

Chapter DWD 277

PRIVATE EMPLOYMENT AGENTS REQUIRED TO BE LICENSED UNDER CH. 105, STATS.

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History: Chapter Ind 77, as it existed on July 31, 1970 was repealed and a new chapter Ind 77 was created, Register, July, 1970, No. 175, eff. 8-1-70. Chapter Ind 77 was renumbered ch. ILHR 277 under s. 13.93 (2m) (b) 1., Stats., Register, February, 1996, No. 482. Chapter ILHR 277 was renumbered chapter DWD 277 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, May, 1997, No. 497.

DWD 277.01 Definitions. As used in this chapter:

- (1) "Agency" or "agent" means employment agent.
- (2) "Applicant" means a job seeker who informs an employment agency of his or her availability and qualifications for referral to job openings and requests assistance in finding a position.
- (3) "Branch office" means a separate office of an agency located in the same community as the parent or main office.
- (4) "Department" means the department of workforce development.
- (4m) "Employer-paid fee employment agent" means a private employment agent whose fees or charges are paid entirely and directly by the employer to the employment agent.
- (5) "Employment agent" has the meaning defined in s. 105.01, Stats.
- (6) "Referral" means the making of arrangements by an agency to bring to the attention of an employer the qualifications of the applicant by means of an employment interview. The mailing of an unsolicited resume in itself does not constitute a referral.
- (7) "Registration fee" means any charge for registering or listing an applicant for employment, including any charge for letter writing, cost of photograph or filmstrip, costume, or any charge of a similar nature, without having a bona fide order for the placement of the applicant in a job.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (2) and (6), Register, June, 1985, No. 354, eff. 7-1-85; cr. (4m), Register, April, 1991, No. 424, eff. 5-1-91.

DWD 277.015 Employer-paid fee employment agent registration. (1) All employer-paid fee employment agents shall pay a \$5.00 registration fee and register with the department by July 1 of each year for the period of July 1 through June 30 of the following year.

(2) The \$5.00 registration fee covers all business locations of the requesting agent.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

DWD 277.02 Application for a license. (1) In order to apply for licensure as an employment agent under ch. 105, Stats., an applicant shall fully complete a written application form furnished by the department and return it to the department of workforce development, equal rights division, at Room 403, 201 E. Washington Avenue, Madison, Wisconsin, or mail to P.O. Box 8928, Madison, Wisconsin 53708. This application shall be accompanied by a \$5,000 surety bond required by s. 105.06, Stats., and the minimum license fee of \$50.00 required by s. 105.06, Stats. The license application may not be processed until all 3 of the above documents have been received by the depart-

ment. If the license application is not approved and a license issued, the \$50.00 license fee shall be refunded to the applicant.

(2) Within 30 working days of receipt of the application, bond and minimum license fee, the department may hold a public hearing to determine if the applicant is of sufficient character to operate an employment agency and whether the quarters of the proposed agency are suitable for use by an employment agency. In scheduling the public hearing, a notice shall be mailed to each licensed employment agency and other interested parties at least 10 calendar days prior to the hearing.

(3) Within 10 working days after completion of the public hearing, the examiner shall issue proposed finding of fact and a proposed order to either grant or refuse the license application. Interested parties that either appeared to testify at the hearing or submitted written testimony at or prior to the hearing shall receive a copy of the proposed findings of fact and order. Parties receiving a copy of the proposed order may appeal it within 10 calendar days of the issuance of the proposed order by requesting in writing an opportunity to present oral or written arguments to the department secretary or the secretary's designated representative. Appeals shall be sent to the address listed on the cover letter accompanying the proposed order. In hearings where no one has testified in opposition to the granting of the license, where the examiner proposes granting the license and where it appears there is no one to object to the granting of the license, the department may forego the proposed order and issue findings of fact and a final order after the hearing.

(4) Within 5 working days after the proposed order appeal period expires, the department shall issue findings of fact and a final order except if a timely appeal has been received. In such cases, the department within 15 working days of receipt of the appeal shall either schedule the secretary or the secretary's designated representative to hear oral arguments or to receive written arguments on why the proposed order should be modified or reversed. The secretary or secretary's representative within 30 calendar days of receipt of all parties arguments shall issue findings of fact and the final order of the department.

