Replaced Register, June, 1985, No. 354

Chapter Ind 77

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

History: Chapter Ind 77 as it existed on July 31, 1970 was repealed and a new chapter Ind 77 was created, Register, July, 1970, No. 175, eff. 8–1–70.

Ind 77.01 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 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 industry, labor and human relations.

(5) "Employment agent" has the meaning defined in section 105.01, Wis. 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.

(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

Ind 77.02 Application for a license. (1) Application for a license as an employment agent under chapter 105, Wis. Stats., shall be in writing, on a form furnished by the department showing such information as deemed necessary.

(2) 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

Ind 77.03 Character, premises and needs. (1) "Character," as used in section 105.13, Wis. Stats., includes components of an applicant's ability to be an agent; such as, his moral character, education, business integrity, fiscal integrity, training and knowledge of the employment business, capability of staff, and the extent of his participation in operating the agency.

(2) "Premises," as used in section 105.13, Wis. Stats., means the location and size of the place of business, the neighborhood, public access, lease, purchase of premises, or other physical arrangements.

(3) "Needs," as used in section 105.13, Wis. Stats., means that both employers and employes in the community to be served will utilize the employment agent to fill their requirements. Inquiry by the department into an application may be directed to the number of public and private agencies in the area, the quality and type of operations including job service and testing, the volume of placements and other services performed by such agencies, as well as the needs and desires of the employes and employers the applicant proposes to serve. The department may consider affidavits or allegations by employers of their needs for services of an agency in granting and renewal of licenses; such needs may be measured by the ability of such employers to train their own forces as an alternative.

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

Ind 77.04 Licensee. A license to operate as an employment agent under chapter 105, Wis. 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

Ind 77.05 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 transfer-

able to any other person or persons whatever, or inure to the benefit of any person other than the licensee.

(3) No sale, transfer, or assignment of the controlling interest in a corporate licensee may be made without prior approval of the department.

(4) Application for such sale, transfer, or assignment of the controlling interest shall be made to the department and the department will withhold its approval if, upon investigation or hearing, it finds that the buyer, transferee, or assignee and the operation of the agency does not meet the requirements of character, premises, and needs.

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

Ind 77.06 License renewal. (1) Within 30 days prior to the expiration date of the license, application for renewal must be submitted to the department with the following:

(a) Minimum fee.

(b) Required bond.

(c) Forms used in making placements, including the contract and fee schedule.

(2) Within 10 days after the expiration date of the license the following must be submitted to the department:

(a) Number of placements made during previous license year.

(b) Gross receipts of previous license year.

(c) Balance of license fee for previous license year, if any.

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

(4) Each license shall expire annually on the date stated thereon.

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

Ind 77.07 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 chapter 105, Wis. Stats., or chapter Ind 77.

(2) The department in granting renewals shall consider whether the needs of all applicants for employment are being met without regard to age, race, color, sex, creed, national origin, ancestry, or handicap.

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

Ind 77.08 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

Ind 77.09 Classifications, fee schedule, and other charges. (1) No agent shall charge any applicant for employment a fee in excess of the approved schedule on file with the department.

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

(b) Every applicant for new or renewal license as employment agent shall file with the department a schedule of fees to employers.

(c) The schedules contained in subsection (2) are presumed reasonable, and application for same will be approved without supporting materials. In the event an applicant for a license or agent submits a schedule of higher fees, such applicant or agent shall file a supporting statement specifying the reasons for, and reasonableness of, the requested variance. In such cases, the department will 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.

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

(2) Employment agencies are classified and maximum fees charged an applicant are set as follows:

(a) Class I agencies (administrative, clerical, commercial, executive, professional, sales, technical, etc.).

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 shall not exceed the following schedule:

a. Positions paying less than $416.66 per month—50% of the first month's salary.

b. Positions paying more than $416.66 and less than $500 per month —60% of the first month's salary.

c. Positions paying $500 or more but less than $583.33 per month—72% of the first month's salary.

d. Positions paying $583.33 or more but less than $666.66 per month—84% of the first month's salary.

e. Positions paying $666.66 or more but less than $750 per month —96% of the first month's salary.

f. Positions paying $750 or more but less than $833.33 per month —108% of the first month's salary.

g. 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 shall not exceed 20% of the wages or salary of the applicant. The total fee charged for a temporary placement shall not exceed 75% of the fee charged for a permanent placement.

(b) Class II agencies (domestic, household employes, unskilled or untrained, industrial workers or mechanics, skilled or unskilled).

1. The total fee charged to the applicant for employment for permanent placements of 3 months or more shall not exceed 50% of the first month's salary.

2. The total fee charged to applicants for employment for temporary placements of less than 3 months shall not exceed 20% of the wages or salary received by the applicant from the employer. The total fee charged to an applicant for a placement shall not exceed 75% of the fee charged for a permanent position.

