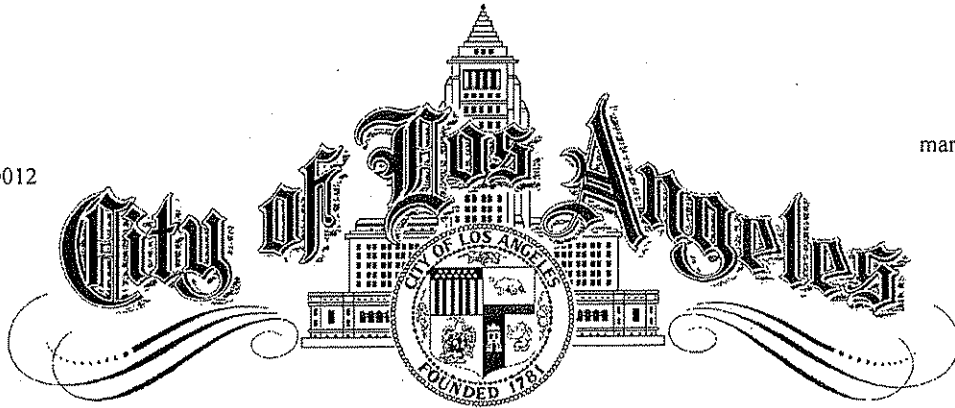


City Hall East
200 N. Main Street
Room 500
Los Angeles, CA 90012

(213) 978-8070 Tel
(213) 978-8111 Fax
mark.lambert@lacity.org
www.lacity.org/atty



CARMEN A. TRUTANICH
City Attorney

February 10, 2010

The purpose of this letter is to inform you that groundbreaking new laws regulating the talent service industry became effective January 1, 2010. These laws affect a broad range of businesses, including acting schools, casting workshops, website listing services, representation services, website listing services and call-in services, to name just a few.

This notice is being sent to a large number of talent services to ensure industry-wide understanding of the new laws and to obtain maximum compliance. Your selection as a recipient of this letter is not necessarily indicative of any wrongful past conduct.

The new laws, known as "*The Krekorian Talent Scam Prevention Act of 2009*," are found in Chapter 4.5 of the Labor Code, entitled "Fee-Related Talent Services." They are available in their entirety at: www.leginfo.ca.gov (Click on "California Law." Then click on "Labor Code." Then scroll down on the right to Sections 1701 through 1705.)

Please note that "lack of knowledge" is not a defense to a criminal violation of these laws. A willful violation of any provision by a talent service, its owner, officer, agent, director, agent or employee is punishable as a misdemeanor, with a maximum penalty for each offense of six months in county jail and a fine of \$10,000 (See Labor Code §1704.) Failure to comply fully can also result in a civil enforcement action. Further, a victim injured by a violation of this Chapter may bring an action to recover damages and or restrain and enjoin a violation, and is statutorily entitled to no less than three times the amount paid to the service and to attorney's fees and costs

The following is a brief overview of the new laws and is not intended to relieve you of your obligation to read and understand Labor Code Chapter 4.5 in its entirety. Any inaccuracy or omission in this overview may not be relied upon by you as a defense to any violation of this Chapter.

Chapter 4.5 of the Labor Code divides the fee-related talent service industry into four (4) categories:

- (1) **Advance Fee Talent Representation Services** → Now Prohibited
- (2) **Talent Training Services** → Permitted, must comply with regulations
- (3) **Talent Counseling Services** → Permitted, must comply with regulations
- (4) **Talent Listing Services** → Permitted, must comply with regulations

Advance Fee Talent Representation Service (AFTRS):

(For the list of exemptions, see Labor Code §1702.4)

An AFTRS is prohibited:

No "person" shall own, operate, act in the capacity of, advertise, solicit for, or knowingly refer a person to an AFTRS (Labor Code §1702)

"Person" means an individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization (Labor Code §1701(e))

Per Labor Code §1701.1 an AFTRS is defined as follows:

1. Provides an artist (or)
offers to provide an artist (or)
advertises as providing an artist (or)
represents itself as providing an artist
2. Directly (or)
by referral to another person
3. With any one of the following services:

Procuring or attempting to procure an employment opportunity or an engagement as an artist (or)

Procuring or attempting to procure an audition (or)

Procuring or attempting to procure a talent agent or talent manager, including an associate, representative or designee of a talent agent or talent manger (or)

Managing or directing the development of an artist's career

[NOTE: The definitions of "artist," "audition" and "employment opportunity" are set forth in Labor Code §1701.

