last four years. In 2011, DCA secured restitution in 48% of complaints. That number dropped to 27% in 2012 and to only 5% of all complaints in 2014.<sup>15</sup>

## **An Investigation into the Predatory Practices of Employment Agencies**

The current weaknesses in New York's laws have resulted in the proliferation of fraudulent and predatory practices in various employment agencies throughout New York City. Unscrupulous con men on behalf of certain agencies are targeting and exploiting desperate immigrants, charging them based on the promise of employment, and then failing to deliver any legitimate services. When victims seek restitution, they not only find that the agency has moved or refuses to acknowledge wrongdoing, but also that there is no effective legal way for them to recover their losses.

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<sup>12</sup> *Employment Agency Complaints & Violations in New York City: 2010-2014*, Summary Report Prepared by LatinoJustice PRLDEF for New Immigrant Community Empowerment (NICE) and The Justice For Job Seekers Campaign (April 2015)

<sup>13</sup> Justice For Job Seekers Campaign, [http://justice4jobseekers.org/wp-content/uploads/2014/05/2014.03.12\\_final\\_J4JS-Comparing-NY-Emp.-Agency-Penalties-2.2.pdf](http://justice4jobseekers.org/wp-content/uploads/2014/05/2014.03.12_final_J4JS-Comparing-NY-Emp.-Agency-Penalties-2.2.pdf)

<sup>14</sup> See e.g. *Rhodes v. Herz*, 84 A.D.3d 1 (N.Y. App. Div. 1<sup>st</sup> Dept. 2011).

<sup>15</sup> *Employment Agency Complaints & Violations in New York City: 2010-2014*, Summary Report Prepared by LatinoJustice PRLDEF for New Immigrant Community Empowerment (NICE) and The Justice For Job Seekers Campaign (April 2015)

In 2012, The Community Development Project at the Urban Justice Center (CDP) and New Immigrant Community Empowerment (NICE) worked together to release a study on the consumer fraud faced by new immigrants in Queens, New York as they struggled to find work and get status. Part of this report, titled *Dreams and Schemes in Queens, New York*, dealt heavily with fraudulent employment agencies, which they found presented a significant obstacle for those looking for work. In fact, the report went so far as to state that, among employment agencies, “predatory, substandard, and fraudulent practices are commonplace, and not merely limited to a few bad actors.”<sup>16</sup>

To support these findings, the Department of Consumer Affairs additionally reported that between 2013 and 2014, the overwhelming majority of complaints made to DCA were for non-delivery of goods or services or breach of contract issues (51%), misrepresentation or advertising issues (27%), or refund policies (13%).<sup>17</sup>

Clearly, existing law does not seem to be deterring the very abuses which it is in place to address, and something must be done to protect our most vulnerable job seekers.

### ***Investigation***

In order to determine the extent of the predatory tactics by employment agencies throughout the entirety of New York City, the Independent Democratic Conference, in partnership with the Justice for Job Seekers Campaign and Assemblyman Francisco Moya, conducted a follow-up study to the *Dreams and Schemes in Queens, New York* report that encompassed all five boroughs. Unfortunately, the results showed that not only are properly licensed agencies often violating existing laws, but that there may be more unlicensed and illicit agencies scamming workers out of their hard-earned cash than previously estimated, and that they are extremely difficult to track down.

### ***Methodology***

The first step was to identify employment agencies throughout the city to investigate. To accomplish this, the team obtained a listing of licensed agencies from the New York City Department of Consumer Affairs, and identified how many employment agencies are currently licensed in each borough. Because the investigation intended to focus on unlicensed agencies as well, further identifications needed to be made. While there is no “official list” of unlicensed employment agencies, even illicit companies often have an online presence. Running a series of employment-agency related search terms through Google created a list of agencies advertising in each borough, which was then cross-referenced with DCA’s database to identify agencies operating illegally.