(c) Class III agencies (modeling agencies).

1. The total fee charged to an applicant for employment shall not exceed 10% of the sum received by the applicant from the employer.

(d) Class IV agencies (nurses registries, including licensed practical nurses and registered nurses).

1. For private nursing the total fee charged to the applicant for employment shall 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 shall not exceed those prescribed in subsection (2) (a).

3. If prior approval from the department is received, a registration fee may be charged not to exceed $10 per month providing each applicant (nurse) 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.

(e) Class V agencies (agencies whose activities are of a specialized nature or limited to specific areas of activity or types of placement).

1. Charges to the applicants for services or employment must be approved as being reasonable for the services offered or provided.

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

a. A schedule of fees, charges, and commissions which he intends 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.

(f) Other charges and contract provisions applicable to class I, II, III, IV, and V agencies.

1. 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.

2. If an applicant accepts a position to which he was referred by an agency with the understanding that the fee or any portion of the fee was to be paid by the employer, and he leaves that position for any reason, he shall not be liable to the agency for that part of the placement fee understood to be paid by the employer, notwithstanding contractual provisions to the contrary.

3. 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 shall not be held liable to the agency for that portion of the fee which the employer has agreed to pay, notwithstanding contractual provisions to the contrary.

4. For placements of less than 3 calendar months' duration, or where an employe remains in a position less than 3 calendar months, the total fee charged may not exceed 20% of amount earned, and not more than 75% of the fee charged for a permanent position.

5. For placements in hourly paid positions by class I and class II agencies, 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 4⅓ weeks of employment.

6. If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed 25% of the maximum fee allowed in this section, provided, however, if the applicant remains with his same employer, the fee shall not exceed 50%.

7. 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 shall 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

Ind 77.10 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 industry, labor and human relations. 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 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 so that not more than 60% of any month's salary may be applied to the total fee, if the total fee exceeds that amount.

(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 Industry, Labor and Human Relations, Madison, Wisconsin 53705."

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

Ind 77.11 Orders from employers. (1) No employment agent shall refer an employe 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 employe was directed or if no other employment in substitution thereof is accepted by the employe, the agent shall within 24 hours of demand refund to the employe any sums paid by the employe for transportation in going to and returning from such place.

(2) Every employment agent who sends an applicant for employment to apply for the same more than 25 miles from the employe's residence shall have a written order from the employer giving the following information:

(a) Employer's name and address.

(b) Number of the kind of workers wanted.

(c) Probable duration of the employment.

(d) Rate of wages.

(e) Cost of board and lodging if these are furnished by the employer or if he deducts the cost of these from the wages.

(f) Whether a strike is on at the place of employment.

(3) An employment agent may send applicants outside of the metropolitan area in response to a telephone order, provided that the employment agent has obtained verbally the required information from the employer and if the employer promises to confirm the order in writing within 2 days. The employment agent also may send applicants outside of the metropolitan area in response to mail orders which do not include the above information, provided that the employment agent has obtained the required information by phone and the employer promises to confirm it in writing within 2 days.

(4) Sections (2) and (3) above shall apply only to positions paying less than $833.33 per month.

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

Ind 77.12 Introduction card or letter. (1) Every class I, II, III, IV, and V employment agent who sends any applicant for employment to apply for any position shall give to such applicant a card or letter stating the following:

(a) Name and address of the person to whom the applicant is referred.

(b) Kind of work supposed to be obtainable.

(c) Name of the applicant for the position.

(d) Probable duration of employment.

(2) Nothing contained herein shall prevent an employment agent from referring an applicant to a place of possible employment by means of the telephone, and without any card or letter, in case prompt action is necessary.

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

Ind 77.13 Promises of positions. Whenever any employment agent induces a person to come to a city from a distance on the promise of a position, or whenever any employment agent sends an applicant to a distant place outside of the city where the agent's office is located on the promise of a position, if the applicant fails to secure employment through no fault of his own, the employment agent shall pay all the necessary expenses incurred by such person; provided, however, that the employment agent shall not be liable for these expenses if he has informed the applicant in writing that the applicant travels at his own risk.

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

Ind 77.14 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; and the proposed rate of wages or salary to be paid to the employe.

(3) A record of all job orders for employes 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 employe 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

Ind 77.15 Advertising and advertisements. (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.

(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.

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

Ind 77.16 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 employe.

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

Ind 77.17 Reports. By the tenth day of each month every licensed employment agent shall send to the department a report in such form as the department may prescribe, giving the number of applications for employment and for help, and the number of positions filled during the preceding month by industries and occupations.

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

Ind 77.18 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 chapter 105, Wis. Stats., and chapter Ind 77, Wis. Adm. Code, 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.