

Subchapter B. Operation of Private Employment Agencies

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Authority

The provisions of this Subchapter B issued under section 27 of the act of July 31, 1941 (P. L. 616, No. 261) (43 P. S. §561), unless otherwise noted.

Source

The provisions of this Subchapter B adopted July 1, 1968; amended April 19, 1974, 4Pa. B. 763, unless otherwise noted.

GENERAL PROVISIONS

§9.11. Definitions.

- (a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act - The Employment Agency Law (43 P. S. §§535581).

Hearing - A quasi-judicial proceeding held by the Department for the purpose of taking evidence to determine issues.

Interested person - Any person who has a demonstrable interest in the decision resulting from any hearing.

Lose a position - An applicant has voluntarily or involuntarily terminated employment within 10 weeks from the starting date.

Party - Any person whose rights are necessarily and directly affected by the decision from any hearing.

Temporary fee - The fee due for any position which is known, at the time of its acceptance, to be for a duration of 10 weeks or less, or if originally permanent, ceases within 10 weeks from the starting date for any reason except the following:

- (i) Applicant accepts a position but fails to report for work on the agreed upon starting date.
 - (ii) Applicant resigns to accept employment elsewhere.
- (b) Those terms used in this subchapter and which are defined in the Employment Agency Law (43 P. S. §535) and not otherwise defined in (45 P. S. §§535581) subsection (a), shall have the same meaning as specified in such law, unless the context clearly indicates otherwise.

Notes of Decisions

Lose a Position

The definition of “lose a position”, in that losing a position includes voluntary and involuntary termination, must be read into the intent of 43 P. S. § 574(m). *Novelli v. Pancoast Personnel, Inc.*, 390 A.2d 1323 (Pa. Super. 1978).

§9.12. Penalty.

Any person who violates any of the provisions of this Subchapter or any regulations of the Department or who interferes with the Department or its duly authorized representative in the enforcement of such regulations or provisions shall be subject to summary proceedings before an alderman, magistrate, or justice of the peace, and upon conviction shall be penalized under the provisions of the act.

§9.13. Qualifications and conditions determining the granting or denial of a license.

- (a) *Character of applicant.* In interpreting the phrase “the character of the applicant makes him unfit to be an employment agent” in section 7 of the act (43 P. S. §541), the Department will consider, among other factors, the following:
- (1) Reputation of the applicant in the community.
 - (2) The criminal record, if any, of the applicant whether or not the applicant has ever been convicted of any crime, exclusive of minor traffic violations.
 - (3) The record of the applicant, if any, in the employment agency field and, when applicable, the effect that the lack of training, experience or education in employment agencies or related fields may have in the operation of the agency.
 - (4) Whether the applicant has sufficient familiarity with the provisions of the act and this Subchapter so that he will be able to comply with them.
 - (5) The financial stability and responsibility of the applicant.
- (b) *Plan of business.* In interpreting the phrase the proposed plan of business is unjust or unfair under the terms of this act in section 7 of the act (43 P. S. §541), the Department will presume any plan to be unjust or unfair if any of the following conditions exist:
- (1) If the applicant is required to sign a contract containing a confession of judgment clause unless the employee is a nonresident of this Commonwealth and is placed in a position outside of this Commonwealth.
 - (2) If the schedule of fees does not provide for a temporary fee applicable in situations specified in the act and this Subchapter, not to exceed 10% of the total amount earned for the first ten weeks of employment, but in no case to exceed the applicable fee for a permanent position.
 - (3) If the proposed schedule of fees and forms do not comply with the requirements of §9.14 (relating to schedule of fees and forms).
 - (4) If the employment agent has any agreement or enters into any agreement with any lender of monies which agreement provides that the employment agency will receive a commission from the lender by the employment agent.

(5) If the plan provides for a fee based on remuneration in excess of that initially contracted for between the employer and the applicant.

(c) *Bonds.* If the same employment agency has two or more licenses he shall file a separate bond for each license as required by section 9 of the act (43 P. S. §543).

