

42CSR1

**TITLE 42
LEGISLATIVE RULES
DIVISION OF LABOR**

**SERIES 1
SUPERVISION OF PRIVATE EMPLOYMENT AGENCIES,
LEGISLATIVE AND PROCEDURAL RULES AND REGULATIONS.**

' 42-1-1. General.

1.1. Scope. -- Pursuant to the authority granted to the Commissioner of Labor in section five, article two, chapter twenty-one of the Code of West Virginia, the following are promulgated by the Commissioner of Labor to regulate Private Employment Agencies as prescribed by section four through fifteen of article two, chapter twenty-one of the West Virginia Code.

1.2. Authority. -- W. Va. Code ' 21-2-5.

1.3. Filing Date. -- December 31, 1982.

1.4. Effective Date. -- December 31, 1982.

' 42-1-2. Definitions.

2.1. "Person" means any individual, company, society, firm, partnership, association, corporation, manager, contractor, subcontractor or their agents or employees.

2.2. "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for any service or act rendered or to be rendered by an employment agency.

(b) Any money received by an employment agency in excess of that which has been paid out by it for transportation, transfer of baggage or board and lodging for any applicant for employment.

2.3. "Employment" includes engagement.

2.4. "Employment Agency" means any person who, for a fee, procures or offers or attempts to procure employees for persons seeking the service of employees. In seeking to perform the foregoing, gives information by any means as to where employees, workers, or employment may be obtained.

2.5. "Applicant" means one who deals directly or indirectly with the employment agency for purposes of seeking employment through said agency's facilities.

2.6. "Permanent Employment" means employment in excess of ninety (90) days.

2.7. "Temporary Employment" means employment for a period of ninety (90) days or less.

2.8. "Accepted" - For the purpose of computing a fee, a position shall be considered "accepted" when the applicant actually begins work.

42CSR1

2.9. "Commissioner" means the Commissioner of the West Virginia Division of Labor.

' 42-1-3. License.

3.1. The application for a license to do business as a private employment agency shall be filed in the form of a letter with the Division of Labor. Said application shall contain the following information:

- (a) The name and address of the licensed person or persons.
- (b) The name and address under which the business will be conducted.
- (c) The business or occupation engaged in by the applicant for a prior period of five (5) years.
- (d) The names and addresses of all persons, except bona fide employees, on stated salaries financially interested either as partners, associates or profit sharers, in the operation of the agency in question.
- (e) Arrest records, if any.
- (f) The types of referrals contemplated.

3.2. The letter of application shall be accompanied with a money order or check made payable to the Tax Commissioner in the amount of fifteen dollars (\$15.00) as required by section thirteen, article twelve, chapter eleven of the Code of West Virginia.

3.3. A separate application form is required by the Tax Commissioner and will be made available by the Division of Labor.

3.4. Each license issued hereunder shall be valid only as to person and place or places named therein and shall not be transferrable.

' 42-1-4. Records and Reports.

4.1. Each private employment agency shall submit a monthly report to the Commissioner of Labor. This report shall contain the name and address of applicant, date of referral, age, nationality, employer's name and address, job classification, rate of pay of every applicant for employment, agency's fee charged for the service rendered and whether fee was paid by employer or applicant.

4.2. Each private employment agency shall:

- (a) Make and keep true and accurate information, reports and records relating to the business of such agency.
- (b) Post or display conspicuously at each place of business the license required by section three.
- (c) File a duplicate copy of all contract documents for approval of the Commissioner of Labor each fiscal year, who shall return one copy for conspicuous posting.

' 42-1-5. Copies And Receipts.

5.1. For any fee received from an applicant by an employment agency, the employment agency shall give to said applicant a receipt upon a form approved by the Commissioner stating:

42CSR1

- (a) The name of the person owing the fee.
- (b) Name of employer or firm to whom the applicant is being referred.
- (c) The date of the referral.
- (d) The type of job for which the applicant is being referred.
- (e) The total amount of the fee in dollars and cents, with the amount paid thereon (if any) being shown and the balance due.
- (f) The date of payment.

5.2. A copy of all contracts and agreements completely filled out with all the conditions of the referral set forth thereon to which the applicant becomes a party with the employment agency shall be given to the applicant by the employment agency at the time of executing such contract or documents.

' 42-1-6. Advertising.

6.1. No employment agency shall publish or cause to be published any notice or advertisement soliciting persons to register for a specific job unless the employment agency has on file a valid job order for that job.

6.2. Each employment agency must maintain a file of all jobs advertised by the agency, identified by date and publication, for a period not less than six (6) months or for any longer period if so required by any other state or federal agency.