4. And charges or receives a fee** from, or on behalf of an artist for:

Any of the services listed in paragraph (3), above (or)

For photographs, Internet Web sites, or other reproductions or other promotional materials as an artist (or)

For lessons, coaching, seminars, workshops, or similar training for an artist (or)

For any other product or service required for the artist to obtain from or through the AFTRS any of the services listed in paragraph (3), above.

[NOTE: ** "Fee" is defined in Labor Code §1701(d). If a talent service does not charge or receive a fee, then it is not an AFTRS. Labor Code §1701(d)(1) through (4) lists the categories that are not considered "fees," including, among others, "a percentage of income earned by the artist for his or her employment as an artist (e.g., "commissions") and verifiable "reimbursements for out-of-pocket costs" paid to independent third parties.]

Talent Counseling Service (TCS):

(For the list of exemptions, see Labor Code §1703.6)

A TCS is permitted to operate, but must comply with Labor Code §1703

Per Labor Code §1701(f) a TCS is defined as follows:

1. For a fee from, or on behalf of, the artist
2. Provides an artist (or)
offers to provide an artist (or)
advertises as providing an artist (or)
represents itself as providing an artist
3. Directly (or)
by referral to another person
4. With career counseling, vocational guidance, aptitude testing, or career evaluation as an artist, coaching, seminars, workshops, or similar training
5. And does not manage or direct the development of that artist's career
[NOTE: If the person does this, then that person is an AFTRS, which is prohibited by Labor Code §1702]

Talent Listing Service (TLS):

(For the list of exemptions, see Labor Code §1703.6)

A TLS is permitted to operate, but must comply with Labor Code §1703

Per Labor Code §1701(g) a TLS is defined as follows:

1. For a fee from, or on behalf of, the artist
2. Provides an artist (or)
offers to provide an artist (or)
advertises as providing an artist (or)
represents itself as providing an artist
3. Directly (or)
by referral to another person
4. With any of the following:

A list of one or more auditions or employment opportunities (or)

A list of talent agents or talent managers, including an associate, representative, or designee thereof (or)

A search of any database for an audition or employment opportunity, or a database of talent agents or talent managers, or an associate, representative, or designee thereof (or)

Providing the artist with the ability to perform a self-directed search of any database for an audition or employment opportunity, or a database of talent agents or talent managers, or an associate, representative, or designee thereof (or)

Storage or maintenance for distribution or disclosure to a person represented as offering an audition or employment opportunity, or to a talent agent or to a talent manager or an associate, representative, or designee of a talent agent or talent manager of either of the following:

- (A) An artist's name, photograph, Internet Web site, filmstrip videotape, audition tape, demonstration reel, resume, portfolio, or other reproduction or promotional material of the artist (or)
- (B) An artist's schedule of availability for an audition or employment opportunity

[NOTE: This includes a call-in service]

Talent Training Service (TTS):

(For the list of exemptions, see Labor Code §1703.6)

A TTS is permitted to operate, but must comply with Labor Code §1703

Per Labor Code §1701(j) a TTS is defined as follows:

1. For a fee from, or on behalf of, the artist
2. Provides an artist (or)
offers to provide an artist (or)
advertises as providing an artist (or)
represents itself as providing an artist
3. Directly (or)
by referral to another person
4. With lessons, coaching, seminars, workshops, or similar training

[NOTE: A "workshop" is specifically included in the definition of a Talent Training Service. However, a workshop that offers auditions or employment is an "Advance Fee Talent Representation Service," which is prohibited by Labor Code §1702]

