

ARTICLE 9. EMPLOYMENT AGENCIES

Rule 1. General Provisions

45 IAC 9-1-1 Definitions

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1

Affected: IC 25-16-1

Sec. 1. Definitions. (a) "Accept" or "Secure," with reference to employment, means the commencement of employment by the applicant by actually beginning work.

(b) "Advertisement" means any communication of job information by an agency designed to reach potential applicants through any mass media.

(c) "Agency" is a licensed employment agency as defined in I.C. 1971, 25-16-1-11.

(d) "Applicant" means any individual seeking employment through a licensed employment agency.

(e) "Bona fide order of employment" is a written agency record of the employer's oral or written communication with an agency, which authorized the agency to refer an applicant to the employer.

(f) "Contract" is an agreement between the agency and the applicant which creates an obligation in the applicant to pay a fee conditional upon the agency acquiring an employment position for the applicant.

(g) "Department of Revenue" shall mean the Indiana Department of State Revenue, or its successor agency of state government.

(h) "Mass Media" includes, but is not limited to: newspapers, magazines, television, radio, cards, circulars, signs or telephone canvassing.

(i) "Permanent Position" is an employment position arranged by the employer to last longer than ninety (90) days.

(j) "Temporary Position" is an employment position arranged by the employer to last not more than ninety (90) days. A permanent position which is terminated within ninety (90) days of acquisition shall be considered a temporary position, unless the applicant leaves the position voluntarily or is released for cause by the employer.

(k) "Unilateral Termination" is a termination of employment where an applicant voluntarily leaves a position or is terminated for cause by the employer. (*Department of State Revenue; Rule 1; filed Mar 3, 1975, 2:10 pm; Rules and Regs. 1976, p. 415*)

45 IAC 9-1-2 Records of bona fide orders for employment

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1

Affected: IC 25-16-1

Sec. 2. Bona fide order for employment. (a) Accurate Record. The agency is required to have a bona fide order of employment for each position. The agency shall maintain a record of its bona fide orders of employment for one (1) year following the receipt of that order.

(b) Duration. An order for employment shall expire after thirty (30) days. Renewal of the order is required after thirty (30) days to allow the agency to rely on such order for advertising purposes. Renewal may be accomplished by oral verification with the employer.

(c) Form. Bona fide orders of employment shall be recorded on a form containing the following:

(1) Person communicating order of employment to the agency.

(2) Name of person recording the order of employment.

(3) Date.

(4) Name and address of employer and name of person to whom the applicant is to report for an interview.

(5) Conditions of employment, including salary, wages, expense allowance, hours and number of days of work per week, as provided by the employer.

(6) Job title and job requirements, as provided by the employer.

(d) Type of orders.

(1) Bona fide order of employment: An order of employment shall not be considered as a bona fide order of employment until it has been recorded.

(2) Proof of order: In the event that a complaint against an agency is filed with the Department of Revenue or the Administrator of Licensed Employment Agencies determines it to be necessary, the agency shall have the burden of showing:

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- (a) The order in writing.
 - (b) Any advertising used resulting from the order.
 - (c) Verification signed by the employer that said employer communicated the order to the agency.
- (3) Order required for advertisement: No mass media advertising (as defined herein), may be used until a bona fide order of employment has been obtained.

(Department of State Revenue; Rule 2; filed Mar 3, 1975, 2:10 pm; Rules and Regs. 1976, p. 416)

45 IAC 9-1-3 Advertisements

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 3. Advertising. (a) Advertisement for Employment with Agency. Any advertisement relating to a job with an employment agency must be defined as such in the advertisement.

(b) Advertisement for Fee Paid Placement. Advertisement may include the words "Fee Paid" or words describing a specific agreement between the employer and agency. (i.e. "1/2 Fee Paid"). *(Department of State Revenue; Rule 3; filed Mar 3, 1975, 2:10 pm; Rules and Regs. 1976, p. 416)*

45 IAC 9-1-4 Form of contracts; collection of fees; refunds

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 4. Contracts. (a) Form of Contract. Every agency shall give to every applicant from whom a fee is to be received a contract, in which is stated all of the following:

- (1) The name of the agency.
- (2) The name and address of the employer communicating the order of the employment.
- (3) The date of issuing the contract.
- (4) The name of the applicant, the name of the employer to whom the applicant is sent, and the address where the applicant is to report for employment.
- (5) The amount of fee to be charged and to be collected from the applicant and the amount of fee paid or advanced by the prospective employer and by whom paid or advanced.
- (6) The kind of work or employment by job title.
- (7) The daily hours of work; the wage or salary including any additional benefits of employment.
- (8) Specific description of fees and refunds as provided by this regulation, and any other term, condition, or understanding agreed upon between the agency and applicant.
- (9) There shall be printed on the face of the contract, clearly and conspicuously, in type no smaller than 10-point bold the following: "This agency is licensed by the Department of Revenue of the State of Indiana. Administrator for Licensed Employment Agencies, Room 104B, State Office Building, Indianapolis, Indiana 46204."
- (10) Every such contract or receipt shall be made in original and duplicate, both to be signed by the applicant and the person acting for the employment agency. The duplicate shall be given to the applicant and the original shall be kept on file at the agency for three (3) years.

(b) Fees.

