



## Talent Agencies in New Jersey

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### **I. Introduction**

This outline is intended to guide an individual through the process of opening a talent agency in New Jersey. The first section gives an overview of the regulations that apply to both talent agencies and the broader category of employment agencies, under which talent agencies are regulated. The next section outlines the requirements of the registration and licensing process for both talent agencies and talent agents. The next part discusses ongoing compliance with employment agency regulations and affirmative violations of applicable law. Any talent agency activity not in compliance with all applicable regulations is a punishable violation, even for a license holder. The

last part reviews potential penalties for acting as a talent agency or agent in violation of the law.

## II. Registration Requirements

Before opening a talent agency in New Jersey, one needs to be aware of the relevant rules governing such an agency. The New Jersey Division of Consumer Affairs<sup>1</sup> has delegated the duty of regulating agencies such as talent agencies as well as other employment agencies to the Regulated Business Section<sup>2</sup> of the Division of Consumer Affairs. Every talent agency and agent in New Jersey is required to register with the Regulated Business Section to operate within the state. The Regulated Business Section requires registered talent agencies to conform to the New Jersey Statutes Annotated, Title 34, Chapter 8 and the New Jersey Administrative Code, Title 13, Chapter 45B, Subchapter 6.

Any person or business falling within the definition of “booking agency” is required by the statute to license the agency within the state as an employment agency governed by Title 34, Chapter 8 of the New Jersey Statutes Annotated. New Jersey defines the term “booking agency” to mean “any person who procures, offers, promises, or attempts to procure employment

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<sup>1</sup> The Division of Consumer Affairs can be contacted by mail at 124 Halsey St., Newark, NJ 07102; by phone (973) 504-6200; by fax at (973) 273-8035; or by e-mail at [askconsumeraffairs@lps.state.nj.us](mailto:askconsumeraffairs@lps.state.nj.us).

<sup>2</sup> The Regulated Business Section can be contacted by mail at 124 Halsey St., P.O. Box 45028, Newark, NJ 07102, or by phone at (973) 504-6370.

for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services.”<sup>3</sup>

“Performing artist” includes models, musicians, actors and other entertainment performers regardless of whether they perform individually or in a group.<sup>45</sup>

Under the relevant New Jersey statute, it is a violation to operate as an employment agent or agency within the state without the appropriate license.<sup>6</sup> (The consequences of violating this statute are described below.) Having the necessary license does not just help the agent or agency avoid criminal liability; it also provides the licensee with certain benefits. Were an unlicensed talent agency to try to sue for the recovery of fees in New Jersey, the agency would not prevail. The contract would be unenforceable and the agent or agency in question would be unable to recover fees.<sup>7</sup>

There are two types of licenses that must be obtained before opening a talent agency.<sup>8</sup> All individual agents must obtain an “employment agent” license. For individuals to be granted this license, they must be employed by a business that has an agency license and be working under the umbrella of that agency license. If someone were trying to set up his or her

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<sup>3</sup> N.J. Admin. Code § 13:45B-6.2.

<sup>4</sup> *Id.*

<sup>5</sup> These definitions include anyone who is in the business of giving career guidance to performing artists. Because entertainment managers are also involved in this kind of activity, they would fall within these definitions and will also be required to become licensed in NJ.

<sup>6</sup> N.J. Stat. Ann. § 34:8-52 (West 2000).

<sup>7</sup> N.J. Stat. Ann. § 34:8-45(b) (West 2000).

<sup>8</sup> N.J. Stat. Ann. § 34:8-52 (West 2000).

own talent agency, he or she must first obtain an agency license. Then, the individual must obtain an agent's license—as long as he or she was going to be acting as the person interviewing and recruiting for the business.<sup>9</sup> Applicants seeking either an agency or agent's license must disclose certain criminal convictions.<sup>10</sup> If an application is denied due to the disclosure of a criminal conviction, the applicant can appeal the denial within 30 days.<sup>11</sup> Other information is required but varies based on whether the application is for an agency or an agent's license. These requirements will be discussed below.