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<sup>16</sup> *Dreams and Schemes in Queens, New York*, New Immigrant Community Empowerment and the Community Development Project at the Urban Justice Center, October 2012, p. iii. (available at: [http://www.issuelab.org/resource/dreams\\_and\\_schemes\\_in\\_queens\\_new\\_york\\_immigrant\\_struggles\\_to\\_find\\_work\\_and\\_get\\_status\\_in\\_the\\_face\\_of\\_consumer\\_fraud](http://www.issuelab.org/resource/dreams_and_schemes_in_queens_new_york_immigrant_struggles_to_find_work_and_get_status_in_the_face_of_consumer_fraud))

<sup>17</sup> *Employment Agency Complaints & Violations in New York City: 2010-2014*, Summary Report Prepared by LatinoJustice PRLDEF for New Immigrant Community Empowerment (NICE) and The Justice For Job Seekers Campaign (April 2015)

A team of mystery shoppers was then deployed to investigate employment agencies in areas of each borough with large immigrant populations. Using the framework created by CDP and NICE for their *Dreams and Schemes* report, and in consultation with these groups, the team designed a procedure and a questionnaire to record relevant information about each agency.

Armed with the questionnaire, the mystery shoppers first observed each agency for proper signage and licensing before entering the office. Then, volunteers from the Justice for Jobs Seekers Campaign and the various government offices posed as job applicants and interviewed with agency representatives to gather information about the agency's practices. Following the interview, the mystery shoppers completed a standardized report sheet, recording information including whether the agency guaranteed placement, what (if any) fees they charged, whether they offered to provide a contract, if they notified applicants that they were entitled to request a refund, and what kind of job and salary the agency claimed it could find them.

All told, the team visited 92 agencies throughout the five boroughs. However, they were only able to gain access to and speak with representatives from 39 employment agencies across the city because many were not located at their purported address. The significant portion – more than half – of employment agencies that the team identified as closed or moved to a new location highlights the unscrupulous and transitory nature of the industry. With investigators unable to track down a business that doesn't want to be found, victims stand little chance of ever finding restitution under current laws.

### ***Results of the Investigation***

Unfortunately, the results of this investigation only highlighted the findings of the *Dreams and Schemes* report and revealed the prevalence of these schemes across the whole of New York City. Not only were illegal and fraudulent practices such as guaranteeing job placement or neglecting to provide a contract common to all boroughs, they were not confined to unlicensed agencies alone. Furthermore, while very few agencies informed their applicants about their rights; unlicensed agencies actively undermined them by moving location and making it nearly impossible for wronged individuals to find them again.

While the team made a concerted effort to include unlicensed agencies in their survey, this was made extremely difficult by the fact that the vast majority of unlicensed agencies visited were not at their purported location. In fact, only 27% of the unlicensed employment agencies that the team attempted to visit could be found.

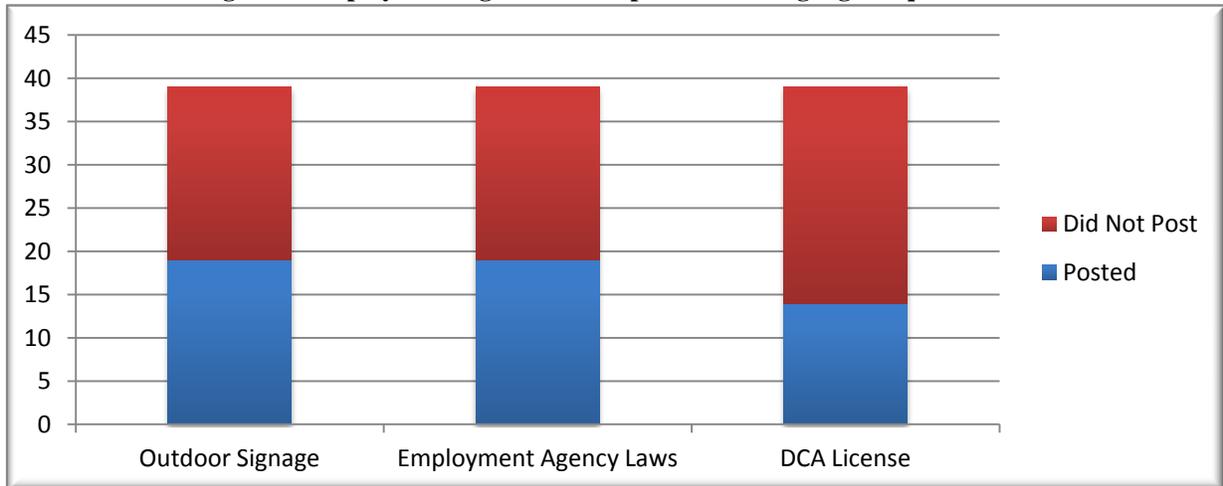
In sum, the investigation revealed two unfortunate truths about current employment agency practices in immigrant communities in New York: First, it sheds new light on the often deplorable business practices of a majority of licensed employment agencies in immigrant communities. Second, it underscores the results of earlier studies which found that unlicensed employment agencies are constantly shifting location, making it all but impossible for either law enforcement or victims to find them.