§9.14. Schedule of fees and forms.

(a) *Fees.* The schedule of fees filed with the Department pursuant to section 11 of the act (43 P. S. §545) shall specify the following:

(1) The standard by which commissions, bonuses, gratuities and other perquisites of his employment are to be valued in computing the wage on which the fee is based.

(2) The value of meals and lodging if these are included in wage or salary on which the fee is based.

(b) *Forms.* No form or contract shall be filed with the Department which does not conform with all the requirements of the act and this Subchapter. The Department may refuse to accept for filing any form or contract which in its opinion does not indicate with sufficient clarity of language, or in printing of sufficient size, the rights and obligations of the applicant who signs or is bound by the terms of the form or contract.

(c) *Requested information.* Upon acceptance of a position for which the applicant assumes liability for any portion of the fee, the following information shall be furnished to the applicant in writing:

(1) Name and address of employer.

(2) Title of position.

(3) Starting date.

(4) Starting salary.

(5) The amount of fee.

(d) *Additional requirements.* In addition to the requirements of subsection (c), the following words shall be included:

“This agency is duly licensed by and bonded to the Commonwealth of Pennsylvania. Inquires may be addressed to (herein shall be noted the name and address of the area office of the Division of Private Employment Agency licenses).”

(e) *Receipts.* A receipt, bearing the agency name, shall be issued by the Employment Agency for all monies received from applicants.

Cross References

This section cited in 34 Pa. Code §9.13 (relating to qualifications and conditions determining the granting or denial of a license).

§9.15. Agencies in violation of regulations.

No placement fee shall be considered earned by an employment agency if the agency has violated the employment agency law or regulations in referring an applicant to an employer, even though the applicant may subsequently accept the position.

§9.16. Refunds.

If an applicant voluntarily or involuntarily loses a position and is therefore entitled to a refund as provided in the act, such refund shall be made by the agency to the applicant within 15 days from the date on which the applicant terminated employment or the date on which the applicant notified the agency of such termination, whichever is the later of the two dates. If the agency has substantial reason to believe that the applicant has resigned to accept employment elsewhere, an additional 7 days will be allowed to complete investigations and make a refund, if refund is due.

§9.17. Petition.

For the modification of any of these rules, the following shall be the method of procedure.

- (1) Any licensed employment agent, or other person interested, affected by any such regulations, or otherwise, may petition for a hearing on the reasonableness of a rule or regulation. Such petition for hearing shall be by verified petition filed with the Industrial Board, setting out specifically and in full detail the rule or regulation upon which a hearing is desired, and the reasons why such rule or regulation is deemed to be unreasonable.
- (2) Upon receipt of a petition the Industrial Board will determine the merits and if a hearing is necessary, notice of time and place will be given to the petitioner and to such other persons as the Industrial Board may find directly interested.

REPRESENTATIVES

§9.21. Registration procedure.

Upon receipt of an application for registration as a representative or counselor, the Department shall within five days notify the applicant that he is eligible to sit for an examination covering the provisions of the act and the regulations pertaining thereto. This examination shall be given at least once each week in Harrisburg, Philadelphia and Pittsburgh. The test having been completed satisfactorily, the Department shall within ten days register the representative or counselor.

§9.22. Application for registration.

Application for registration as a representative or counselor shall be made on the date employment commences.

§9.23. Termination of registration.

A representative or counselor registration shall terminate when the representative or counselor leaves the agency by whom persons were employed when the registration took place or 1 year after that date. In this event it shall be the responsibility of the employment agency and the representative or counselor to return notice of registration to the Department.

§9.24. Reregistration.

If a previously registered representative or counselor re-applies for registration within a period of 2 years, the Department may waive re-examination.

THEATRICAL AGENCIES

§9.31. Clearing of contracts.

No employment agency may make any theatrical engagement, except as provided in §9.32 (relating to theatrical engagements by foreign agents), unless it is licensed as a theatrical employment agency (class "2") by the Department.

§9.32. Theatrical engagements by foreign agents.