RULES APPLYING TO TALENT SERVICES (TCS, TLS, TTS):

CONTRACTS:

A TCS, TLS and TTS must comply with the following requirements pertaining to contracts. A TCS, TLS and TTS contract shall:

1. Be provided to the artist to keep before the artist signs the contract and before becoming obligated to pay any fee (Exception: A contract executed through the Internet, provided it is available to be downloaded and copied)
Labor Code §1703(i)
2. Be a single document, in writing, and in at least 10-point type
Labor Code §1703(a), Labor Code §1703(d)
3. Include the name, address, phone, fax (if any), website (if any), email (if any) of all of the following:
The talent service (and)
The talent service's representative executing the contract (and)
The artist
Labor Code §1703(a)(1)
4. Describe the services to be performed and when they are to be performed

Labor Code §1703(a)(2)

5. Describe the duration of the contract (which may not exceed 1 year and may not be automatically renewed)

Labor Code §1703(a)(2), §1703(f)

6. State the amount of fees charged or collected from, or on behalf of an artist and the date(s) those fees are due

Labor Code §1703(a)(4)

7. Provide evidence of compliance with the applicable bonding requirement, including the name of the bonding company, the bond number (if any), and a statement that a \$50,000 bond must be filed with the Labor Commissioner

Labor Code §1703(a)(3)

8. Include the "Notice Statement" exactly as it appears in Labor Code §1703(a)(5) in bold type and in close proximity to the artist's signature
[NOTE: This language serves notice as to what type of talent service you are operating, informs the artist that only a licensed talent agent can procure work, that your service cannot offer to obtain auditions or employment, advises the artist where to make a complaint and describes the cancellation and refund procedures.]

Labor Code §1703(a)(5).

9. Disclose whether a refund may be obtained after the 10-day cancellation period has expired.

[NOTE: Failure to include this statement allows an artist to cancel the contract at any time after the 10-day cancellation period and receive a pro rata refund]

Labor Code §1703(a)(6)

10. (For talent services that offer to list or display information about an artist, including a photograph, on the service's Internet Web site, or on a Web site which the talent service has authority to design or alter):

(A) Notify the artist that the talent service will remove all Internet listings, photographs and content about an artist within 10 days of a request (and)

(B) Provide the valid telephone number, mailing address and e-mail address where the artist may make such a request

Labor Code §1703(c)

11. Be signed and dated by the artist and the talent service representative executing the contract on behalf of the artist (Exception: A contract executed through the Internet, provided the talent service enables the artist to acknowledge receipt of the contract terms before acknowledging agreement thereto)

Labor Code §1703(b)

[NOTE: Non-complying contracts are voidable by the artist at any time without any penalty whatsoever, per Labor Code §1703(d)]

CANCELLATIONS AND REFUNDS:

A TCS, TLS and TTS must comply with the following requirements pertaining to cancellation and refund procedures:

1. Advise any person inquiring about cancellation to follow the written procedures for cancellation set forth in the contract
Labor Code §1703(h)
2. Permit cancellation and full refund within 10 business days from the date the artist commences utilizing the services
Labor Code §1703(e)(1)
3. Provide a pro rata refund after the expiration of the 10-day cancellation period (unless the contract conspicuously discloses that cancellation is prohibited after the 10-day period.)
Labor Code §1703(e)(2)
4. Accept cancellation by mail, delivery, fax (or by the Internet if the contract was executed in whole or in part through the Internet)
Labor Code §1703(e)(1)
5. Maintain an address for cancellation and notify the artist in writing of any change (may notify artist by e-mail if the artist so designates the e-mail address in the contract)
Labor Code §1703(g)
6. All refunds must be made within ten (10) business days after delivery of the cancellation notice
Labor Code §1703(e)(1)

BONDING REQUIREMENTS:

A TCS, TLS and TTS must comply with the following:

1. File a \$50,000 bond with the Labor Commissioner (or a deposit in lieu thereof per Code of Civil Procedure §995.710)
Labor Code §1703.3(a)