The simplest requirement for employment agencies under New York State law is that they post a sign indicating their presence to the public. However, both licensed and unlicensed agencies

alike flouted the rule, and less than half of those visited were in compliance with this basic mandate. **This set the tone for the entire investigation, as only 19 out of 39 (49%) posted New York City’s employment agency laws as they are required to do.**

Even fewer posted their DCA license conspicuously so that job seekers can be confident that they are trusting a legitimate agency: **only 14 out of 39 (36%) of agencies visited had a visible license, and two of those did not bear the official logo of the DCA, meaning that they were possible forgeries.**

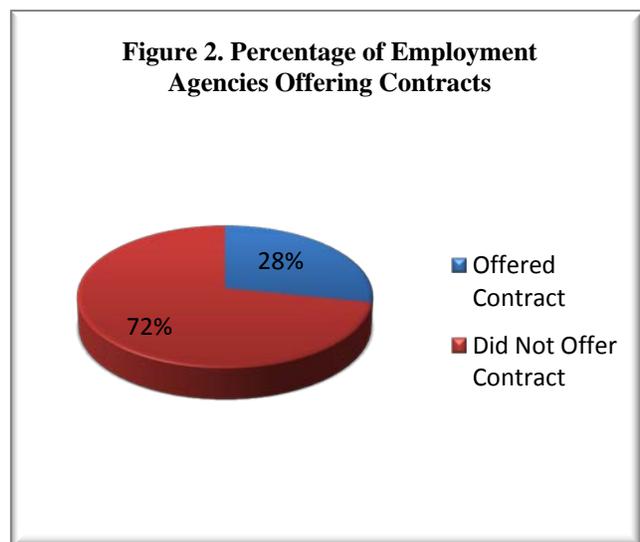
Figure 1. Employment Agencies’ Compliance with Signage Requirements



By neglecting to post the requisite credentials or laws, agencies increase the chances that their targets are uninformed and at a disadvantage, making them easier to prey on. **This is compounded by the fact that at 54% of agencies, the representative the team spoke with did not provide a name and contact information, making it difficult for job seekers with grievances or questions to contact agencies again, especially when they shift location.**

But this was not the only way that employment agencies seek to keep their clients in the dark. **In blatant contravention of state law, twenty-eight out of the thirty-nine agencies visited, or 72%, did not offer a contract to the mystery shoppers who requested help finding a job.** This is significant not only because it demonstrates how willingly even licensed employment agencies flout the law, but also because advocates estimate that job seekers who are offered contracts are not only significantly more likely to be placed in a job, but are also only half as likely to report being a victim of fraud.<sup>18</sup>

Figure 2. Percentage of Employment Agencies Offering Contracts



<sup>18</sup> *Dreams And Schemes*, p. 16.

