

Employment Agencies and the Labor Law

Essay

Employment agencies are a well established and recognized part of the modern employment process. They operate in the majority of the countries with sufficiently developed labor law. Despite being a legitimate part of the employment procedure today, their legal status was questioned several times in various countries throughout the course of the twentieth century, which has led to the establishment of regulations, licensing, and the division into state and private branches.

An employment agency is an organization which provides services of finding employment positions for its clients. This can be done for a fee in case of a private agency, or free of charge if the agency is public ("Employment Agencies Law & Legal Definition" par. 1). The first recorded mention of such organization dates back to 1650 when Henry Robertson proposed the concept of the organization named "The Office of Addresses and Encounters" which would help the poor to find a job (McKeon 28).

However, the first successful instance of such organization in action is seen much later, near the end of the nineteenth century (Phipps par. 2). Several small private agencies have opened relatively simultaneously in the U.S. in the 1890s to a varying degree of success. At this time, the legal status of these organizations was questionable, and it can be safely assumed they were in the "gray zone" – they were acting within the limits of active labor and business laws but were not properly regulated. This was reflected in the quality of the provided services: the agencies were often mistreating their clients and engaging in abusive practices, taking advantage of the unfavorable situation on the labor market.

Gradually, as the employment segment became more tightly regulated and new laws were established at the beginning of the twentieth century, the questionable practices and lack of legislation for the agencies came into attention. The series of court cases prompted the investigation, which revealed the maltreatment of employees and unfair practices. The U.S. Bureau of Labor Bulletin no. 109, published in 1912, lists "charging a fee and failing to make any effort to find work for the applicant; sending applicants where no work exists; collusion between the agent and employer whereby the applicant is given a few days' work and then discharged to make way for new workmen, the agent and employer dividing the fee; charging exorbitant fees, or giving jobs to such applicants as contribute extra fees, presents" among many others (Sargent 36).

The initial reaction was the attempt to abolish the employment agencies altogether. In the famous Adams v. Tanner case, the Washington state proposed a law that prohibited the practice of charging a fee for aiding an employee in seeking a job on the grounds that such practice is a threat to the employee's welfare, and, by extension, the welfare of the state (Justia par. 3). However, the law was not passed as it was found to be unconstitutional. Nevertheless, the issue

has gained attention, and the reaction followed. The International Labor Organization, the United Nations agency created in 1919 to deal with labor issues, has addressed the agencies issue in its very first recommendation, stating that any organization that charges fees for their services is prohibited unless operated under a government license, and an effort must be directed at eradicating such organizations.

However, the Unemployment Convention of the same year proposes a softer alternative of creating a centralized and tightly controlled institution instead of the unregulated multitude of entities and closing down only those which are unable to comply to the standards. Since then, the concept of public employment agency has been worked out, while private companies became strictly regulated. However, it was not before 1933 when the first public agency has opened in the U.S. Initially conceived as a part of the New Deal policy, the Wagner-Peyser Act of 1933 has introduced the public agency as a part of unemployment solution (United States Department of Labor par. 4).

This act has been the chief regulatory standard for public agencies until it was amended in 1998 by the Workforce Investment Act. Simultaneously, the International Labor Organization has called for enforcing stricter policies regarding the private sector. In 1933, the Fee-Charging Employment Agencies Convention proposed to close down all the agencies which have failed to be licensed by the state. The situation stayed relatively unchanged until 1997 when the Private Employment Agencies Convention has finally introduced more acceptable conditions for private businesses in the field. However, the U.S. did not sign the initial conventions of 1933, which, in itself, are not enforceable. Thus, by the time the private agencies were allowed, they were already present in America.

The similar situation is true to most other countries where the labor law is sufficiently developed. For example, in the United Kingdom, the general pattern follows that of the described above, with the first agencies emerging in the late nineteenth century, the only difference being that they were initially government-based. Likewise, the private agencies in the UK were initially quasi-legal, but with the introduction of the respective acts, became legal and regulated. They do not have any statutory basis but are instead regulated through inspections and court cases. Most of the developed countries follow this practice – the employment agencies are rarely illegal, and often exist in both public and private forms.

The generally accepted legal requirements for private agencies can be broadly characterized as those advocating good faith and excluding deceptive strategies or breach of human rights. As such, they forbid advertising nonexistent positions, disclosing personal information, charging additional fees or selling additional services, and charging a fee beforehand. Most of the regulations are thus comparable to those present in other private businesses and are dictated by common sense.

The current status of the employment agencies in the U.S., as well as throughout the rest of the world, is legal. They are thoroughly covered in the labor laws of the countries, and in the Conventions of International Labor Organization. The public, non-profit organizations, are run and regulated by the authorities and exist to guarantee low unemployment rates and the general

welfare of the state. The private agencies are business companies that offer the same services for a fee.

The resources devoted to controlling their operations are minimal, so they are primarily monitored by complaints submitted by the clients in case the contract is breached, and occasional inspections, most often on demand. The agencies are generally viewed as contributing to the low unemployment rates and increasing the employees' chances of finding a good job, and the complaints are rare. To conclude, the practice is firmly established in the labor legislature as well as in the system as a whole, and it can be safely assumed that the level of regulation is sufficient to ensure the proper functioning.

Works Cited

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