Obtaining the license is not enough to make any talent-related activities immune from criminal liability. Before undertaking an activity, the license holder must make sure that he or she is in compliance with all regulations as outlined in the on-going compliance section below as of the first moment the license holder begins operations as a talent agency or agent.

## A. Agency License Requirements

To register as an employment agency, several requirements must be fulfilled.

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<sup>9</sup> N.J. Stat. Ann. § 34:8-43 (West 2000).

<sup>10</sup> The relevant statute defines the types of convictions that must be disclosed as: “(1) Any crime of the first degree; (2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or (3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2, 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:18-2, 2C:20-1, 2C:20-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19, chapter 27 or 28 of Title 2C of the New Jersey Statutes, N.J.S.2C:30- 2, 2C:30-3, 2C:35-5, 2C:35-10, or 2C:37-1 through 2C:37-4.”

<sup>11</sup> N.J. Stat. Ann. § 34:8-44(c) (West 2000).

First, the talent agency must complete the required forms, which can be obtained from the Regulated Business Section's office in Newark. These forms call for basic information, such as the complete address of the place of business and the specific services that the business will supply to clients.

Second, the person responsible for interviewing and attempting to place clients must submit at least two affidavits from New Jersey citizens who have known the person for at least five years, attesting to that person's character.

Third, the application must also include copies of all forms and contracts the agency intends to use during the ordinary course of business.<sup>12</sup>

Fourth, the applicant must include payment of \$250.

In addition to these requirements, the Chief of the Bureau of Employment and Personnel Services in the Division of Consumer Affairs may request additional information that he or she requires on an individual basis to determine whether to grant a license. Before a license can be granted, the agency must also post a bond of \$10,000 with the Director of the Division of Consumer Affairs,<sup>13</sup> which will be used as damages should anyone be injured by the agency during the course of the agency's acting as a booking agent.<sup>14</sup>

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<sup>12</sup> N.J. Admin. Code § 13:45B-6.4.

<sup>13</sup> At present (October 2006), Stephen B. Nolan is the Director of the Division of Consumer Affairs.

<sup>14</sup> N.J. Stat. Ann. § 34:8-49 (West 2000).

Within 30 days of receiving the application, the Chief is required to act on it. (The Director of Consumer Affairs may extend the deadline to 60 days to provide time to collect additional information.<sup>15</sup>) Should a license be granted, it (along with all agency licenses) will expire on January 1 of the following year. The license cannot be transferred without the consent of the Director, so the person who submitted the application may be the only owner to use it unless otherwise determined by the Director.<sup>16</sup>

## **B. Agent's License Requirements**

After receiving the agency license, any person within the agency who will be acting as a booking agent of that agency must file for an employment agent's license through the Division of Consumer Affairs. A "booking agent" is defined as "any person . . . who performs any solicitation or recruiting function for or on behalf of any booking agency; a booking agent is licensed as an employment agent."<sup>17</sup>

An individual must meet certain requirements before receiving an employment agent's license.<sup>18</sup>

Individuals must complete applicable forms, which are available from the Regulated Business Section.

These forms must include the name and address of

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<sup>15</sup> N.J. Stat. Ann. § 34:8-47(b) (West 2000).

<sup>16</sup> N.J. Stat. Ann. § 34:8-47(d) (West 2000).

<sup>17</sup> N.J. Admin. Code § 13:45B-6.2.

<sup>18</sup> N.J. Stat. Ann. § 34:8-48 (West 2000).

the individual and any other name previously used by the individual in the last six years. The applicant must also include the name of the holder of the employment agency license under which he or she is working. The applicant must also include affidavits from the agency license holder stating that (i) the applicant has been actively, lawfully and reputably employed in a business or licensed profession, and (ii) the applicant has been employed in the handling of personnel (including helping job seekers find employment in the type or class of occupation for which the application is made) for at least six months.<sup>19</sup> The applicant must also provide two affidavits regarding the applicant's character from New Jersey citizens who have known the applicant for at least one year.<sup>20</sup> As with an agency license, the Chief may request additional information regarding the applicant's qualifications. The Director will require the applicant to take a written examination to evaluate his or her relevant knowledge and experience within the field as well as the applicable regulations.<sup>21</sup> The person applying for the license must also meet the requirements set out by the statute regarding their place of business. This subject matter is discussed later in this article (Section III, A(1)).