The investigation also found that even licensed agencies routinely employ illegal means to get vulnerable victims in the door. **Nearly half of agencies visited, 18 out of 39, guaranteed mystery shoppers a job placement despite the fact that the State’s General Business Law forbids it. Furthermore, 16% of employment agencies shared space with another business, such as a nail and hair salon, real estate agency, or immigration lawyer, seeking to sucker customers in with promises of work.** While employment agencies legally cannot share business space with other enterprises, photographs taken through the locked door of a closed business demonstrate that they often do.

Figure 3. Shared Space

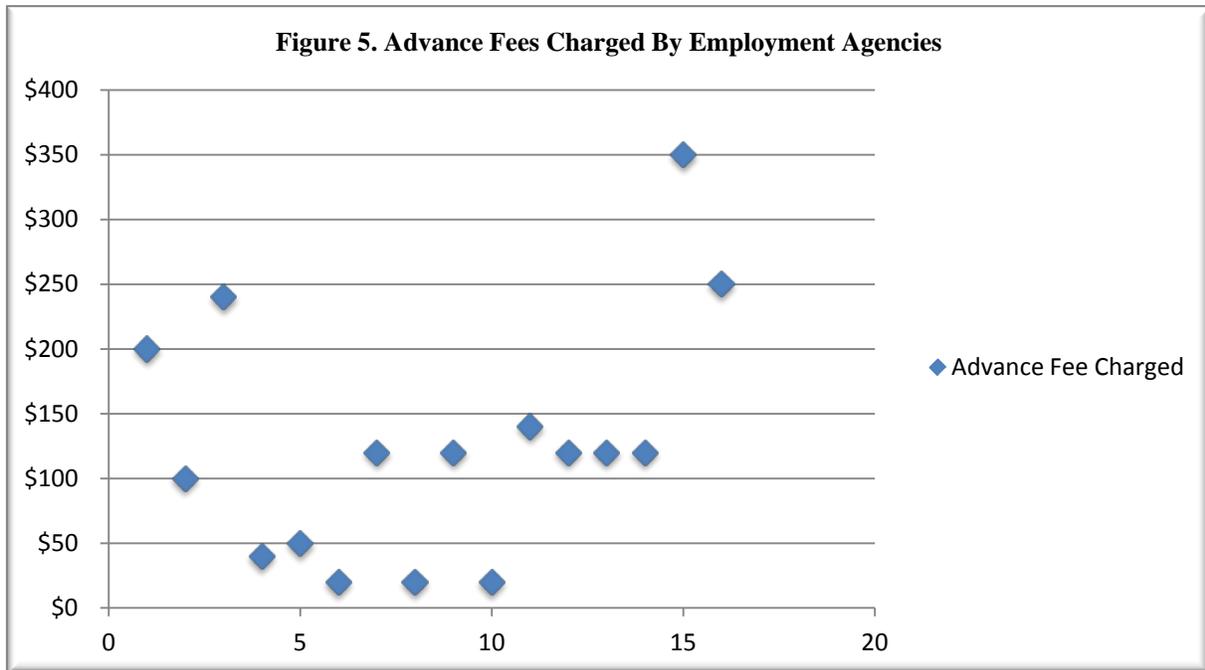


Figure 4. Interior of Shared Space



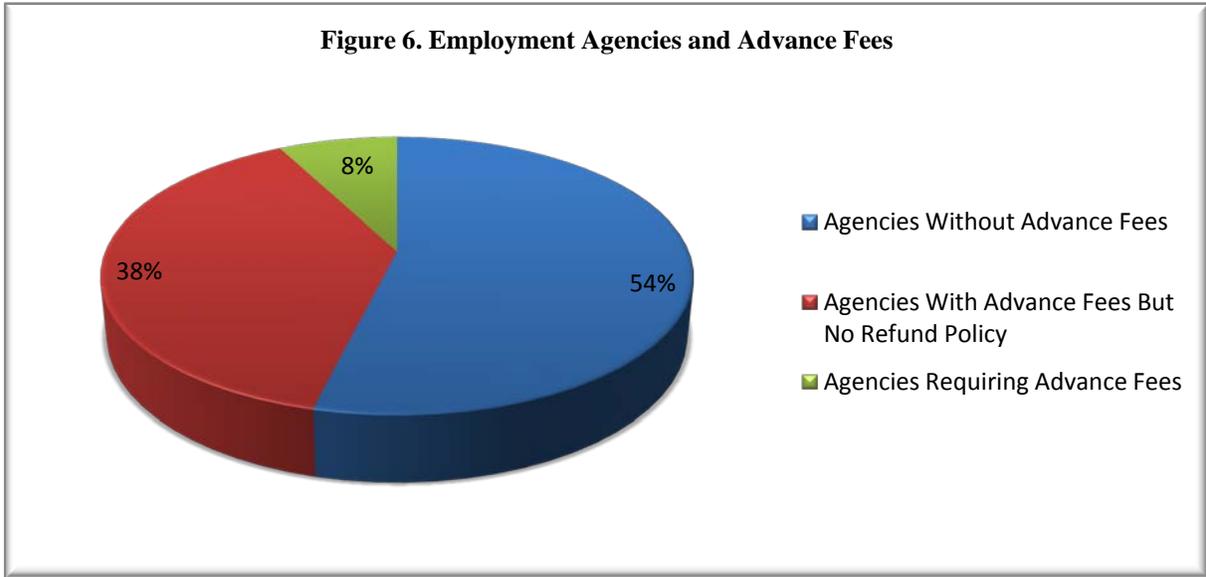
Note the sign for the “Mathias Employment Agency” on the exterior of the building and the Agency desk at the rear of the interior space.

