

CR 84-243

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

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APR 30 1985
4:05 pm
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Private Employment Agents were duly approved and adopted by this department on (Subject) (Date).

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 10 am in the city of Madison, this 26th day of April A.D. 1985.

Howard S. Bellman
Secretary

4-1-85

ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02 (11) and 105.15, Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. 77 Private Employment Agents
(Number) (Title)

The attached rules shall take effect on publication

_____, pursuant to section
227.026, Stats.

Adopted at Madison, Wisconsin, this 26th
day of April, A.D., 1985.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman
Secretary



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RULES in FINAL DRAFT FORM

Rule: _____ IND 77
Relating to: Private Employment Agents

An order to amend and create Wis. Adm. Code Sections of Ind 77 Private Employment Agents.

PLAIN LANGUAGE ANALYSIS OF PROPOSED RULES BY THE
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

The proposed changes of Ind 77 primarily are for two reasons:

1. The recently-enacted 1983 Wisconsin Act 91 which requires permit procedures to be stated in Adm. Code and 1983 Wisconsin Act 90 which requires a review for small business reporting requirements contained in the Adm. Codes.
2. The balance of the changes are considered as clarification or clean-up language.

The proposed changes were recommendations from a private employment committee appointed by the Department which served in an advisory capacity only.

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|--------------------------------|---|
| Ind 77.01(2) | Desexes this section. |
| Ind 77.01(6) | Clarifies the mere mailing of a resume does not constitute a referral. |
| Ind 77.02(1), (2), (3) and (4) | Establishes the procedure for obtaining a private employment agent's license as required by 1983 Wisconsin Act 91. |
| Ind 77.02(5) | Is strictly a renumbering of a paragraph. |
| Ind 77.03(1) | Desexes this section and corrects title. |
| Ind 77.03(2) | Redefines premises. |
| Ind 77.03(3) | Is outdated and repealed as need was removed from the Statutes in 1974. |
| Ind 77.05(3) and (4) | Clarifies the sale of an employment agent's business. |
| Ind 77.06 | Clarifies and updates the renewal procedure for a license. |
| Ind 77.07(2) | Clarifies when a license may be withheld, suspended or revoked. |
| Ind 77.09 | Is repealed and recreated to clarify the class of licenses issued, fee schedules and other conditions as to how and when fees can be collected by the agency. |
| Ind 77.10(4) | Desexes this section. |
| Ind 77.10(5) | Clarifies how much of the placement fee can be collected in the first 30 days of employment. |

- Ind 77.10(8) Clarifies Department's address.
- Ind 77.11(2) These sections are repealed as they are outdated and not
(3) and (4) the practice that is presently used in the industry.
- Ind 77.12 This section is repealed as it is outdated and not used in
the industry.
- Ind 77.13 This section was rewritten to clearly establish who is
responsible for travel expense of the applicant.
- Ind 77.14(2) This is strictly clean-up language as this information is
in other agency records.
- Ind 77.15(2) Clarifies advertising as to location of jobs.
- Ind 77.15(4) Clarifies advertising when an agency operates a division
within their agency.
- Ind 77.17 Repeals a reporting requirement that is outdated and no
longer required.

* * * * *

Pursuant to the authority vested in the Department of Industry, Labor and Human Relations under s. 101.02(1) and 105.15, the department hereby amends, repeals and creates sections of Chapter Ind 77 Private Employment Agents interpreting Chapter 105 stats. as follows:

SECTION 1. Ind 77.01 (2) and (6) are amended to read:

Ind 77.01 (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.

(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.

SECTION 2. Ind. 77.02 (1) is repealed and recreated to read:

Ind 77.02 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 industry, labor and human relations, equal rights division, at Room 403, 201 E. Washington Avenue, Madison, Wisconsin, or mail to P.O. Box 8928, Madison, Wisconsin 53708. The 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 three of the above documents have been received by the department. If the license application is not approved and a license issued, the \$50.00 license fee shall be refunded to the applicant.

SECTION 3. Ind 77.02 (2), (3) and (4) are created to read:

Ind 77.02 (2) Within thirty 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 ten calendar days prior to the hearing.

(3) Within ten working days after completion of the public hearing, the examiner shall issue proposed findings 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 ten 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 five 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 case, 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.

SECTION 4. Ind 77.02 (2) is renumbered (5).

SECTION 5. Ind 77.03 (title) and (1) are amended to read:

Ind 77.03 (title) 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.

SECTION 6. Ind 77.03 (2) is repealed and recreated to read:

(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.

SECTION 7. Ind 77.03 (3) is repealed.

SECTION 8. Ind 77.05 (3) and (4) are repealed and recreated to read:

(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.

SECTION 9. Ind 77.06 is repealed and recreated to read:

Ind 77.06 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.
- (f) Employer paid 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.

SECTION 10. Ind 77.07 (2) is repealed and recreated to read:

(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. Ind 72, overtime, ch. Ind 74, and complying with the wage payment and collection law, ch. 109, stats.

SECTION 11. Ind 77.09 is repealed and recreated to read:

Ind 77.09 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.
- (e) Class V Employer Paid Fee Agencies. A class V license is for agencies which charge and collect a fee from the employer 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 employes, unskilled or untrained
 9. Industrial workers or mechanics, skilled or unskilled.

(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.

1. 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 subsection (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.

(e) Class V Employer Paid Fee Agencies.

1. Agencies who use employer paid fees shall file their employer paid fee schedule and guarantee with the department. The amount of employer paid fees and guarantee are not regulated by the department.

(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 employe 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 employe 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 employe during the first 4-1/3 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.

SECTION 12. Ind 77.10 (4) is amended to read:

Ind 77.10 (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.

SECTION 13. Ind 77.10 (5) is repealed and recreated to read:

Ind 77.10 (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.

SECTION 14. Ind 77.10 (8) is amended to read:

Ind 77.10 (8) Upon every contract shall be printed the following statement: "Complaints against employment agent may be made to the state of wisconsin, department of industry, labor and human relations, P.O. Box 8928, Madison, Wisconsin 53705 53708."

SECTION 15. Ind 77.11 (2) (3) and (4) are repealed.

SECTION 16. Ind 77.12 is repealed.

SECTION 17. Ind 77.13 is repealed and recreated to read:

Ind 77.13 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.

SECTION 18. Ind 77.14(2) is amended to read:

Ind 77.14 (2) A record of all persons referred to employers, the date of referrals, whether they are hired or not. ~~and-the-proposed-rate-of-wages or-salary-to-be-paid-to-the-employee.~~

SECTION 19. Ind 77.15 (2) is amended to read:

Ind 77.15 (2) Advertisements for positions located in communities other than that in which the employment agency is located shall clearly indicate that each position advertised may require geographic relocation.

SECTION 20. Ind 77.15 (4) is created:

Ind 77.15 (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.

SECTION 21. Ind 77.17 is repealed.

The attached rules shall take effect on publication pursuant to Section 227.026 (1) (intro.), stats.

The Wisconsin Department of Industry, Labor and Human Relations

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

April 29, 1985

Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

RECEIVED

CLEARINGHOUSE RULE NO. 84-243

APR 30 1985

RULE NO. Ind 77

Revisor of Statutes
Bureau

RELATING TO: Private Employment Agents

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person