

CHAPTER 184

EMPLOYMENT AGENCIES

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184.22 LICENSES REQUIRED.

[For text of subd 1, see M.S.1982]

Subd. 2. Exemptions. Except as otherwise specifically provided, the provisions of sections 184.21 to 184.41 do not apply to any person, firm, corporation, partnership, or association engaged in the business of a management consultant, management search consultant or personnel consulting firm (hereafter "search firm") if: (1) the search firm is retained by, acts on behalf of and is only compensated by the employer, pursuant to a written or oral agreement specifying the position to be filled; (2) in no instance will any individual candidate who is identified, appraised or recommended by the search firm for employment become liable in whole or in part to pay a fee of any kind, directly or indirectly, on account of any service performed by the search firm; (3) in no instance does the search firm or its agents solicit, persuade or induce any individual to terminate his or her employment with an employer with whom the search firm has placed that individual; and (4) the search firm does not carry on any other activity that comes within the definition of employment agency as hereinbefore defined. Each search firm shall file annually with the commissioner a sworn statement indicating whether or not it has conducted its business during the past year in a manner consistent with the above provisions, exempting search firms from regulation as employment agencies. The statement must include, in addition to other information the commissioner by rule requires, a representation as to whether the search firm has placed any advertisements in the "help wanted" columns of newspapers published in Minnesota. If the commissioner at any time has reason to believe that the search firm has not conducted its business in a manner consistent with the above four conditions, the commissioner may inspect the relevant records of the search firm for the purpose of confirming whether the search firm has maintained its exempt status during the year. If it is determined, either by written admission by the search firm or by a finding of fact in a court of law or by a hearing officer pursuant to chapter 14, that any of the four conditions were not met, the search firm shall thereafter be considered an employment agency and be subject to the provisions of sections 184.21 to 184.41. If an employment agency offers services which are the same or similar to those offered by a search firm, or if a search firm offers services which are the same or similar to those offered by an employment agency, the person or entity offering these combined employment agency and search firm services shall identify itself to the public by displaying the name in which it is registered with the commission as a licensed employment agency; provided, that no registered search firm may offer licensed employment agency services at the same location.

Subd. 3. Registration. Before starting business in this state, any firm established as an exempt firm under subdivision 2 shall (1) file a sworn statement with the commissioner indicating whether or not it will conduct its business in a manner consistent with the provisions of subdivision 2 and other information the commissioner by rule requires, (2) pay the registration fee required by section

184.29, and (3) furnish the bond required by section 184.30. A search firm registration may not be transferred to another search firm, unless written notice of the transfer is given to the commissioner.

Subd. 4. **Continued exemption.** A search firm exempted under subdivision 2 prior to August 1, 1983 is not subject to the provisions of section 184.29, 184.30, 184.37, or 184.38.

Subd. 5. **Fee payment prohibited.** No employer may require any job candidate placed with the employer by a search firm to pay, directly or indirectly, all or part of the search firm's fee.

History: 1983 c 375 s 1-4

184.23 ADVISORY TASK FORCE CREATED.

Subdivision 1. The commissioner of labor and industry may appoint an employment agency advisory task force to advise the department as to the administration of the provisions of sections 184.21 to 184.40. If appointed, a majority of members shall be actually engaged as an owner or manager of an employment agency licensed by the state of Minnesota for a period of three years immediately preceding the time of their appointment.

Subd. 3. The task force shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

History: 1983 c 260 s 46

184.29 FEES.

Before a license is granted to an applicant, the applicant shall pay the following fee:

(a) An employment agent shall pay an annual license fee of \$200 for each license.

(b) A search firm exempt under section 184.22, subdivision 2, shall pay an annual registration fee of \$200, accompanying the annual statement to the commissioner.

(c) An applicant for a counselor's license shall pay a license fee of \$10 and a renewal fee of \$5.

(d) An applicant for an employment agency manager's license shall pay a license fee of \$10 and a renewal fee of \$5.

History: 1983 c 375 s 5

184.30 BONDS.

Subdivision 1. Every application for an employment agency's license, and every annual report required to be filed under section 184.22, subdivision 2, must be accompanied by a surety bond approved by the department in the amount of \$10,000 for each location. The bond must be filed in the office of the secretary of state and conditioned that the employment agency and each member, shareholder, director, or officer of a firm, partnership, corporation, or association operating as an employment agency will comply with the provisions of sections 184.21 to 184.40 and any contract made by the employment agent in the conduct of the business. A person damaged by a breach of any condition of the bond may bring an action on the bond, and successive actions may be maintained on it.

[For text of subd 2, see M.S.1982]

History: 1983 c 375 s 6

184.37 CONTRACTS WITH APPLICANTS FOR EMPLOYMENT.

Subdivision 1. **Employment agents.** Every employment agent shall contract, in writing, with every applicant for employment for services to be rendered to the applicant by the employment agent, which contract shall contain the date, the name and address of the employment agency, the name of the employment agent, the service charge to be made to the applicant, and the time and method of payments, and, on either the face or back of the contract, shall appear the definition of "accept," "method of payment," "temporary position," and "charge for permanent position which proves to be temporary."

