

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Consumer Affairs (DCA) proposes to add a rule that would establish a template “Terms and Conditions” document, pursuant to Section 181(3) of the New York General Business Law, which an employment agency would be required to provide to its customers. DCA also proposes amendments to Section 5-250 of Title 6 of the Rules of the City of New York requiring employment agencies to post certain signs, as mandated by Section 188 of the New York General Business Law. DCA also proposes to amend Section 5-248 of Title 6 of the Rules of the City of New York to prohibit employment agencies from discriminating on the basis of sexual orientation. Finally, DCA proposes to amend the employment agency penalty schedule in Section 6-59, to indicate that first-time violations of certain provisions are curable, and to change the maximum penalty for most employment agency violations pursuant to Section 189(5) of the New York General Business Law.

When and where is the Hearing? DCA will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 AM on Monday, February 4, 2019. The hearing will be in the DCA hearing room at 42 Broadway 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax written comments to DCA, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-5962. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Monday, February 4, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rules on or before 5:00 PM on Monday, February 4, 2019.

Do you need assistance to participate in the Hearing? You must tell the Department’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Thursday, January 31, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the

hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes the Department of Consumer Affairs to make this rule? Section 181(3)(c) of the New York General Business Law authorizes the Commissioner of the Department of Consumer Affairs to make the proposed amendments to Sections 5-259 and 5-250 of Title 6 of the Rules of the City of New York. Section 189(3) of the New York General Business Law, Sections 1043 and 2203(f) of the New York City Charter, and Section 20-104(b)(7) of the New York City Administrative Code authorize DCA to make the proposed amendments to Section 5-248 of Title 6 of the Rules of the City of New York. The proposed amendments were not included in the regulatory agenda of DCA for this Fiscal Year because they were they were not contemplated when DCA published the agenda.

Where can I find the rules of the Department of Consumer Affairs? DCA's rules are in Title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? DCA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rules

DCA proposes to add a new Section 5-259 to Title 6 of the Rules of the City of New York to establish a template “Terms and Conditions” document, pursuant to Section 181(3) of the New York General Business Law, which an employment agency would be required to provide to its customers. The “Terms and Conditions” document must accompany each contract and summarize the important terms and conditions contained in the contract in plain and commonly understood terms.

DCA also proposes amendments to Section 5-250 requiring employment agencies to post certain signs, as required by Section 188 of the New York General Business Law.

DCA proposes to amend Section 5-248 to prohibit employment agencies from discriminating on the basis of sexual orientation. Working with the City’s rulemaking agencies, the Law Department, the Office of Management and Budget, and the Office of Operations conducted a retrospective rules review of the City’s existing rules, identifying rules that should be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. This proposed amendment to Section 5-248 was identified through this initiative.

Section 189(3) of the New York General Business Law grants DCA the authority to create administrative rules to effectuate the purposes of Article 11 of the General Business Law. Section 20-104(b)(7) of the New York City Administrative Code grants DCA the power to create rules to ensure that licensed businesses do not discriminate on the basis of sex, among other things. Discrimination on the basis of sexual orientation is a form of discrimination on the basis of sex. *See Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 108 (2d Cir. 2018) (en banc).

DCA proposes to amend Section 6-03(b) to add to the list of provisions of Title 6 of the Rules for which the opportunity to cure a first-time violation is available. Specifically, DCA proposes to add three employment agency related violations to the list: Sections 5-250 and 5-251, and Section 188 of the New York General Business Law. Section 189(5) of the New York General Business Law grants to DCA the discretion to make certain violations curable.

Finally, DCA proposes to amend the employment agency penalty schedule in Section 6-59. DCA proposes to indicate that first-time violations of certain provisions are curable. DCA also proposes to change the maximum penalty for most employment agency violations pursuant to Section 189(5) of the New York General Business Law (NYGBL). Conforming the penalties to NYGBL Section 189(5) will double first violations and first default amounts, and will increase by ten times the current amount for all subsequent violations and defaults.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rules

Section 1. Section 5-248 of Subchapter M of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-248 Prohibited Practices.

(a) No employment agency shall discriminate against any individual because of his age, race, creed, color, national origin, religion, sexual orientation, or sex, in receiving, classifying, disposing or otherwise acting upon applications for its services, in referring an applicant or applicants to an employer or employers or with respect to any guidance, training or apprenticeship program.

(b) No employment agency shall:

(1) print or circulate or cause to be printed or circulated any statement, advertisement or publication, or

(2) use any form of application for employment, or

(3) use any business name, trade name or display name, or

(4) make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, religion, sexual orientation, or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(c) No employment agency engaged in securing or obtaining positions for applicants in the modeling field shall directly or indirectly refer any applicant to a particular school or course for modeling, nor induce, suggest, or encourage choice of such school or course.