6.3. No employment agency shall circulate any knowingly false information to any person seeking employment or to any employer seeking an employee.

6.4. All salaries, when advertised, must be stated as recorded on the job order which will be as given by the employer. If the potential salary is advertised, the base pay or starting pay must also be advertised.

6.5. When the dollar amount of the salary is not stated, such phrases as "Top," "Maximum" or other superlatives which are based on individual judgment are not authorized and will be construed as false advertising.

' 42-1-7. Prohibited Activities.

7.1. No private employment agency shall:

- (a) Impose any fees for the registration of applicants in excess of one dollar (\$1.00).
- (b) Engage or attempt to engage in the splitting or sharing of fees with an employer, an agent or other employee of an employer, or other person to whom employment service has been furnished, or any other person not authorized to charge a fee under these rules and regulations.
- (c) Make, give or cause to be made or given, to any applicant for employees or employment any false promise, misrepresentation or inaccurate or misleading statement or information if such agency had knowledge or should have had knowledge of such falsity, misrepresentation or inaccurate or misleading statement or information.

42CSR1

- (d) Procure and/or attempt to procure the discharge of any person from his or her employment.
- (e) Unduly influence an employee to quit his or her employment for the purpose of obtaining other employment through such agency.
- (f) Require applicants for employees or employment to subscribe to any publication or incidental service or contribute to the cost of advertising.
- (g) Refer any person to employment deleterious to health or morals if the agency had knowledge or should have had knowledge of such conditions.
- (h) Refer any employee or applicant for employment to a place where a strike, lockout or labor dispute exists without furnishing such employee or applicant with a written statement as to the existence of such strike, lockout or labor dispute, if the agency had knowledge or should have had knowledge of such facts or conditions, a copy of which statement signed by the employee or applicant shall be kept on file for one (1) year after the date thereof.
- (i) Make any referral to an employment or occupation prohibited by law.
- (j) Operate directly or indirectly in conjunction with the private employment agency, any lodging house, restaurant, small loan company, collection agency, any place where beer is sold or dispensed, or adjacent to any establishment determined not to be conducive to the proper operation of business.
- (k) Conduct a private employment agency business in a room or rooms used for eating, sleeping or other living purposes except with the written permission of the Labor Commissioner.
- (l) Make or cause to be made or use any name, sign or advertising device bearing a name which may be similar to or reasonably be confused with the name of any agency of the local, state or federal government.
- (m) Use any contract form or other forms for execution by an applicant for employment unless approved by the Labor Commissioner.
- (n) Refer any person to any employer unless said employment agency has received a valid order for such placement. Forms to be used for valid order shall be uniform and approved by the Labor Commissioner.

' 42-1-8. Basis For Fee Charges.

8.1. Placement fees may be computed on the basis of permanent employment unless the valid order received from the employer is for temporary employment. However, if the employee is terminated without fault on his part within the first ninety (90) days of employment, a temporary fee will be charged.

8.2. "Without Fault" (see 8.1) shall include, but not necessarily limited to, the following:

- (a) Wage rate or salary less than agreed upon.
- (b) Working hours, working days or working shift different than agreed upon unless such differences affect other employees of similar job classifications, such as a complete reorganization of department or section affecting all job assignments or orders, so as not to indicate discrimination.
- (c) Type of work assignment different than agreed upon. EXCEPTION: An applicant hired as a

42CSR1

"Trainee" agrees that the choice of actual assignment remains with the employer.

(d) Location of job different than agreed upon.

(e) Lack of mental or physical ability to perform duties connected with position agreed upon by applicant and employment agency.

(f) Lockout or strike, causing loss of pay during fee-based period.

(g) Physical or economic destruction of place of employment.

(h) Employee enters active service in Armed Forces.

(i) Death of employee, the refund in case of an applicant paid fee will be to the estate of the deceased.

8.3. "At Fault" (see 8.1) shall include, but not necessarily limited to, the following:

(a) Willful absence from place of employment.

(b) Willful violation of company policy or rules.

(c) Misrepresenting or withholding any requested information, including, but not limited to, health (including pregnancy), education, work experience, responsibility or training, that would cause the employer to refuse employment.

8.4. All situation not covered by (b) and (c) above shall be determined by the Commissioner of Labor.

8.5. Applicant shall be allowed up to sixty (60) days from start of employment to pay fee to the agency without interest or additional charges of any kind. Interest on unpaid balance of said fee may be charged after sixty (60) days from start of employment and shall be at the legal rate of interest. An employment agent shall not require the applicant to make any arrangement with a third party for payment of the fee.