The individual applying for the agent's license cannot receive the agent's license until the license of his or

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<sup>19</sup> N.J. Admin. Code § 13:45B-2.6.

<sup>20</sup> *Id.*

<sup>21</sup> N.J. Stat. Ann. § 34:8-48(c) (West 2000).

her agency is confirmed.<sup>22</sup> Once the individual receives an agent's license, it is only valid while the person is working for the agency listed on the agent's license application. If an individual does not have the experience necessary to be granted an employment agent's license, a conditional license may be granted so that the individual can gain experience. The Director requires that, once an agent's license is issued, the license number issued must be included on the agent's business cards. The absence of the license number on the business card is a fineable offense. As with agency licenses, the agent's license will expire on January 1 of the year following the year of issuance. The cost of an agent's license is \$25.

### III. On-Going Compliance

The registration requirements are sufficient to obtain the employment agency and agent licenses required to open a talent agency. However, talent agencies and agents must be in compliance with all of the requirements outlined below from the onset of operations; any talent agency activity that is conducted while the agency or agent is not in compliance with one of the below elements is considered a violation of the Employment and Personnel Services Act.<sup>23</sup>

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<sup>22</sup> N.J. Stat. Ann. § 34:8-48(b) (West 2000).

<sup>23</sup> N.J. Stat. Ann. § 34:8-52(a) (West 2000).

## A. Agency Compliance Obligations

The bulk of compliance requirements falls on the holder of the agency license. Most of the requirements below apply to all employment agencies, not just talent agencies.

### 1) Place of Business

The agency license only authorizes agency activities at the address on the license; the license is not transportable to different locations.<sup>24</sup> Talent agencies can obtain special permits to allow for off-site talent showcases, such as performances by clients conducted solely as auditions for potential employers.<sup>25</sup> These special permits are only valid for specific events and must be renewed for every such showcase, even if subsequent showcases are conducted at the same location. Each special permit costs \$10.<sup>26</sup> Special permits are not required for private electronic presentations made in the home of a prospective employer, but such presentations either must identify the agency by name, address, and license number for at least twenty seconds of the presentation, or the same information must be provided in writing to the prospective employer.<sup>27</sup>

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<sup>24</sup> N.J. Admin. Code § 13:45B-3.1(b).

<sup>25</sup> N.J. Admin. Code § 13:45B-3.1(d).

<sup>26</sup> N.J. Admin. Code § 13:45B-3.1(b).

<sup>27</sup> N.J. Admin. Code § 13:45B-3.1(d)(2).

## 2) Recordkeeping

### a. Services and Fees

Every talent agency must keep and make available to the Chief or the Chief's designee records containing information regarding services provided, products sold, and fees charged or collected, along with any other information as required by the Director or Chief.<sup>28</sup> The agency must maintain these records and make them available for inspection to the Director or the Director's duly authorized representative for a period of at least two years.<sup>29</sup> The agency can create written records of oral job orders for which no other documentation exists and collect them in a separate book or binder.<sup>30</sup>

### b. Advertisements

An agency must keep records of all advertisements it publishes or disseminates.<sup>31</sup> These records must not only include a copy of the advertisement, but also a record of every date of publication in every medium in which the advertisement is used.<sup>32</sup> This requirement applies to both traditional advertisements and any marketing text or messages used by the agency, such as identifying text in the agency's letterhead. In the case of telemarketing campaigns, the full text of the

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<sup>28</sup> N.J. Stat. Ann. § 34:8-51(a)(1) (West 2000).

<sup>29</sup> N.J. Admin. Code § 13:45B-2.4 (a).

<sup>30</sup> N.J. Admin. Code § 13:45B-2.4 (a)(1)(iii).

<sup>31</sup> N.J. Admin. Code § 13:45B-2.4 (a)(2).

