



**Independent Democratic Conference
& Assemblyman Francisco Moya**

Demanding Justice for Job Seekers

October 2016

INTRODUCTION

Employment agencies, entities licensed by the state or city, serve as critical conduits to connecting the unemployed to jobs, particularly low-wage jobs. However, a 2015 report co-authored by the Independent Democratic Conference (IDC), Assemblyman Francisco Moya and the campaign Justice for Job Seekers proved that these critical establishments do not go without their share of fraudulent activities that only the state can address.

Fraudulent employment agencies take advantage of unwitting job seekers, many of whom have little knowledge of their rights. Predatory agencies 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 and even employers paying below the minimum wage. 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. New immigrants are particularly affected by these predatory practices.

In June of this year the New York State Legislature passed legislation to improve protections for job seekers. The law passed, would better regulate state and city employment agencies. The most important changes included in the legislation would eliminate the advance fee employment agencies are currently allowed to charge low-wage job seekers, and it would double the penalty the Department of Labor may impose per violation from \$500 to \$1,000.

The IDC, Assemblyman Moya, and the campaign Justice for Job Seekers launched a follow up undercover investigation starting in August 2016 to showcase that problems persist and to urge the Executive to take action. This new report highlights that as of October 2016, nearly a year and five months after the 2015 report and four months after the respective chambers of the legislature each passed this bill, predatory employment agencies are still defrauding low-wage job seekers of funds they cannot afford to lose. It is now time for Governor Andrew Cuomo to act, and sign Senate Bill 8102/Assembly Bill 10672 into state law.

Key Findings

- The advance fees being charged *only* to low-wage job seekers can be as high as \$200, and average at \$85—a hefty fee for individuals earning a \$9/hour minimum wage or a \$360 weekly salary.
- Of 37 employment agencies surveyed, 76% asked for an advance fee, of which 46% explicitly stated no refund would be provided, in contravention to current state law.
- Of the employment agencies visited, 78% guaranteed job seekers employment—in contravention to state law—40% of these agencies also charging an advance fee explicitly stated no refund would be provided.

BACKGROUND

Employment Agencies in New York

Employment agencies are state-regulated, privately-operated businesses where the unemployed are connected to potential employers. New York has regulated such establishments since the 1970s through the Department of Labor to ensure their legitimacy. The start of the economic recession sparked a proliferation of employment agencies in low-income immigrant-majority neighborhoods in New York City, according to a paper released in 2012 by New Immigrant Community Empowerment (NICE) and the Urban Justice Center.¹ The State Department of Labor indicates that as of August 24, 2016 there are 74 licensed employment agencies in New York State outside of New York City.² And data from the New York City Department of Consumer Affairs (DCA), which is responsible for licensing employment agencies in New York City, indicates that as of May 1, 2016 there are 303 licensed employment agencies across the five boroughs.³

However, the true number of employment agencies, particularly in New York City, is estimated to be much higher. Advocates estimate that the actual number of employment agencies operating in New York is closer to 1,000 once you count unlicensed agencies. While there is no “official list” of unlicensed employment agencies, many illicit companies tend to have an online presence. To prove the advocates’ allegation, analysts ran a series of employment-agency related search terms through Google Maps to generate a list of employment agencies in each New York City borough. Upon compiling the list of agencies found online, each agency was cross referenced with the list of 303 DCA-licensed employment agencies. **In the end, a total of 100 employment agencies were found through the Google Maps search, of which 78 were not found on the DCA list of licensed agencies.**

Since the uptick in the number of employment agencies in New York City, NICE has also witnessed an increase in members that consistently report negative experiences at employment agencies.⁴ Reports of fraud, specifically related to nonrefundable advanced fees, have become common. In fact, between 2013 and 2014, 92 percent of complaints to DCA reported unlicensed employment agency activity, many related to illegal refund policies.⁵ Complaints filed allege that employment agencies charge job seekers a fee in exchange for guaranteed employment, which is not refunded in the event the agency is unable to secure employment for the job seeker. Ultimately, this prompted NICE and over [thirty coalition partners](#) to collaborate with public officials, including the IDC and Assemblyman Moya to investigate, analyze, and develop legislative solutions.⁶

¹ New Immigrant Community Empowerment and Urban Justice Center. (2012). *Dreams And Schemes in Queens, New York*. Retrieved from https://cdp.urbanjustice.org/sites/default/files/DreamsandSchemes_ES.pdf

² New York State Department of Labor. (2016). *Employment Agencies Currently Licensed As of August, 24, 2016*. Retrieved from <https://www.labor.ny.gov/workerprotection/laborstandards/PDFs/EmploymentAgenciesListing.pdf>

³ New York City Open Data, Department of Consumer Affairs. (2016). *Legally Operating Businesses* [Data Set]. Retrieved from <https://data.cityofnewyork.us/Business/Legally-Operating-Businesses/w7w3-xahh>

⁴ See supra note 2.

