

West Virginia Division of Labor

Private Employment Agency Requirements

West Virginia Division of Labor
Wage & Hour Section

Private Employment Agency Fact Sheet 1 – Chapter 21, Article 2

(July 2016)

PRIVATE EMPLOYMENT AGENCIES

Any business that provides employees, or information concerning where employees may be obtained, to other employers for hire is considered a private employment agency in the state of West Virginia. All private employment agencies are required to obtain a letter of approval from the West Virginia Division of Labor before obtaining a license to conduct business in this state by the State Tax Commissioner. The term private employment agency does not include those companies that provide the services of their own employees to other employers on a temporary basis.

DEFINITIONS

Employment Agency – Any business who, for a fee, procures or attempts to procure employees for persons seeking the service of employees. These requirements do not apply to, nor prevent or interfere with, any person, firm, corporation or association employing labor for his, their, or its own business. §42CSR-12.4

Employment Agent - The term “employment agent” means all persons, firms, corporations or associations which furnish to persons seeking employment, or information enabling or tending to enable such persons to secure the same. Municipality corporations, churches, and charitable associations are not considered employment agents. §21-2-4

Requirements to Apply for a Letter of Approval

In order to register as an employment agency with the West Virginia Division of Labor, the following must be provided:

1. A letter of application to the Commissioner of Labor.
2. A completed West Virginia Business Registration Application form. (no fee required)
3. Sample forms of any and all placement contracts.
 - a. In the absence of a contract for new applicants, a separate statement is required to indicate whether or not the applicant will be charged any fees to sign up for placement services and if so, the amount of the placement fee.
4. A schedule of all client placement fees.

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Letter of Application Required

There is no official application form to apply for a letter of approval. Applications are submitted in letter form to the Commissioner of the West Virginia Division of Labor. The letter of application must contain the following information.

1. Name and address of licensed person(s).
2. Exact business name and address, including any DBA names.
3. Applicant(s) occupation or business affiliations over the last five years.
4. Name and addresses of all persons financially interested in the operation of the agency to include partners, associates, and profit sharers.
5. Arrest record of applicant(s), if any.
6. Types of referrals being contemplated.
7. Applicant's United States Citizenship status.

Issuance of License/Letter of Approval

Once approved, the original application for a state business license and a copy of the Labor Commissioner's letter of approval to operate as a private employment agency will be submitted directly to the West Virginia Tax Department for processing. The original letter of approval will be sent to the private employment agency for conspicuous posting.

For those companies that have already obtained a West Virginia business license and are adding the category of private employment agency to their existing license, the Division will submit a copy of the letter of approval directly to the West Virginia Tax Department. The original letter of approval will be returned to the private employment agency for conspicuous posting.

Monthly Reporting Requirements

Once approved by the Division of Labor to operate as a private employment agency, monthly reports relating to employee placement activity are required. Reports may be submitted by regular mail to the Division of Labor or by email to wageandhour@wv.gov. There is no specific form required for monthly reporting as long as the following information is provided for all placements:

1. Name and address.
2. Job classification.
3. Hourly rate of pay or salary amount.
4. The amount of the placement fee.
5. The party responsible for paying the fee, the employer or the applicant.

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Prohibited Activities §42CSR 1-7

No private employment agency shall:

- Impose any fees for the registration of applicants in excess of \$1.00.
- Engage or attempt to engage in the splitting or sharing of fees with an employer, an employee of an employer, or other person to whom employment service has been furnished.
- Make any false promises or provide inaccurate or misleading information to any applicant for employees or employment if such agency had, or should have had, knowledge that such information was false.
- Procure, or attempt to procure, the discharge of any person from his or her employment.
- Unduly influence an employee to quit his or her employment for the purpose of obtaining other employment through their agency.
- Require applicants for employees or employment to subscribe to any publication or incidental service.
- Require applicants or employees to contribute to the cost of advertising.
- Refer any person to employment that is detrimental to health or morals if the agency had, or should have had, knowledge of such conditions.
- 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 such circumstances.
- Make any referral of an occupation that is prohibited by law.
- Operate directly, or indirectly, in conjunction with the private employment agency any lodging, house, restaurant, small loan company, collection agency, a place where beer is sold or dispensed, or adjacent to any establishment determined not to be conducive to the proper operation of business.
- Conduct a private employment agency business in a room or rooms, used for eating, sleeping, or for other living purposes except with the written permission of the Labor Commissioner.
- Make any 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.
- Use any contract form or other forms in relation to applicants unless approved by the Labor Commissioner.
- Refer any person to any employer unless the employment agency has received a valid order for such placement.