<sup>32</sup> N.J. Admin. Code § 13:45B-2.4 (a)(2)(i)-(ii).

telemarketing script can serve as the record, and the agency must record the approximate number of recipients contacted.<sup>33</sup> The agency must maintain these records and make them available for inspection to the Director or the Director's duly authorized representative for a period of at least two years.<sup>34</sup>

### c. Contracts

The agency must maintain copies of all contracts between job seekers or employers and the agency and make them available for inspection to the Director or the Director's duly authorized representative for a period of at least two years.<sup>35</sup> The agency must file a form contract with the Regulated Business Section of the Office of Consumer Protection.<sup>36</sup> It is recommended that an agency send the form via certified mail, so they have proof of the filing.

### 3) Agency Identification

All advertisements must contain the name, address, and license number of the talent agency as it appears on the license.<sup>37</sup>

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<sup>33</sup> N.J. Admin. Code § 13:45B-2.4 (a)(2)(iii).

<sup>34</sup> N.J. Admin. Code § 13:45B-2.4 (a).

<sup>35</sup> N.J. Admin. Code § 13:45B-2.4 (a)(5).

<sup>36</sup> N.J. Admin. Code § 13:45B-6.4(b).

<sup>37</sup> N.J. Admin. Code § 13:45B-6.5.

#### 4) Character References

Agencies must require job seekers applying for positions of trust or work with a private family to furnish the agency with names and addresses of individuals available as character references.<sup>38</sup> The agency is only required to communicate successfully with one character reference before placing a job seeker in a position of trust or with a private family, but the agency must keep records of all attempted communications with character references.<sup>39</sup> The affected prospective employer may waive the requirement of a successfully verified character reference, including when the employer is a private family.<sup>40</sup> The agency must maintain records of all attempted communications with character references and any waivers related to positions of trust or work with private families and make them available for inspection to the Director or the Director's duly authorized representative for a period of at least two years.<sup>41</sup>

#### 5) Documents Signed by Job Seekers

The agency must provide job seekers with copies of not only every document the job seeker has signed, but also of every document incorporated by reference in agreements between the job seeker and the

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<sup>38</sup> N.J. Stat. Ann. § 34:8-51(a)(2) (West 2000).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> N.J. Admin. Code § 13:45B-2.4 (a).

agency.<sup>42</sup> The agency must also provide job seekers with a receipt for all services provided that states the job seeker, agency, agent, date, amount, and purpose of the fee charged to the job seeker.<sup>43</sup>

## 6) Order of Employment

An agency cannot send a job seeker to a place of employment, nor collect a related fee from the job seeker, unless the agency has a *bona fide* order for employment from that employer.<sup>44</sup> However, there is an exemption to this rule that allows the agency to send out job seekers for any position so long as the agency provides the job seeker with an “introductory card.”<sup>45</sup>

The introductory card, which can take the form of a business card or a note on the agency’s letterhead, must identify the agency and the job seeker and contain any other identifying details regarding the particular job and prospective employer. The following message must appear verbatim in bold-faced type on the introductory card:

**This card of introduction is given to (name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by this**

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<sup>42</sup> N.J. Admin. Code § 13:45B-2.5 (c).

<sup>43</sup> *Id.*

<sup>44</sup> N.J. Stat. Ann. § 34:8-51(b)(6) (West 2000).

<sup>45</sup> N.J. Admin. Code § 13:45B-2.8 (a).

agency, (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer. (Name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by the employer.<sup>46</sup>

## 7) Posting of Rules

The agency must post an abstract of the Employment and Personnel Services Act and any rules and regulations the Director deems appropriate.<sup>47</sup> The abstract must be posted in a place designated by the Chief or the Chief's representative.<sup>48</sup> The abstract must be purchased from the Section for \$5 per copy.<sup>49</sup>

## 8) Fees

The agency's fee schedule must be approved by the Chief before the agency can charge any fee to a job seeker or prospective employer.<sup>50</sup> The fee schedule can be amended at any time, but the new fees cannot be charged until approved by the Chief and posted for seven days.<sup>51</sup> Agencies have the discretion to charge less than the posted fee schedule, but cannot charge more.<sup>52</sup> The agency must post the fee schedule in a

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<sup>46</sup> *Id.*

<sup>47</sup> N.J. Stat. Ann. § 34:8-51(a)(5) (West 2000).