But the most tangible way in which fraudulent employment agencies take advantage of would-be workers is by charging them fees before finding them a job. **The vast majority of positions in which these agencies claimed they could place job seekers were as cleaning or domestic staff, busboys or waiters, and cashiers – all of them class A or A-1 positions. These low-wage workers can ill afford to pay the fees that 46% of employment agencies required before they would even accept an application: an average of \$128.75.** To compound the issue, nearly a quarter of agencies that did charge an advance fee also charged an additional placement fee after the job seeker secured a position, ranging from \$100 to one week’s wages.



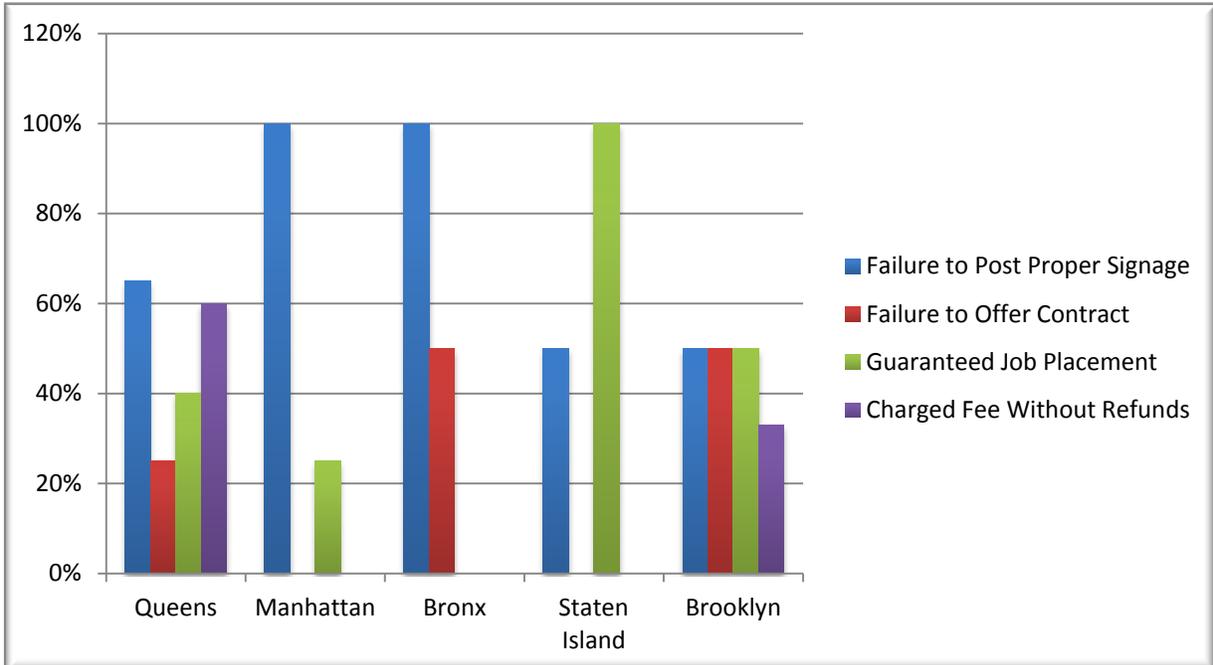
While current law allows employment agencies to charge class A and A1 workers advance fees before placing them in a job, applicants are also entitled to a complete refund of the fee at any point upon request so long as they have not been placed in a position by the agency. **Nevertheless, only 22% of the agencies that demanded fees from the mystery shoppers stated the fees were refundable.**