[NOTE: This requirement is not satisfied by the filing of a talent agent bond or by the filing of an employment agency, employment counseling or job listing service bond (See Labor Code §1703.3(a)(10)]

2. File the required bond or deposit prior to advertising or engaging in business
Labor Code §1703.3(a)

(For more information about the bond: contact Jeanie McBride, Office of the State Labor Commissioner, (415) 703-4846)

MUST MAINTAIN AND PROVIDE DESIGNATED RECORDS TO LAW ENFORCEMENT:

A TCS, TLS and TTS must comply with the following:

Keep the following records for inspection and a true copy furnished, Monday through Friday between the hours of 9 a.m. through 5 p.m. inclusive, except legal holidays, to a peace officer, the Labor Commissioner, the Attorney General, or any district attorney or city attorney

Labor Code 1703.1(b)

The designated records to be kept:

1. Re: Talent Service ownership:

The name, address, date of birth, social security number, federal tax identification number, and driver's license number and state of issuance thereof, of the owner of the talent service and of its corporate officers (if it is owned by a corporation)

Labor Code §1703.1(a)(9)

2. Re: Talent Scouts: ("talent scout" is defined in Labor Code §1701(h))

For every talent scout:

(A) The legal name, principal residence address, date of birth, driver's license number and state of issuance (and)

(B) The name each talent scout uses while soliciting artists

[NOTE: No two talent scouts for a service may use the same name, per Labor Code §1703.5]

Labor Code §1703.1(a)(10)

3. Re: Artists:

For each artist contracting with the talent service:

(A) The name and address of each artist under contract (and)

(B) The amount of fees paid by each artist during the term of the contract (and)

(C) The original, executed contract for each artist [NOTE: Labor Code §1703(j) requires this document be maintained at the service's principal place of business.]

Labor Code §1703.1(a)(1), §1703.1(a)(2), §1703.1(a)(5)

4. Re: Advertisements:

For any advertisement or representation that expressly or impliedly offers an artist the opportunity to meet with or audition before any producer, director, casting director, or any associate thereof, or any other person who makes, or is represented to make, decisions for the process of hiring artists for employment as an artist, or any talent agent or talent manager, or any associate, representative, or designee thereof:

Written evidence of the supporting facts, including but not limited to:

(A) The name business address, and job title of all persons conducting the meeting or audition (and)

(B) The title of the production and the name of the production company.

Labor Code §1703.1(a)(6)

For any advertisement or representation that any artist, whether identified or not, has obtained an audition, employment opportunity, or employment as an artist in whole or in part by use of the talent service: Written evidence of the supporting facts, including but not limited to:

- (A) The name of the artist (and)
- (B) The approximate dates the talent service was used by the artist

Labor Code §1703.1(a)(7)

[NOTE: For definitions of "audition" and "employment opportunity" see Labor Code §1701(b) and §1701(c)]

5. Re: Listings (Required to be kept by a Talent Listing Service only):

- (A) A copy of all original listings (and)
- (B) The name, business address, and business telephone number of the person granting permission to the talent listing service to use the listing (and)
- (C) The date the permission was granted.

Labor Code §1703.1(a)(8)

6. Re: Proof Relating to Claimed Exemptions From This Chapter 3.5

- (A) Proof that fees paid by an artist to the talent service were actually advanced or owed to a third party having no direct or indirect financial interest in the talent service and that the talent service received no referral fee from that third party (See Labor Code §1701(d)(2))

Labor Code §1703.1(a)(3)

- (B) Proof that 90% of the service's student body is post-compulsory high school age, including the students' name, date of birth, principal residence address, principal telephone number, driver's license number and dates of attendance (See Labor Code §1703.6)

Labor Code §1703.1(a)(4)

7. Any other information required by the Labor Commissioner.

Labor Code §1703.1(a)(11)

ADVERTISING AND SOLICITATIONS:

A TCS, TLS and TTS must comply with the following:

1. Disclaimer required: A written or verbal solicitation or advertisement for an artist to perform or demonstrate any talent for the talent service, or to appear for an interview with the talent service, shall include the following clear and conspicuous statement:

"This is not an audition for employment or for obtaining a talent agent or talent management."