<sup>48</sup> *Id.*

<sup>49</sup> N.J. Admin. Code § 13:45B-2.3.

<sup>50</sup> N.J. Stat. Ann. § 34:8-51(b)(1) (West 2000).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

conspicuous manner using forms provided by the Chief.<sup>53</sup>

#### a. Job Classification

Employment agencies typically charge a higher fee to prospective employers for filling a permanent position than for a temporary position. In New Jersey, permanent placement is the default classification for a job.<sup>54</sup> In instances where temporary employment leads to permanent employment, any fees paid under the classification of temporary employment are to be credited to the payment of the permanent employment fees.<sup>55</sup>

#### b. Fees for Discharge Without Cause or Voluntary Termination Without Cause

A job seeker is not responsible for the full scheduled placement fee in cases where the job seeker is discharged without cause or the job seeker voluntarily terminates employment with just cause.<sup>56</sup> In such cases, the job seeker only owes the agency 1% of the scheduled placement fee for each day worked.<sup>57</sup> The agency can contract in advance with the job seeker to either provide a refund of credit due or apply the credit

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<sup>53</sup> N.J. Stat. Ann. § 34:8-51(b)(2) (West 2000).

<sup>54</sup> N.J. Stat. Ann. § 34:8-51(b)(3) (West 2000).

<sup>55</sup> *Id.*

<sup>56</sup> N.J. Stat. Ann. § 34:8-51(b)(4) (West 2000).

<sup>57</sup> *Id.*

to a new job placement when such a situation arises.<sup>58</sup>

### c. Fees for Failure to Report for Duty and Voluntary Termination Without Cause

When the job seeker is responsible for losing the job within 30 days of placement, whether for failure to report for duty or for voluntarily terminating employment without cause, the agency can only charge the job seeker a maximum of 30% of the scheduled fee.<sup>59</sup>

## B. Agent Compliance Obligations

As noted above, agency license holders are responsible for most of the on-going compliance requirements of operating a talent agency. However, individual agents have several obligations.

### 1) Display of License

An agent must display his or her license in a place and manner that makes the license readily visible and legible by anybody doing business with the agent.<sup>60</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> N.J. Stat. Ann. § 34:8-51(b)(5) (West 2000).

<sup>60</sup> N.J. Admin. Code § 13:45B-6.3.

## 2) Business Cards

Whenever performing the duties of a booking agent, agents must carry and provide to job seekers a business card with the agent's agent license number.<sup>61</sup> If the agent's license number is not included, the agent may be fined. In addition, since any agency advertisement/publication must clearly identify the agency by name and address, this information must also be on the agent's business card.<sup>62</sup>

## 3) Contracts

When agents contract with performing artists to supply products such as photographs, photographic publications, or any other material related to finding employment for the job seeker, the contract must specify the exact quantity, quality, cost of items to be supplied, and date of delivery or publication.<sup>63</sup> If the date of delivery for any such materials is more than sixty days following the date of the contract, the agency or agent can only charge up to one-third of the cost in advance.<sup>64</sup> If the materials are not delivered by the contracted delivery date, the performing artist is entitled to a full refund of any such monies collected in

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<sup>61</sup> N.J. Admin. Code § 13:45B-6.5 (c).

<sup>62</sup> N.J. Admin. Code § 13:45B-2.4 (a)(2)(i)-(ii).

<sup>63</sup> N.J. Admin. Code § 13:45B-6.4 (d).

<sup>64</sup> N.J. Admin. Code § 13:45B-6.4 (e).

advance.<sup>65</sup> The performing artist can waive the right to a refund in writing.<sup>66</sup>

## IV. Violations and Penalties

### A. Employment and Personnel Services Violations

An agency or agent violates the Employment and Personnel Services Act whenever the agency or agent conducts the activities of a talent agency in contravention of the items described above.<sup>67</sup> The list below describes affirmative acts that are also violations of the Employment and Personnel Services Act. The penalties for either type of violation are the same<sup>68</sup> and are described in the next section.