- (a) *Definitions.* The following words and terms, when used in this section, have following meanings, unless the context clearly indicates otherwise:

Endorsing agent - A class "2" employment agent duly licensed by the Department under the act and this subchapter, who approves the contract for a theatrical engagement by a foreign agent.

Foreign agent - A theatrical agent or employment agent validly operating under the law of the state in which he has his principal place of business.

- (b) *Approval by endorsing agent.* A foreign agent may make a theatrical engagement in this Commonwealth if the contract for such engagement is in writing and is approved by an endorsing agent. Except as provided for in subsection (c), such approval shall be given prior to commencement of the engagement. The approval shall be an endorsement signed by the agent or, in the case of a corporation, an officer of such corporation. The endorsement shall appear in all copies of the contract.
- (c) *Emergency engagement.* In the case of an emergency engagement, as defined by section 2 of the act (43 P. S. §536(2)), the endorsement shall be made within 48 hours after the engagement is made and, in no case, more than 48 hours after the commencement of the engagement.
- (d) *Responsibility of endorsing agent.* The endorsing agency shall be responsible for compliance with all conditions and

requirements of the act and this subchapter. All statements, forms, and contracts required to be filed by the act shall be filed with the endorsing agent. The endorsing agent shall be considered the employment agent for all purposes under the act and this subchapter.

- (e) *Agreement between foreign and endorsing agent.* No foreign agent shall act as an endorsing agent, and no endorsed contract shall be valid unless there is filed with, and approved by, the Department at least seven days in advance of such endorsement, a written agreement between the foreign agent and the endorsing agent, stating that for a consideration, the endorsing agent agrees to endorse such employment contracts as the foreign agent shall present to him, if such contracts, in the opinion of the endorsing agent, are and will be fair and equitable to the entertainer, and are proper under the terms of the act and this subchapter and if the endorsing agent understands that he is responsible for compliance with all the requirements of the act and this subchapter. Such statement shall also contain a provision by which the foreign agent appoints the endorsing agent as his agent for receipt of any service of process, whether civil or criminal, before any court whether or not of record, or any agency of the Commonwealth. Such statement shall be sworn to by both the endorsing agent and the foreign agent before any person duly authorized to take oaths under the laws of the Commonwealth.
- (f) *Suspension or revocation.* The Department may suspend or revoke for cause the authority of any foreign or endorsing agent to act under the terms of the statement. A hearing shall be provided for in all such cases but a suspension may be ordered pending the hearing and its outcome.

Cross References

This section cited in 34 Pa. Code §9.31 (relating to clearing of contracts); and 34 Pa. Code §9.33 (relating to distribution of regulations to parties).

§9.33. Distribution of regulations to parties.

Whenever a contract is executed under §9.32 (relating to theatrical engagements by foreign agents), the endorsing agent shall be responsible for assuring that there is distributed free, to both the employer and the entertainer, a copy of the act and this subchapter or such abstract of the act and this subchapter as may be made available by the Department, so that all parties will be informed of their rights and obligations. Copies of the act and this subchapter or abstracts thereof, will be distributed to all licensed class 2 agents without charge.

ADVERTISING

§9.41. Advertising generally.

In conjunction with section 20(d) of the act (43 P. S. §574(d)) which states, in part, No employment agent shall publish or cause to be published any false or fraudulent or misleading information, representation, notice or advertisement, the Department will require the following:

- (1) No employment agency may advertise a position unless the agency has, in its possession, a current bona fide job order for that position.
- (2) An advertisement for a position that an employment agency publishes or causes to be published shall accurately reflect the information and requirements given to the agency by the employer requesting the agency's services in supplying candidates for the position.

REFERRALS

§9.51. Referrals generally.

Only one fee is payable for a placement. In the case of a duplicate or overlapping referral resulting in a dispute which the parties are unable to resolve or compromise, the matter may be referred to the Department, in which case the Department will use the principle of effective action and determine whose professional effort actually resulted in the placement and will award the fee accordingly.