(5) Approval of applications for a license shall expire 90 days after date of order if the agency has not commenced operation. Extensions of 30 days may be granted by the department where extenuating circumstances exist.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. (1), renum. (2) to be (5), cr. (2), (3) and (4), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.03 Character and premises. (1) "Character," as used in s. 105.13, Stats., includes components of an applicant's ability to be an agent; such as, his or her moral character, education, business integrity, fiscal integrity, training and knowledge of the employment business, capability of staff, and the extent of his or her participation in operating the agency.

(2) "Premises" as used in s. 105.13, Stats., includes components of the following to be considered as fit for the use by private

employment agents; such as, location, size, neighborhood, public and handicap access, public restroom facilities, compliance with local zoning and building codes, occupancy permit, principal place of business and the types or services provided at the licensed facility.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (1), r. and recr. (2), r. (3), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.04 Licensee. A license to operate as an employment agent under ch. 105, Stats., may be issued to a person, partnership or corporation. If a license is issued to a corporation or transferred from an individual or partnership to a corporation, the following conditions shall apply:

(1) The corporation shall be licensed to do business in the state of Wisconsin, shall maintain therein all records with respect to the operations of the agency within the state of Wisconsin, and shall appoint a manager or managers who shall reside in Wisconsin, and who shall consent to service of process by certified mail addressed to the agency.

(2) The licensee shall notify the department immediately if there is a change in managers.

(3) The corporation shall file with the department a certified statement setting forth the names, home addresses and telephone numbers of all officers and directors of the corporation and their respective interest therein.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70.

DWD 277.05 License coverage. (1) Private employment agency licenses are limited by the terms and classifications set forth thereon.

(2) Said license shall constitute a license from this state to operate as an employment agent for compensation and shall not be transferable to any other person or persons whatever, or inure to the benefit of any person other than the licensee.

(3) When the sale, transfer or assignment of the agency or the controlling interest of the agency takes place, the assuming principals shall proceed to obtain a license in the same manner as any other applicant for a license.

(4) If the sale, transfer or assignment is not contingent on the approval of the license application by the department, the agency shall cease operation until such time as the department issues a license.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. (3) and (4), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.06 License renewal. (1) Before May 31 of each year, the department shall mail a renewal application and bond form to each licensed agent.

(2) By July 10 of each year, each licensed agent shall submit to the department the following:

- (a) The completed renewal application.
- (b) Required surety bond.
- (c) Balance of unpaid license fees for previous license year, if any.
- (d) The minimum license fee for the next year.
- (e) Applicant fee schedule.

(3) A license may be withheld until all of the information under sub. (2) is furnished and may be suspended if the license fee is not paid.

(4) Each license shall expire annually on June 30 of each year or the date stated thereon.

(5) When a licensee has made a timely and sufficient application for the renewal of their license, the existing license remains in effect until the renewal application has been finally acted upon by the department.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. (6), Register, June, 1985, No. 354, eff. 7-1-85; r. (2) (f), Register, April, 1991, No. 424, eff. 5-1-91.

DWD 277.07 Licenses withheld, suspended, or revoked. (1) The license may be withheld, suspended, or revoked by the department if the applicant for a license or licensee fails to meet the requirements of ch. 105, Stats., or ch. DWD 277.

(2) The license may be withheld, suspended, or revoked by the department if the licensee fails to meet the requirements of the Wisconsin fair employment law, ss. 111.31 to 111.395, Stats., Wisconsin labor standards laws applying to the payment of minimum wage, ch. DWD 272, overtime, ch. DWD 274, and complying with the wage payment and collection law, ch. 109, Stats.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. (2), Register, June, 1985, No. 354, eff. 7-1-85; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 277.08 Moving place of business. (1) No agent shall open, conduct or maintain an office at any place of business other than that approved by the department.

(2) A place of business shall not be moved unless the agent first obtains the written consent of the department.

(3) No branch office or additional place of business shall be opened without the prior approval of the department.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70.

DWD 277.09 Classifications, fee schedules, and other requirements. (1) CLASSIFICATIONS OF LICENSES. (a) *Class I applicant-paid fee agencies.* A class I license is for agencies which charge and collect a fee from the applicant for securing work for persons in the following positions:

1. Administrative
2. Clerical
3. Commercial
4. Executive
5. Professional
6. Sales
7. Technical
8. Domestic, household employer, unskilled or untrained
9. Industrial worker or mechanic, skilled or unskilled.