- (1) A fee shall not be collected until an employment position has been secured (as defined herein).
- (2) A schedule of fees shall be printed on the face of the contract with both dollar amounts and/or percentages of gross yearly earnings and/or gross monthly earnings shown. The schedule shall be filed with Administrator for Employment Agencies.
- (3) The fee schedule shall be made up of a Permanent Position schedule and Temporary Position schedule.
- (4) If the fee is to be paid partially by the employer, this shall be clearly expressed on the face of the contract.

(c) Refunds.

- (1) When a Permanent Position becomes a Temporary Position, the fee shall be recomputed. A refund shall be due the applicant for any difference between the amount paid to the agency that is greater than the fee for the actual Temporary Position. If the fee for the actual Temporary Position is greater than the amount already paid by the applicant, the balance shall

be due the agency from the applicant.

(2) It is possible for a Permanent Position to terminate within ninety (90) days and not be considered a Temporary Position for the purpose of this regulation. In such an instance the full Permanent Position fee is due to the agency. Such a termination must be verified by the employer or his agent expressing that the termination was "unilateral" in nature. A "unilateral" termination shall be one where an applicant voluntarily leaves a position or is terminated for cause by the employer. Activities considered by the Department of Revenue as sufficient for termination for cause include, but are not limited to, intoxication, dishonesty, unexcused tardiness, unexcused absenteeism, or insubordination.

(3) When a contract provides for a refund when a position is terminated through no fault of the applicant, a refund is due and/or a recomputation to a Temporary Position fee is required unless a "unilateral termination" is verified by the employer or his agent.

(4) All refunds shall be paid and at no time shall be shown as a credit to the account of the applicant.

(d) General Guidelines.

(1) Any statement on the face of the contract indicating that a deduction for income tax purposes is available for fees paid by the applicant for an employment position, must not state that such a deduction is available for Indiana State Income Tax purposes.

(2) No contract may contain the statement "Application for Employment," or any statement to that effect.

(Department of State Revenue; Rule 4; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 417)

45 IAC 9-1-5 License revocation hearing

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1

Affected: IC 25-16-1-2

Sec. 5. Hearing Procedure. (a) Hearing and Notice before final determination as to revocation of license. Whenever it is the judgment of the Administrator of Licensed Employment Agencies that an agency has violated any provisions of Indiana law or Indiana rules and regulations pertaining to employment agencies, he may recommend that the agency's license be revoked. The final order or determination of any issue or case applicable to a specific agency shall not be made except upon hearing and timely notice of time, place, and nature thereof.

(b) Hearing Officers. The hearing shall be conducted by a panel of three (3) Hearing Officers appointed by the Commissioner of the Indiana Department of State Revenue. The final determination of the panel of Hearing Officers shall be made by at least a majority thereof and is subject to the approval of the Commissioner of the Indiana Department of Revenue.

(c) Notice. In all cases in which the Department of Revenue is the moving party it shall give at least twenty (20) days notice in writing by registered or certified mail with return receipt requested, addressed to the persons or person against whom an order or determination may be made at their last known place of residence, or place of business, which notice shall set forth therein a sufficient statement of the matters of fact or law to advise such a person of the matters in issue and to be heard or determined by said Department, together with notice of the time and place of such hearing. Said statement may be informal and need not conform to the requirements of a pleading in court. Whenever the hearing involves the claim, averment or complaint of, or is made by a private person, a copy or the substance thereof shall be included in or exhibited with such notice.

(d) Opportunity to be Present. No evidence shall be received except upon reasonable opportunity for all persons, against whom a determination may be made, to be present. The Hearing Officers presiding at the hearing shall have the power to administer oaths and affirmations, issue subpoenas, rule upon offers of proof and receive relevant oral or documentary evidence, take or cause depositions to be taken, regulate the course of the hearing and conduct of the parties, hold informal conferences for the settlement or simplification of the issues by consent of the party or parties, dispose of procedural motions and similar matters, and such other powers as may be given by the law relating to the supervision of employment agencies.

(e) Informal Hearings. The Department is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common-law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports the Department's determination. The Department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every person who is a party to such proceedings shall have the right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the state determined by the Department.

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(f) Record. The transcript of testimony adduced and exhibits admitted together with notice, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall constitute the complete and exclusive record of such hearing and determination of the Department, and it shall be available to all parties for examination. Any party may obtain a copy thereof at its expense. Whenever objections to recommended determinations are filed or when a petition for judicial review is filed, such evidence together with the original or a copy of all exhibits admitted, the notice of hearing, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall be incorporated in a transcript and certified by the Hearing Officers presiding at the hearing. Such transcript when so prepared and certified shall be admissible without further proof in any subsequent review or proceeding affecting such determination of the Department, and shall be prima facie evidence of all facts therein contained as the complete record of such hearing or determination.

(g) Finding of Facts. All issues of fact shall be considered and determined upon the record. The Department shall make an informal finding of facts which shall encompass the relevant facts shown by the evidence. Said finding of facts may be made by direct statement or by reference to the particular charges made in the complaint before the Department. A reference to the particular charges in the complaint shall be sufficient as a finding of facts. Notice of all final orders and determinations shall be given promptly by registered or certified mail, return receipt required, to all parties to the hearing by the Department of Revenue.

(h) Force and Effect. Revocation of licenses shall be effective as of the date of revocation by the Department, and shall remain revoked until and unless set aside by a court. (*Department of State Revenue; Rule 5; filed Mar 3, 1975, 2:10 pm; Rules and Regs. 1976, p. 418*)

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