Each of the following acts is a violation of New Jersey's Employment and Personnel Services law.

1) Operating as an employment agency or agent without a valid license.<sup>69</sup>

2) Conducting business in a location where an individual sleeps or conducts his or her household affairs.<sup>70</sup> This violation does not apply if the business premises have a separate entrance from that of the residential premises.<sup>71</sup> This provision also does not

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<sup>65</sup> N.J. Admin. Code § 13:45B-6.4 (f).

<sup>66</sup> *Id.*

<sup>67</sup> N.J. Stat. Ann. § 34:8-52 (a) (West 2000).

<sup>68</sup> N.J. Stat. Ann. § 34:8-58 and 59 (West 2000).

<sup>69</sup> N.J. Stat. Ann. § 34:8-52 (a) (West 2000).

<sup>70</sup> N.J. Stat. Ann. § 34:8-52 (b)(1) (West 2000).

<sup>71</sup> N.J. Admin. Code § 13:45B-3.1 (c)(1).

apply to persons who have no personal contact with either job seekers or prospective employers at their licensed place of business.<sup>72</sup> The Regulated Business Office explains that New Jersey's primary concern with this regulation is to ensure a distinct division between home life and business life. Also, the primary factor in deciding whether there was likely to be personal contact at the place of business was the type of business, not the licensee's intended method of operation. Thus, as long as a business is targeted at job seekers and employers, the State of New Jersey believes that there will be personal contact with the intended clientele.

However, the Regulated Business Office notes that, since the primary concern is maintaining a division between home life and business life, in some instances the relevant examiner has waived the "separate entrance" requirement when the agency license applicant was in substantial compliance with the spirit of the requirement. In these instances, the business premises were in parts of the residence devoted exclusively to the operation of the business, and the business had its own dedicated communication lines separate from those used in the residence. The decision to waive the "separate entrance" requirement is solely at the discretion of the examiner, and, since the rule is to always require the separate entrance if personal contact is expected, there is no obligation on the examiner ever to grant

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<sup>72</sup> *Id.*

such a waiver. Furthermore, there is no way to evaluate the examiner's likely decision before the license application process is underway.

3) Conducting business in a place leased on a transient basis.<sup>73</sup> It is a violation to lease office space for the agency on a weekly or shorter basis.<sup>74</sup>

4) Charging a fee greater than that on the approved and posted fee schedule.<sup>75</sup>

5) Accepting a gift in lieu of a fee.<sup>76</sup>

6) Dividing or offering to divide fees with prospective employers.<sup>77</sup>

7) Accepting or attempting to collect payment when employment has not been accepted by the job seeker.<sup>78</sup>

8) Falsely stating or implying to a job seeker that a prospective employer is hiring.<sup>79</sup>

9) Sending any job seeker to a place used for unlawful activities.<sup>80</sup>

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<sup>73</sup> N.J. Stat. Ann. § 34:8-52 (b)(2) (West 2000).

<sup>74</sup> *Id.*

<sup>75</sup> N.J. Stat. Ann. § 34:8-52 (c) (West 2000).

<sup>76</sup> N.J. Stat. Ann. § 34:8-52 (d) (West 2000).

<sup>77</sup> N.J. Stat. Ann. § 34:8-52 (e) (West 2000).

<sup>78</sup> N.J. Stat. Ann. § 34:8-52 (f) (West 2000).

<sup>79</sup> N.J. Stat. Ann. § 34:8-52 (g) (West 2000).

<sup>80</sup> N.J. Stat. Ann. § 34:8-52 (h) (West 2000).