(b) *Class II modeling agencies.* A class II license is for agencies which secure work for persons to act as live models or to model for photography.

(c) *Class III nurses registry agencies.* A class III license is for agencies which operate a nurses registry which secure work for persons who are licensed practical nurses and registered nurses.

(d) *Class IV other agencies.* A class IV license is for agencies whose activities are of a specialized nature or limited to specific areas of activity or types of placement that do not fall under the other classes of license.

(2) FEE SCHEDULES. (a) *Class I applicant-paid fee agencies.*

1. For placement of 3 calendar months or more duration, regarded as a permanent position by both parties, the total fee charged to an applicant for employment may not exceed the following schedule:

- a. Positions paying less than \$583.33 per month — 72% of the first month's salary.
- b. Positions paying \$583.33 or more but less than \$666.66 per month — 84% of the first month's salary.
- c. Positions paying \$666.66 or more but less than \$750 per month — 96% of the first month's salary.
- d. Positions paying \$750 or more but less than \$833.33 per month — 108% of the first month's salary.
- e. Positions paying \$833.33 or more per month — 120% of the first month's salary.

2. The total fee charged to an applicant for employment for temporary placements of less than 3 calendar months may not exceed 20% of the wages or salary of the applicant. The total fee charged for a temporary placement may not exceed 75% of the fee charged for a permanent placement.

(b) *Class II modeling agencies.* The total fee charged to an applicant for employment may not exceed 15% of the sum

received by the applicant from the employer. In addition to the 15% charge to the applicant, the agent may also charge the client a service charge for specific services performed.

(c) *Class III nurses registry agencies.* 1. For private nursing the total fee charged to the applicant for employment may not exceed 5% of the wages or salary received by the applicant from the employer.

2. The total fee charged to the applicant for employment for all other placements may not exceed those prescribed in par. (a) 1.

3. If prior approval from the department is received, a registration fee may be charged not to exceed \$20 per month providing each applicant for employment is given a reasonable number of bona fide job offers and the actual registration fee does not exceed 5% of the annual wages or salary received. If the applicant registers for a lesser period of time, the sum received may be prorated to the actual period of availability.

(d) *Class IV other agencies.* 1. Charges to the applicants for services or employment shall be approved as being reasonable for the services offered or provided.

2. Each agent or applicant for a class IV license shall submit to the department for approval:

a. A schedule of fees, charges, and commissions which they intend to charge to applicants for service or employment.

b. Copies of all forms and contracts pertinent to the placement of applicants to be used in the operation of the agency.

c. Adequate supporting materials justifying the proposed schedule of fees and contracts.

(3) **OTHER REQUIREMENTS.** (a) All fee schedules of class I, II, III and IV agencies for applicants for employment shall base the fee upon the first month's salary.

(b) The fees contained in sub. (2) are presumed reasonable, and application for the fees shall be approved without supporting materials. If an applicant for a license or agent submits a schedule of higher fees, the applicant or agent shall file a supporting statement specifying the reasons for, and reasonableness of, the requested variance. In such cases, the department shall deny the request if it determines that the requested schedule is unreasonable. No agent shall request or accept any placement fee or charge until the placement is made.

(c) Agencies may be limited to specific areas of operation within a class or may be licensed to operate in more than one classification.

(d) No charge for a placement may be made by an agency to an applicant unless the agency has made arrangements to bring to the attention of the employer the qualifications of the available applicant by means of an employment interview and the applicant accepts employment.

(e) If an applicant accepts a position to which they were referred by an agency with the understanding that the fee or any portion of the fee was to be paid by the employer, and they leave that position for any reason, they are not liable to the agency for that part of the placement fee understood to be paid by the employer, notwithstanding contractual provisions to the contrary.

(f) If an employee is referred to a position by an agency with the understanding that the fee is negotiable, the results of this fee negotiation shall be made a part of the agency's record, and the employee is not liable to the agency for that portion of the fee which the employer has agreed to pay, notwithstanding contractual provisions to the contrary.

(g) For placements in hourly paid positions, the total fee charged to the applicant for employment shall be computed on the basis of an amount not to exceed the actual earnings of the employee during the first $4\frac{1}{3}$ weeks of employment.