⁵ *Employment Agency Complaints & Violations in New York City: 2010-2014*. (2015). Summary Report Prepared by LatinoJustice PRLDEF for New Immigrant Community Empowerment (NICE) and The Justice for Job Seekers Campaign.

⁶ For a full list of coalition partners, visit: http://www.justice4jobseekers.org/?page_id=28

Current Law in New York State Governing Employment Agencies

Currently, employment agencies are governed by sections 170-194 of Article 11 of New York State's general business law:⁷

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.

Provisions related to promulgating false promises of guaranteed employment and granting employment agencies the right to charge A and A1 job-seekers a fee before job placement has generated much attention. In analyzing complaints filed by job seekers alleging fraudulent activity, these two provisions, in particular, stand out. Employment agencies may charge A and A1 job seekers a fee before initiating the job search, but are not allowed to guarantee employment and must provide job seekers a full refund in the case employment is not secured.

Per state law, class A employment in New York State includes “domestic, household employees, unskilled or untrained manual workers or laborers, and agricultural workers.” Class A1 employees are “non-professional trained or skilled industrial workers or mechanics.” This broad class of workers is one that is predominantly made up of immigrants. For example, an April 2016 report published by the Center for Popular Democracy and the Center for an Urban Future estimates that immigrants make up 71 percent of the construction labor force and 72 percent of the food service labor force in New York City.⁸

For all classes of employee other than A and A1, applicants pay agencies only after they are successfully placed in a job. Only these low-wage earners, who are predominantly immigrants, are required to pay employment agencies an advance fee to initiate the job search in addition to a placement fee after successfully securing employment. Legally, the only protection in place for these low-wage workers is

⁷ Laws of New York, General Business, Article 11: Employment Agencies
http://www.nyc.gov/html/dca/downloads/pdf/employment_agency_statelaws_rules.pdf

⁸ See supra note 1.

that the agency must refund fees as long as a job has not been secured, but only at the request of the applicant. While it is unlikely 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.

2016 Legislation Passes State Senate and Assembly

In May 2015, the IDC, Assemblyman Moya, and the Justice for Job Seekers campaign published a [report](#) of an undercover investigation that validated job seekers' complaints.⁹ Among other findings, the report specifically indicated that 46 percent of agencies visited guaranteed job seekers placement despite being prohibited from doing so by law, and 38 percent of agencies visited 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.

To best protect vulnerable job seekers, Senator Klein and Assemblyman Moya introduced legislation in their respective chambers. On June 16, 2016 the State Senate and Assembly successfully passed legislation that would finally deny employment agencies the right to charge an advance fee for those seeking A and A1 class employment and increase fines to better hold employment agencies accountable. A summary of the legislation includes:

Senate Bill 8102/Assembly Bill 10672

- Commissioner is responsible for ensuring sample version of forms job seekers are required to complete are available in languages other than English based on need.
- An individual who has applied to operate an employment agency is entitled to review any criminal record information obtained by the Department of Labor during the application process.
- Removes one year record retention exemption for job orders, and requires records of job orders be retained for three years, similar to other records.
- Clarifies the content of contract demands; requires employment agencies provide job seekers a separate form with terms and conditions approved by the commissioner; and **requires all receipts rendered by employment agencies explicitly state employment agencies cannot charge fees before job placement.**
- **Eliminates the exemption allowing employment agencies to charge advance fees to class A and A1 workers.**
- Caps fees employment agencies may charge job seekers that fail to report to work.
- Requires employment agencies display their license number on all advertisements and public documents.
- Commissioner in conjunction with the Office of New Americans must develop a public awareness campaign about the right of job seekers.
- Violation of laws and regulations may result in a civil action fine of no more than \$1,000 for a first offense, and \$5,000 for subsequent offenses within six years of the first offense—up from the existing flat \$500 per violation fine.
- In the case of a criminal action against an employment agency, fines assessed may be of no more than \$2,500 for each violation, up from the current \$1,000 per violation.