10) Placing any individual under 18 years of age in employment that would be illegal for a minor.<sup>81</sup>

11) Coercing an individual to use an agency.<sup>82</sup>

12) Publishing or causing to be published deceptive advertising.<sup>83</sup> Failure to identify the agency on any communication, such as letterhead and receipts, counts as a violation of the “deceptive advertising” rule.<sup>84</sup>

13) Making any deceptive or misleading representation to a job seeker or prospective employer.<sup>85</sup> An agency also violates this prohibition by inducing either a job seeker or prospective employer to agree to a contract that would be in violation of Employment and Personnel Services law.<sup>86</sup>

14) Requiring that a job seeker enter a contract with the agency or a specific lender in order to fulfill a financial obligation to the agency.<sup>87</sup>

15) Demanding, charging, collecting, or receiving any fee not in accordance with the terms of a written contract or agreement with a job seeker.<sup>88</sup>

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<sup>81</sup> N.J. Stat. Ann. § 34:8-52 (i) (West 2000).

<sup>82</sup> N.J. Stat. Ann. § 34:8-52 (j) (West 2000).

<sup>83</sup> N.J. Stat. Ann. § 34:8-52 (k) (West 2000).

<sup>84</sup> *Id.*

<sup>85</sup> N.J. Stat. Ann. § 34:8-52 (l) (West 2000).

<sup>86</sup> *Id.*

<sup>87</sup> N.J. Stat. Ann. § 34:8-52 (m) (West 2000).

<sup>88</sup> N.J. Stat. Ann. § 34:8-52 (n) (West 2000).

16) Engaging in any act or practice in violation of the Consumer Fraud Act.<sup>89</sup> The Employment and Personnel Services Act specifies that the Act is violated whenever the Consumer Fraud Act is violated<sup>90</sup>; thus, a violation of the Consumer Fraud Act is punishable as an Employment and Personnel Services Act violation.<sup>91</sup> The Consumer Fraud Act itself specifically targets the activities of temporary help services and not talent or any other kind of employment agencies.<sup>92</sup> However, the definition of “merchandise” under the Consumer Fraud Act does include any “services,”<sup>93</sup> so the Act most likely would apply to any talent agency activities.

## B. Employment and Personnel Services Penalties

Any of the above violations is punishable by a fine of \$2,000 for the first offense and \$5,000 for the second and any subsequent offense.<sup>94</sup> In addition to these fines, the Director may also pursue an injunction to force the agency to cease and desist any activities that are causing the violations, up to and including suspending all agency and agent operations<sup>95</sup> and revoking all licenses.<sup>96</sup> Violations of the cease and desist orders are punishable by fines of not less than

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<sup>89</sup> N.J. Stat. Ann. § 34:8-52 (o) (West 2000).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> N.J. Stat. Ann. § 56:8-1.1 (West 2000).

<sup>93</sup> N.J. Stat. Ann. § 56:8-1 (c) (West 2000).

<sup>94</sup> N.J. Stat. Ann. § 34:8-61 (West 2000).

<sup>95</sup> N.J. Stat. Ann. § 34:8-58 (West 2000).

<sup>96</sup> N.J. Stat. Ann. § 34:8-53 (West 2000).

\$1,000 or more than \$25,000 for each violation, plus reasonable attorney fees and court costs.<sup>97</sup>

In addition to the penalties above, the Director may pursue a remedy of enjoining the violating individual from managing, owning, or having any substantial control of any business in New Jersey.<sup>98</sup> Substantial control includes not only holding positions such as corporate officer or manager, but also owning more than 10% of the outstanding capital stock of any New Jersey corporation.<sup>99</sup> Under this provision, the Director may also petition the court to revoke any licenses and annul the charter of any New Jersey corporation held by the violating individual.<sup>100</sup>

### C. Labor Dispute Violations and Sanctions

It is a misdemeanor<sup>101</sup> for an employment agency knowingly to send a job applicant to any employer whose employees are engaged in a strike or have been locked out.<sup>102</sup>

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<sup>97</sup> N.J. Stat. Ann. § 34:8-60 (West 2000).

<sup>98</sup> N.J. Stat. Ann. § 34:8-58 (b) (West 2000).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> N.J. Stat. Ann. § 34:13C-5 (West 2000).

<sup>102</sup> N.J. Stat. Ann. § 34:13C-3 (West 2000).

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