**Figure 6. Employment Agencies and Advance Fees**



Unfortunately, these results were not restricted to a single borough. All across New York City, both licensed and unlicensed employment agencies follow the same fraudulent practices and take advantage of job seekers who want nothing more than to be able to provide for their families. With such predatory practices both widespread and commonplace, it is clear that New York must act to make its policies reigning in fraudulent employment agencies more effective.

**Figure 7. Comparison of Violation Frequency by Borough**



Finally, mystery shoppers also noted that some agencies were willing to find work for underage family members or for someone who was currently living out of the country. **Across all five boroughs, 13% of employment agencies were willing to find positions for these particularly vulnerable workers, though all of them stated that such workers were likely to be paid less and have less luck finding a job.**

### Case Studies<sup>19</sup>

The job seekers victimized by fraudulent employment agencies are more than just numbers, however. They are our friends and neighbors, faces we see each day, and the bedrock of our nation's economy. And as the illegal businesses which defraud them proliferate across the city, more and more step forward to give their testimonies every day.

*Rosa Pauta*, of Queens, paid an employment agency \$125 to help her find a job in order to provide for her family. The agency sent her to a laundromat, but when she arrived for her interview she was told that there were no positions available and that the laundromat had not asked anyone to provide them with workers. Rosa confronted the employment agency, but was told that the laundromat had turned her down because she was too old. Upset and frustrated, she tried to reclaim the fee she had paid, but the agency refused to give it up, instead providing her with two more referrals for non-existent positions.

*Servando Rodriguez*, of Staten Island, paid an employment agency \$120 to help him find a job as a plumber. The agency gave him the details of a job over the phone, and he accepted, hoping to find good, skilled employment. When he first met the plumber with whom he would be working, however, he was offered a much lower salary than the agency had promised, and could not accept the job. Though Servando was entitled to a refund, the agency refused to provide it, and when he tried to seek legal recourse, he found he was unable to recover his money.

*Maria Fretell*, of the Bronx, came to New York City from Peru to make a better life for her three children. Shortly after she arrived, she paid an employment agency \$70 to help her find work – they promised her a job, but then never provided one. Embarrassed that they had taken advantage of her vulnerable situation and robbed her of money that she needed to take care of her children, Maria later found that the agency has since moved, and she has no way of knowing if it even still exists.

*Narbada Chhetri*, of Queens, also went to an employment agency to help find a job when she first arrived in New York. She was forced to pay an application fee, as well as one week's worth of her salary once she was placed. However, her contract stated that if she left or was fired, she could request a refund. She left the position after a short time, and when she requested a refund, she was refused. Narbada still has not been able to reclaim the \$243 the agency took from her.