(h) If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant may not exceed 25% of the maximum fee allowed in this section, provided,

however, if the applicant remains with their same employer, the fee may not exceed 50%.

(i) If a placement fee is paid partially by the applicant and partially by the employer, the total fee that the agency may charge for that placement may not exceed the applicant's fee schedule on file and approved by the department.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. Register, June, 1985, No. 354, eff. 7-1-85; r. (1) (e) and (2) (e), Register, April, 1991, No. 424, eff. 5-1-91.

DWD 277.10 Receipts, refunds, and other contractual provisions applicable to all classes. (1) The agency shall give every person from whom a fee is received for services rendered a receipt which shall include:

(a) Name of the person paying the fee.

(b) Amount of the fee.

(c) Date of payment of the fee.

(d) Balance due, if any.

(2) If an applicant is entitled to a refund from the fee paid, the agency shall make such refund in cash or negotiable check within 10 days.

(3) No interest or carrying charges, except for payment of delinquent fees or charges, for placement services may be made that would cause the total placement fee to be paid to exceed the schedules on file with the department of workforce development. No agent shall charge an applicant interest for failure to make payment of fees when due, unless the interest requirement and the interest rate are stated on a written contract signed by the applicant. An agent may be reimbursed for any disbursements made on behalf of an applicant or employer where authorization for disbursement and reimbursement has been given.

(4) An agent may include as part of the agency contract a provision that, if an applicant is referred to an employer for a permanent position and fails to get that position, but, within 6 months does secure employment with that employer as a result of the referral, he or she may be liable for the fee to the agency.

(5) The agency and applicant may agree on a schedule of payment of the fee for a permanent placement, but in no case may more than 60% of the first month's earnings be required to be paid to the agency in the first 30 days of employment, if the total fee exceeds 60% of the first month's earnings.

(6) An agency which requires an applicant to sign a contract shall have the terms of the contract and the fee schedule printed in its entirety and in not less than 8 point type and shall give to the applicant a copy of the signed contract.

(7) No agency may take from an applicant a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

(8) Upon every contract shall be printed the following statement: "Complaints against employment agents may be made to the State of Wisconsin, Department of workforce development, P.O. Box 8928, Madison, Wisconsin 53708."

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (4) and (8), r. and recr. (5), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.11 Orders from employers. No employment agent shall refer an employee to employment without having obtained either orally or in writing authorization therefor, and if no employment of the kind specified by the employment agent existed at the place to which such employee was directed or if no other employment in substitution thereof is accepted by the employee, the agent shall within 24 hours of demand refund to the employee any sums paid by the employee for transportation in going to and returning from such place.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. (2), (3) and (4), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.13 Applicant travel expense. The employment agent shall clearly advise the applicant who is liable for all necessary expenses incurred by the applicant when referred to a

position outside the city where the agent is located. Failure by the agent to advise the applicant either verbally or in writing who is responsible for the expenses shall result in the employment agent being liable for the expenses incurred.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; r. and recr. Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.14 Records to be kept. For the purpose of this chapter, each employment agency shall keep, in the English language, for at least 2 years, the following records:

(1) A record of all applications for employment showing the name and address of the applicant.

(2) A record of all persons referred to employers, the date of referral, whether they are hired or not.

(3) A record of all job orders for employees received from employers. Such job orders shall be numbered consecutively and shall show the name and address of the employer, the name and position of the person placing the order, the kind of employee requested, the nature of the employment, the salary or wages to be paid and the duration of the job.

(4) A record of all payments to the agency of any and all placement fees received and refunded. Each record shall show the date of each transaction, the name of the person making the remittance, the amount paid, a duplicate receipt, and the date and amount of any refund.

(5) A record of jobs advertised correlated to show date and publication in which the ad appeared and the job order number of each job advertised.

(6) A record of fee agreement negotiations showing the amount to be paid by each party.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (2), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.15 Applicant-paid fee agents. (1) All advertising, including newspaper ads, informational flyers, and bulletins, shall contain the name of the employment agency and a statement that the agency is a "licensed employment agent."

(2) Advertisements for positions located in communities other than that in which the employment agency is located shall clearly indicate that fact for each position advertised may require geographic relocation.