Subd. 2. **Search firms.** Every search firm must give to each job candidate a written statement confirming that the candidate will in no instance become liable in whole or in part to pay a fee of any kind, directly or indirectly, on account of any service performed by the search firm. A copy of this statement must be kept on file by the search firm for at least one year.

History: 1983 c 375 s 7

184.38 RULES GOVERNING AGENCIES.

[For text of subds 1 to 5, see M.S.1982]

Subd. 6. (a) No employment agent or search firm shall send out any applicant for employment without having obtained a job order, and if no employment of the kind applied for existed at the place to which the applicant was directed, the employment agent or search firm shall refund to the applicant, within 48 hours of demand, any sums paid by the applicant for transportation in going to and returning from the place.

(b) Nothing in this chapter shall be construed to prevent an employment agent or search firm from directing an applicant to an employer where the employer has previously requested that he be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the applicant was so directed; nor shall it prevent the employment agent or search firm from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent or search firm; provided, that prior to scheduling an interview with an employer, when no opening currently exists with that employer, the applicant is clearly informed that no opening exists at that time.

[For text of subd 7, see M.S.1982]

Subd. 8. No employment agent or search firm shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment. For purposes of this subdivision the phrase "false or fraudulent notice or advertisement" shall include the following:

(a) The advertisement of any job for which there is no bona fide oral or written job order and completed job order form in existence at the time the advertisement is placed;

(b) The inclusion in any advertisement of any information concerning the identity, availability, features, or requirements of any advertised job when such information is not substantiated by, and included in, the supporting job order form;

(c) The advertisement of any job opening of the type described in subdivision 6, clause (b);

(d) The advertisement of any job without the inclusion in the advertisement of the "job order number" required in subdivision 18;

(e) If an applicant appears at any agency or search firm in response to the advertisement of a particular job, the failure to attempt placement of the applicant in the advertised job; provided however, that the agency or search firm may refuse to attempt such placement if the reason(s) for the refusal are clearly and truthfully disclosed to the applicant either orally or in writing.

Subd. 9. No employment agent or search firm shall place or assist in placing any person in unlawful employment.

Subd. 10. No employment agent or search firm shall fail to state in any advertisement, proposal, or contract for employment, that there is a strike or lockout at the place of proposed employment, if the agent or firm has knowledge that such condition exists.

Subd. 11. No employment agency or its employee may split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employer or applicant with any employer, or person in any way connected with the employer's business. No search firm or its employee may split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employer with any person connected in any way with the employer's business. A violation of this subdivision shall be punished by a fine of not less than \$100, and not more than \$1,000, or on failure to pay the fine by imprisonment for a period not to exceed one year, or both, at the discretion of the court.

[For text of subds 12 to 16, see M.S.1982]

Subd. 17. Except for applicant information given in the course of normal agency or firm operations, no employment agent or search firm shall voluntarily sell, give, or otherwise transfer any files, records, or other information relating to his employment agency or search firm applicants and employers to any person other than a licensed employment agent or registered search firm or a person who agrees to obtain an employment agency license or register as a search firm. Every employment agent or search firm who ceases to engage in the business of or act as an employment agent or search firm shall notify the department of such fact within 30 days thereof, and shall advise the department as to the disposition of all files and other records relating to his employment agency or search firm business.

Subd. 18. Every job order communicated to an agency or search firm shall be recorded by the agency or search firm on a job order form which form shall contain specific information as prescribed by the department. A job order form shall be filled out for each job order prior to any attempt to advertise the job opening or to place persons in said job. Such forms shall each be assigned a separate number and shall be maintained by the agency or search firm for a period of one year.

Subd. 19. No person shall be required to pay a fee to an employment agency for a position, whether temporary or permanent, if the applicant withdraws acceptance of the position, provided that the applicant did not actually start the job.

Subd. 20. No employment agent or search firm shall knowingly misrepresent to any employer the educational background, skills, or qualifications of any job candidate; or knowingly misrepresent to a job candidate the responsibilities, salary, or other features of any position of employment.

History: 1983 c 375 s 8-16

184.41 VIOLATIONS.

Any person who engages in the business of or acts as an employment agent or counselor without first procuring a license as required by section 184.22, any employment agent, manager, or counselor who violates the provisions of this chapter, and any exempt firm which violates any of the applicable provisions of this chapter, is guilty of a misdemeanor.

In addition to the penalties for commission of a misdemeanor, the department may bring an action for an injunction against any person who engages in the business of or acts as an employment agent or counselor without first procuring the license required under section 184.22, or who engages in the business of or acts as a search firm without first filing the registration required under section 184.22, subdivision 3, and against any employment agent, manager, counselor, or search firm who violates the applicable provisions of this chapter. If an agency, manager, counselor, or search firm is found guilty of a misdemeanor in any action relevant to the operation of an agency, or search firm the department may suspend or revoke the license or registration of the agency, manager, counselor, or search firm.

History: 1983 c 375 s 17