§ 2. Section 5-250 of Subchapter M of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§5-250 Display of Signs.

(a) Every license[e]d employment agency must post conspicuously at his or her place of business a sign, at least 12 inches by 18 inches in dimension with letters at least 1-inch high, which includes the name that appears on his or her license(s), the license number(s), and instructions on contacting the Department to file a complaint. [reading as follows:

“The Department of Consumer Affairs of the City of New York has issued the following license(s) to this business:

Licensee: [name appearing on license(s)]

License Title(s): [type(s) of license(s) held]

License No(s).: [corresponding number(s) of license(s) held]

The Department of Consumer Affairs is located at (Insert the Department’s current address).
Phone No.: (Insert the Department’s current telephone number).”

]

(b) Every licensed employment agency must post conspicuously in the main room of his or her place of business a sign, at least 12 inches by 18 inches in dimension, containing sections one hundred seventy-eight, one hundred eighty-one, one hundred eighty-five, and one hundred eighty-six, of Article 11 of the general business law. The sign must be posted in all languages in which the employment agency does business, provided the commissioner has made signs available in such language(s).

(c) Every licensed employment agency must post conspicuously in the main room of his or her place of business a sign, at least 8.5 inches by 11 inches in dimension, containing the rights of job seekers. The sign must be posted in all languages in which the employment agency does business, provided the commissioner has made signs available in such language(s).

(d) For the purposes of this section, “main room” means the main reception or waiting area or, where no reception or waiting area exists, the main entrance to the agency.

§ 3. Subchapter M of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new Section 5-259 to read as follows:

§5-259 Statement of Terms and Conditions.

(a) All employment agencies must provide to each applicant a document accompanying each contract entitled “Terms and Conditions,” except when offering an applicant a contract for Class “C” theatrical employment.

(b) Each “Terms and Conditions” document provided to an applicant must conform to the template made available by the commissioner.

(c) The “Terms and Conditions” document must be provided to each applicant in the language in which their contract was negotiated, provided the commissioner has made a template available in such language.

(See attached for Proposed Template)

Terms and Conditions

THIS DOCUMENT IS NOT A CONTRACT AND IS NOT LEGALLY BINDING

EMPLOYMENT AGENCY INFORMATION	
Name of Employment Agency:	License Number:
Name of Agency Staff or Salesperson:	Telephone:
Address:	E-mail Address, if available:

DESCRIPTION OF WORK AND FEES	
Type of service to be performed:	Anticipated rate of wages or compensation:
Anticipated number of hours of work per day:	Anticipated number of days of work per week:
Anticipated period of employment:	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent
Fee for Job Placement (See attached Sections 185 and 186 for maximum fees Agency can charge by law.) <input type="checkbox"/> Check here if the fee will be paid by the employer. <input type="checkbox"/> Flat Placement Fee Total Amount: \$ _____ <input type="checkbox"/> Percent of Salary: _____% of _____ Months or Weeks (circle one)	
Fee Payment Schedule The fee shall be paid: <input type="checkbox"/> in ten equal weekly installments payable at the end of each of the first ten weeks <input type="checkbox"/> in five equal installments payable at the end of each of the first five pay periods <input type="checkbox"/> other: _____	

SUMMARY OF IMPORTANT TERMS AND REQUIREMENTS
<p>Receipts: Agency will provide you a separate, written receipt for every deposit, fee or charge collected by it.</p> <p>Fee Amounts: Agency cannot accept a deposit or charge you a fee before you are paid by the employer.</p> <p>Legitimate Employment: Agency will only send you to current, legitimate job openings obtained from the employer, unless they tell you otherwise in advance of being referred.</p> <p>Work Hours: Agency will provide you prior to placement with the hours per week you are expected to work.</p> <p>Work Conditions: Agency may provide you prior to placement with information about (1) whether you will be paid on a weekly, bi-weekly, or monthly basis; and (2) whether there are any health and/or safety risks involved and what steps may be taken to prevent or control those risks.</p>

AN EMPLOYMENT AGENCY MAY NOT CHARGE YOU, THE JOB APPLICANT, A FEE BEFORE REFERRING YOU TO A JOB THAT YOU ACCEPT. IF YOU PAY A FEE BEFORE ACCEPTING A JOB OR PAY A FEE THAT OTHERWISE VIOLATES THE LAW, YOU MAY DEMAND A REFUND, WHICH SHALL BE REPAID WITHIN SEVEN DAYS. IF YOU HAVE A COMPLAINT OR NEED MORE INFORMATION, CALL 3-1-1.