Labor Code §1703.1(b)

2. Must maintain and disclose written evidence supporting certain advertisements and representations (See section above)
Labor Code §1703.4(a)(1)
Labor Code §1703.4(a)(2)
3. General prohibition against false or misleading advertising
Business and Professions Code §17500
(referenced in Labor Code §1705.1)
4. *(Applicable to a Talent Listing Service only):*
A TLS may not make include the trademark, logo, name, word or phrase of a company or organization (including a studio, production company, network, broadcaster, licensed talent agency, labor union, or organization defined in Labor Code §1117) that falsely or misleadingly suggests that company or organization endorses, sponsors, approves or is affiliated with that TLS
Labor Code §1703.4(c)(3)

ADDITIONAL PROHIBITED ACTS:

A TCS, TLS and TTS, its owners, directors, officers, agents and employees may not do any of the following:

1. Charge or attempt to charge an artist for an audition or employment opportunity
Labor Code §1703.4(a)(3)
2. Charge or attempt to charge an artist any fee not disclosed in the contract
Labor Code §1703.4(a)(5)
3. Require an artist, as a condition for using the talent service or to obtain an additional benefit or preferential treatment from the talent service, to pay a fee for:
 - (A) Photographs, filmstrips, videotapes, audition tapes, demonstration reels, or other reproductions of the artist, Internet Web sites, casting or talent brochures, or other promotional materials in order for the artist to use the talent service (or)
 - (B) Any product or service in which the talent service, its owners, directors, officers, agents, or employees has a direct or indirect financial interest**Labor Code §1703.4(a)(4), Labor Code §1703.4(a)(7)**
4. Refer an artist to any person charging the artist a fee for a product or service in which the talent service, its owners, directors, officers, agents, or employees have a direct or indirect financial interest, unless it is conspicuously disclosed in a separate writing for the artist to keep, prior to the execution of the contract.
Labor Code §1703.4(a)(6)
5. Accept compensation or consideration for referring an artist to any person charging that artist a fee.
Labor Code §1703.4(a)(8)

6. Within 10 days of delivery of a request, failing to remove an artist's information or photograph from the talent service's Internet Web site or a Web site it has authority to design or alter
Labor Code §1703.4(a)(9)
7. Attempt to have an artist waive his or her rights under this Chapter (Chapter 3.5)
Labor Code §1705.2
8. (Applicable to a Talent Counseling Service and a Talent Listing Service Only):
A talent counseling service and a talent training service, its owners, officers, directors, agents, and employees may not own, operate or have a direct or indirect financial interest in a talent listing service
Labor Code §1703.4(b)
9. (Applicable to a Talent Listing Service Only):
A talent listing service, its owners, officers, directors, agents, and employees:
 - (A) May not own, operate or have a direct or indirect financial interest in a talent counseling service or a talent training service (and)
 - (B) May not provide a listing of an audition, job or employment opportunity without written permission for the listing (and without keeping and maintaining specified records)**Labor Code §1703.4(c)(1), Labor Code §1703.4(c)(2)**
10. No talent scout shall use the same name as used by any other talent scout soliciting for the same talent service.
Labor Code §1703.5
11. No talent service shall permit a talent scout to use the same name as used by any other talent scout soliciting for the talent service.
Labor Code §1703.5

END OF SUMMARY

To reiterate, all appropriate efforts should be made to ensure full compliance with the requirements of state law described above. The City Attorney's Office is monitoring the talent service industry closely, and reserves the right to take any criminal or civil enforcement action necessary to abate and punish violations of these laws.

Please understand that public prosecutors are not authorized to provide private legal counsel, such as reviewing or approving the operation of a particular talent service.

Very truly yours,

CARMEN A. TRUTANICH
Los Angeles City Attorney

By


MARK LAMBERT

Deputy City Attorney, Consumer Protection Section