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<sup>19</sup> Selected from Justice for Job Seekers Campaign testimonials, available at: [http://justice4jobseekers.org/?page\\_id=655](http://justice4jobseekers.org/?page_id=655)

## **Justice for Job Seekers Legislation (S.3415/A.3702)**

Fraudulent employment agencies throughout New York take advantage not only of countless desperate job seekers, but also some pervasive weaknesses within New York’s law. In order to prevent this daylight robbery, the Independent Democratic Conference, supported by the Justice for Job Seekers Campaign, has introduced Senate bill S. 3415 sponsored by Senators Jeff Klein and Diane Savino and carried in the Assembly by Assemblyman Francisco Moya (A. 3702). This is a comprehensive, 11-point bill that will modify licensing procedures for employment agencies, make it more difficult for them to defraud workers, improve enforcement of existing regulations, and enable victims to seek legal recourse if they have been a victim of fraud.

### **Key Provisions of S.3415**

- Requires employment agencies to obtain and update a “bona fide order” from employers certifying that the employer is looking for workers before directing workers to placements.
- Eliminates the exemption allowing employment agencies to charge advance fees to class A and A1 workers, the most vulnerable classes.
- Requires agencies to inform applicants that all fees are required to be refunded upon request on all receipts issued.
- Increases fines for violations from \$500 per violation to \$1,000 for the first violation and up to \$5,000 for each subsequent violation.
- Guarantees victims the right to bring civil actions against employment agencies that have defrauded them and allows judges to mandate that, if found guilty, the violator must pay the victims attorney fees.

Under S. 3415, employment agencies must create a stock contract, statement of terms and conditions, and receipt to be approved by the commissioner of either the Department of Labor or the Department of Consumer Affairs before they are granted a license. In order to ensure that applicants are aware of their rights, all of these documents will be required to be provided to any job seeker who hires the agency.

The root of the problem, however, stems from the fact that current law makes it too easy for agencies to defraud their clients, and this bill contains several provisions to address that. First, and perhaps most importantly, S. 3415 eliminates the exemption that allows agencies to charge advance fees to class A and A1 workers – the most vulnerable populations. By removing this exemption, the state can prevent agencies from charging anyone until they have found them a job. To further prevent fraud, this bill requires that agencies acquire a “bona fide order” clearly detailing the position available from employers before they refer any individuals, and that they renew these orders every 45 days. This will prevent agencies from sending applicants to businesses that are not hiring.

To improve the information available to both enforcement agencies and job seekers, S. 3415 will also require agencies to keep and post certain records. To inform consumers, the Department of Labor and the Department of Consumer Affairs will be required to post licensing information on their websites, and agencies will be required to disclose their criminal history, as well as post their licensing number on any job advertisements they release. To assist enforcement officials, agencies will be required to keep records of their “bona fide orders,” contracts, and receipts.

Finally, S. 3415 increases the penalties for violations to bring them into line with other states and make them effective deterrents against illicit activity. Not only does it increase the fines which can be imposed on violators to \$1,000 for the first offense and \$5,000 for subsequent offenses, but it also explicitly allows victims to bring civil suits against agencies that have taken advantage of them. To encourage lawyers to help victims recover fees, the bill will allow the court to order violators to pay not only damages to the plaintiff but also to pay for the cost of an attorney. S.3415 also increases the criminal penalties for individuals involved in operating fraudulent employment agencies and further protects victims from retaliation from employment agencies for exposing violations.

## **Conclusion**

With the enactment of all of these amendments to New York State’s employment agencies law, we can help protect our most vulnerable job seekers from the depredation of unscrupulous and illegal scam artists. Rather than fearing employment agencies that charge a fee to low-wage workers and then fail to connect them with legitimate employment, job seekers should be able to rest assured that they can only be charged once they have successfully found a job. Rather than worry that an employment agency will refer them to an employer with no job openings, job seekers should know that agencies will only refer them to employers who are actively seeking workers. Rather than know that they have only limited protection under the law and must rely on overburdened government agencies to help them exercise their rights, job seekers should know that they have the ability to use the law to get what they are entitled to. Rather than seeking justice on their own, job seekers throughout New York State should trust that the state will help ensure that they get justice.