§ 4. Subdivisions (xxvii) and (xxviii) of Section 6-03(b)(5) of Subchapter A of Chapter 6 of Title 6 of the Rules of the City of New York are amended, and subdivisions (xxix) and (xxx) are added, to read as follows:

(xxvii) Section 5-265, requiring the posting of signs about tenant screening reports pursuant to Section 20-809 of the Administrative Code of the City of New York; [and]

(xxviii) Section 2-57(i), requiring sidewalk cafés to post the DCA sidewalk café sign, as described in Section 1-03 of this title[.];

(xxix) Section 5-250, requiring the posting of signs by employment agencies; and

(xxx) Section 5-251, requiring the display of a license by an employment agency.

§ 5. Section 6-03 of Subchapter A of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

(b) Opportunity to Cure.

(1) Any person charged with a first-time violation of any of the mandates set forth in paragraphs (5) or (6) of this subsection will not be subject to a civil penalty if such person proves to the satisfaction of the Department, within thirty days of the issuance of the notice of violation and prior to the commencement of an adjudication of the violation, that the violation has been cured.

(6) The following provisions of New York State law constitute the mandates for which the opportunity to cure a first-time violation is available:

(i) Section 188 of Article 11 of the New York General Business Law, requiring the posting of copies of certain provisions of law.

§ 5. The Employment Agency Penalty Schedule contained in section 6-59 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended as follows:

§ 6-59 Employment Agency Penalty Schedule.

All citations are to Chapter 20, Article 11 of the New York General Business Law, Title 20 of the Administrative Code of the City of New York, or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Section 189(5) of the New York General Business Law.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Title 20, Chapter 5 of the Administrative Code contains two subchapters numbered 14 that include § 20-770, § 20-771, § 20-772, § 20-773, and § 20-774.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
NY Gen Bus § 172	Unlicensed activity	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 175	Failure to notify the Department of changes in license or ownership of the agency	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 176	Improper assignment or transfer of license, change of location, or addition of a location	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 179	Failure to maintain adequate registers and other records	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 181	Failure to maintain adequate contracts or receipts	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 182	Failure to provide identification card to nurse or maintain records of investigation and verification of nurses	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 184	Failure to comply with requirements pertaining to recruitment of domestic or household employees who are residents of other states	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000
NY Gen Bus § 184-a	Failure to comply with requirements pertaining to recruitment of domestic or	[\$375]750	[\$500]1,000	[\$450]4,500	[\$500]5,000	[\$500]5,000	[\$500]5,000

	household employees from outside the continental United States						
NY Gen Bus § 185	Charging or accepting an unlawful fee	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
NY Gen Bus § 185-a	Failure to comply with requirements pertaining to domestic dayworkers who are transported to the place of employment	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
NY Gen Bus § 186	Failure to comply with the requirements pertaining to the return of fees	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
NY Gen Bus § 187	Engaging in prohibited activities or conduct	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
NY Gen Bus § 188	Failure to post the required copies of law	<u>[\$375]750*</u>	<u>[\$500]1,000*</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
Admin Code § 20-771	Failure to provide a statement of employee rights and employer obligations under city, state and federal law	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-772	Failure to provide a statement of job conditions or maintain required records	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 5-241	Improper financial records	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-242	Failure to comply with corporate applicant requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-243	Failure to comply with trade name and partnership certificate requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-245	Failure to comply with premises requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-246	Failure to comply with referral card requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-247	Improper recruitment of domestic or household employees	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-248	Engaging in prohibited practices	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-250	Failure to display sign in required form	<u>[\$375]750*</u>	<u>[\$500]1,000*</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-251	Improper display of license	<u>[\$375]750*</u>	<u>[\$500]1,000*</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-252	Failure to comply with the notice of hearing and subpoena duces tecum requirement	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-253	Failure to comply with change of address requirement	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-254	Failure to comply with judgment requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-255	Failure to respond to consumer complaints	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>
6 RCNY § 5-257	Failure to comply with lost or mutilated license requirements	<u>[\$375]750</u>	<u>[\$500]1,000</u>	<u>[\$450]4,500</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>	<u>[\$500]5,000</u>

<u>6</u> RCNY <u>§ 5-259</u>	<u>Failure to provide the “Terms and Conditions” document</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
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**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Employment Agencies

REFERENCE NUMBER: DCA-69

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) DCA has made certain violations related to the posting of signs curable, including Section 188 of the NY GBL, Section 5-250 of the Rules, and Section 5-251 of the Rules.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 21, 2018
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Employment Agencies

REFERENCE NUMBER: 2018 RG 028

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 21, 2018