⁹ Assemblyman Francisco Moya, Independent Democratic Conference, and Justice for Job Seekers. (2015). *Justice for Job Seekers*. Retrieved from <http://justice4jobseekers.org/wp-content/uploads/2015/05/J4JS-Report-Final-5.6.pdf>

INVESTIGATION

Now that the State Legislature has taken action to better protect vulnerable immigrants and low-wage workers in the state from being defrauded of funds they cannot afford to lose, it is time for Governor Cuomo to take action. Similar to the original investigation conducted in 2015, the IDC, Assemblyman Moya, and the Justice for Job Seekers campaign brought together a team of analysts in August 2016 to conduct a follow-up investigation. The findings highlight the need for Senate Bill 8102/Assembly Bill 10672 to become state law.

Methodology

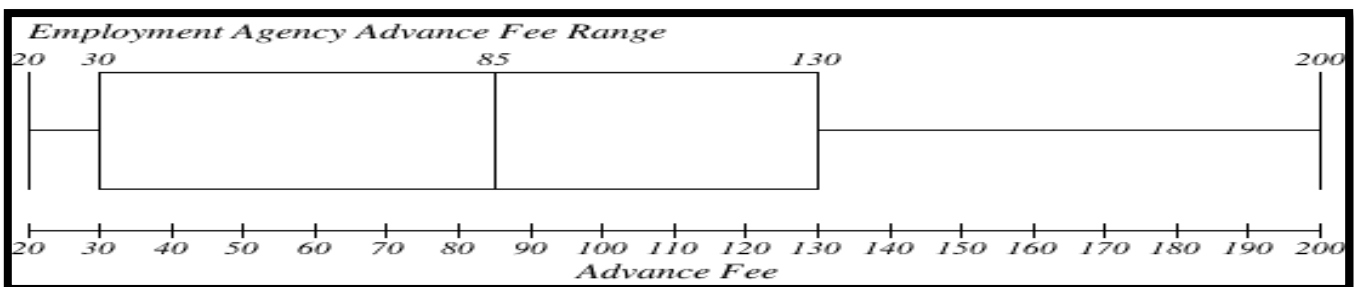
First, a list of 76 employment agencies across the five boroughs was generated. The list included a randomized sample of: (1) agencies found on Google Maps but not on the DCA list of licensed agencies to serve as a proxy for unlicensed agencies, (2) agencies found on Google Maps and on the DCA list of licensed agencies, and (3) agencies only listed on the DCA database of licensed employment agencies. Next, a questionnaire was designed similar to the original questionnaire used for the 2015 undercover investigation. Finally, a team of mystery shoppers were armed with the questionnaires and tasked with visiting employment agencies in search of fraudulent activity.

In all, the mystery shoppers were able to access 37 employment agencies including 1 establishment in the Bronx, 10 in Manhattan, 17 in Queens, and 9 in Brooklyn. Our investigation found that many agencies advertising online could not be found at the locations advertised. In fact, 35 of the 76 locations visited no longer existed. Unfortunately, this underscores the result of earlier studies, which found that employment agencies are constantly shifting location, illustrating how easy it might be for fly-by-night operators to scam job seekers.¹⁰

Results

Fraudulent employment agencies continue to charge low-wage job seekers hefty advance fees often disguised as compulsory application fees in exchange for guaranteed employment with no mention of a refund.