(3) Positions listed in the "Help Wanted" columns of newspapers or other media shall refer to bona fide openings available at the time that the advertisement or copy is given to the publisher.

(4) When an agent operates separate divisions within the agency and the separate divisions are operated under different names than the licensed agent, then all advertising shall contain the name of the licensed agent and the fact that the agent is licensed.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (2) and cr. (4), Register, June, 1985, No. 354, eff. 7-1-85.

DWD 277.16 Inducing discharge or termination of employment. No employment agent shall persuade, induce or procure, or attempt to persuade, induce, or procure any employer or agent of any employer to discharge any employee.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70.

DWD 277.18 Posting of license, fee schedule, and rules. (1) The license shall be posted in a conspicuous place in the main room of the agency.

(2) The name of the agency and the fact that he is licensed shall be posted on or near the main entrance door of the agency.

(3) All stationery, contracts, and fee schedules shall contain the name of the employment agency and a statement that the agency is a "licensed employment agent."

(4) A copy of ch. 105, Stats., and ch. DWD 277 shall be posted or made readily available to visitors in the main room of the agency.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.

DWD 277.19 Notice to home care consumers and workers. (1) DEFINITIONS. In this section:

(a) "Home care consumer" or "consumer" has the meaning given in s. 105.115 (1) (b), Stats.

Note: Section 105.115 (1) (b), Stats., provides that "home care consumer" means "a person who receives home care services in his or her temporary or permanent residence from a home care worker."

(b) "Home care placement agency" means a person that is engaged in placing home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers, including an employment agent engaged in the business specified in s. 105.01 (1) (intro.), Stats., or a person specified in s. 105.01 (1) (f), Stats., whose fees or charges are paid entirely by a home care consumer. "Home care placement agency" does not include a person that places home care workers in the residences of home care consumers for the purpose of providing home care services to those home care consumers if the person employs the individuals and pays wages or salaries, federal social security taxes, and state and federal unemployment contributions or taxes; carries worker's compensation insurance as required by state law; and maintains liability insurance covering the acts of its employees while providing home care services.

(c) "Home care worker" has the meaning given in s. 105.115 (1) (e), Stats.

Note: Section 105.115 (1) (e), Stats., provides that "home care worker" means "a person who provides home care services to a home care consumer in the temporary or permanent residence of the home care consumer."

(d) "Refer" means to bring to the attention of a potential home care consumer the qualifications of a potential home care worker.

(2) NOTICE TO HOME CARE CONSUMER. (a) A home care placement agency shall have in its files a copy of the notice required under s. 105.115 (2), Stats., signed by a home care consumer, before the home care placement agency refers a home care worker to the consumer.

Note: Section 105.115 (2) (intro.), Stats., provides that the notice shall be on a form prescribed by the department. A copy of the required form is available by contacting the Equal Rights Division, 201 East Washington Avenue, P.O. Box 8928, Madison WI 53708; phone (608) 266-6861; or by following the link to Equal Rights on the department's website at <http://www.dwd.state.wi.us/>.

(b) "Temporarily substituting" as used in s. 105.115 (2) (intro.), Stats., means no more than 2 weeks per incident.

Note: Section 105.115 (2) (intro.), Stats., provides that "a home care placement agency is not required to provide that notice [the notice to home care consumers] when placing a home care worker who is temporarily substituting for the regular home care worker of a home care consumer."

(3) NOTICE TO HOME CARE WORKER. A home care placement agency shall have in its files a copy of the notice required under s. 105.115 (3), Stats., signed by a home care worker, before the home care placement agency refers the potential home care worker to a consumer.

Note: Section 105.115 (3) (intro.), Stats., provides that the notice shall be on a form prescribed by the department. A copy of the required form is available by contacting the Equal Rights Division, 201 East Washington Avenue, P.O. Box 8928, Madison WI 53708; phone (608) 266-6861; or by following the link to Equal Rights on the department's website at <http://www.dwd.state.wi.us/>.

(4) RECORD RETENTION. A home care placement agency shall retain the notices required under s. 105.115 (2) and (3), Stats., at least 4 years from the date that the home care agency referred the home care worker to the consumer if the home care worker and home care consumer enter into an employment agreement or contract for services.

History: CR 06-138: cr. Register April 2007 No. 616, eff. 5-1-07.