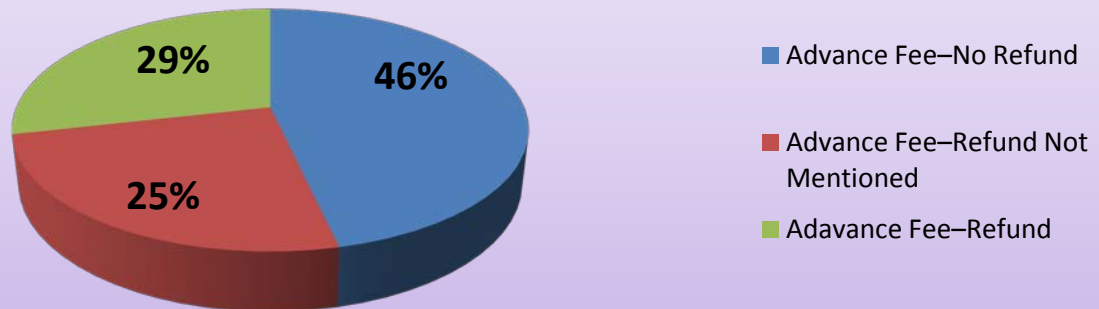
Thirty-three of the 37, or 89 percent, of employment agencies visited explicitly claimed they would place job seekers in jobs classified as either A or A1 including housekeeping, busboy, waiting, and construction. Per current state law, employment agencies have the right to charge a refundable advance fee before they render their services for these type of job placements; however, **these low-wage job seekers cannot afford to pay the advance fees that can range from \$20 to \$200, and average about \$85, according to data collected during the investigation.** While an \$85 to \$200 fee may not seem much to many, this is a heavy lift for a low-wage worker earning a \$9 per hour minimum wage with a weekly gross salary of \$360.



¹⁰ See supra note 1.

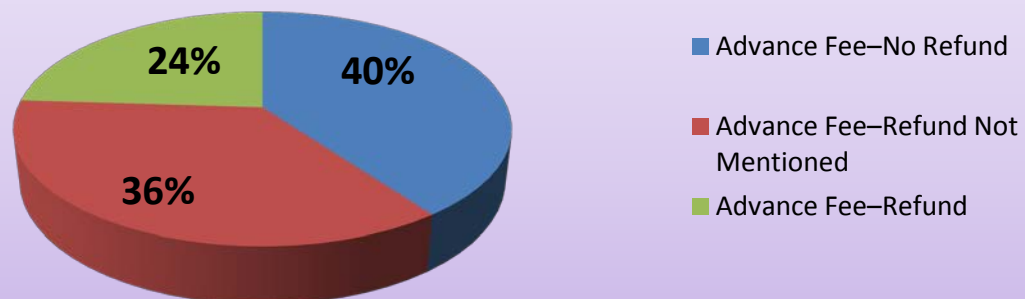
The investigation concluded that the vast majority of employment agencies charge an advance fee. In fact, 28 of the 37, or 76 percent of the agencies visited charged an advance fee; and only 9 agencies did not charge any fee. Of the 28 agencies that charged an advanced fee, **46 percent explicitly stated they would offer no refund, which is against current state law**, 19 percent did not mention any type of refund if employment were not secured, and 29 percent explicitly shared they would provide a refund.

**Refund Policy Associated with Employment Agencies
Charging an Advance Fee**



It is important to note that New York State General Business Law prohibits employment agencies from guaranteeing job placement as a means of recruiting job seekers. **Of the 37 agencies visited, 29 agencies, or 78 percent, guaranteed job placement despite the practice being a strict prohibition by state law.** Of the 29 employment agencies that guaranteed job placement, 25 required an advanced fee. And of the 25 requiring an advance fee, 40 percent explicitly stated they would not provide a refund, which is against current state law; 36 percent did not mention a refund if employment were not secured; and only 24 percent explicitly offered a refund.

**Refund Policy Associated with Employment Agencies
Guaranteeing Jobs and Charging an Advance Fee**



CONCLUSION

Every day thousands of New Yorkers desperate for employment visit employment agencies. Unfortunately, many of them will be defrauded by unscrupulous operators who, against State law, make promises of assured employment and then charge them fees that, again in violation of State law, will not be refunded. Even if a person seeking a minimum wage job, such as a busboy or a housekeeper finds a legitimate job agency, current state law allows job agencies to charge an upfront fee. Advance fees can run into the hundreds of dollars, which for someone who is unemployed and is seeking low-wage work can be prohibitively expensive. State law specifically penalizes low-wage workers in this regard, because job agencies are not allowed to charge upfront fees to individuals seeking more profitable employment. In June 2016, following an investigation conducted by the IDC and the office of Assemblyman Moya, the Legislature passed Senate bill 8102/Assembly bill 10672, which would eliminate the advanced fee exemption that penalizes low-wage workers and increase fines that can be imposed on fraudulent employment agencies. This legislation is awaiting Executive action. This new investigation again showcases the bad behavior that makes changing the law so crucial. We urge the Governor to take swift action to protect job seekers by signing this legislation into law.