CHAPTER 184

EMPLOYMENT AGENCIES

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184.05 MS 1965 [Repealed, 1967 c 884 s 21]

184.06 MS 1965 [Repealed, 1967 c 884 s 21]

184.07 MS 1965 [Repealed, 1967 c 884 s 21]

184.08 MS 1965 [Repealed, 1967 c 884 s 21]

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184.10 MS 1965 [Repealed, 1967 c 884 s 21]

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184.12 MS 1965 [Repealed, 1967 c 884 s 21]

184.13 MS 1965 [Repealed, 1967 c 884 s 21]

184.14 MS 1965 [Repealed, 1967 c 884 s 21]

184.15 MS 1965 [Repealed, 1967 c 884 s 21]

184.21 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** For the purposes of sections 184.21 to 184.41 and unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases shall have the meanings given them in this section.

Subd. 2. **Employment agency.** The term "employment agency" means any person, firm, corporation, partnership, association, or job listing service in this state engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agency; or furnishing any other person, firm, corporation, partnership, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, partnership, or association to procure such help. Any party performing the services of an employment agency as herein defined, is not an employment agency if the performance of these services is peripheral to the primary business of that party, and if no part of any fees or compensation is paid by the person seeking employment unless that party has an employee, officer,

department or division whose primary responsibility is providing employment services to clients. The term "employment agency" does not include any exclusively teacher or exclusively nurse or exclusively medical doctor placement service, theatrical, booking, modeling, babysitting agency, educational or labor organization, resume service, newspaper, magazine, trade or professional journal or like publication of general circulation, the main purpose of which is dissemination of news, reports, trade, or professional information. The term "employment agent" shall be synonymous with the term "employment agency."

Subd. 3. **Employer.** The term "employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.

Subd. 4. **Applicant.** The term "applicant" means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium or service of an employment agency.

Subd. 5. **Counselor.** The term "counselor" within the meaning of sections 184.21 to 184.41 means one who is employed by an employment agency to perform any act authorized by sections 184.21 to 184.41 to be performed by an employment agent.

Subd. 6. **Person.** "Person" includes an individual, a firm, corporation, partnership, or association.

Subd. 7. **Department.** The term "department" means the Department of Labor and Industry of the state of Minnesota.

Subd. 8. **Board.** The term "board" means the Employment Agency Advisory Board.

Subd. 9. **Job order.** The term "job order" means a statement either written or oral by any employer to an agency, the purpose of which is to notify the agency of a job opening with that employer and to request that the agency provide the employer with applicants for interview or employment. All information concerning the availability, features, or requirements of a job shall be considered part of the job order.

Subd. 10. **Character.** "Character" includes components of an applicant's ability to be an agent; such as, moral character, education, business integrity, fiscal integrity, training and knowledge of the employment business, capability of staff, and the extent of participation in operating the agency.

Subd. 11. **Premises.** "Premises" means the location and size of the place of business, the neighborhood, public access, lease, purchase of premises, or other physical arrangements.

Subd. 12. **Job listing service.** "Job listing service" means any employment agency in the business of matching applicants with employment opportunities through providing a list of employers or list of job openings or like publications or lists of applicants for distribution to potential employers, where a fee or valuable consideration is exacted from the applicant. An employment agency operating exclusively as a "job listing service" is not engaged in the placement of applicants.

Subd. 13. **Concurrent fee.** "Concurrent fee" means a fee charged to an applicant for providing a list of employers or list of job openings or like publications and the fee is not contingent upon actual hiring, but for the information provided by the agency.

History: *1967 c 884 s 1; Ex1967 c 1 s 6; 1973 c 780 s 1; 1974 c 423 s 1,2; 1976 c 60 s 1; 1980 c 452 s 1; 1986 c 444; 1988 c 659 s 3-5; 2015 c 54 art 5 s 3; 2016 c 158 art 1 s 214*

184.22 LICENSES REQUIRED.

Subdivision 1. MS 2014 [Repealed, 2015 c 54 art 5 s 16]

Subd. 2. MS 2000 [Repealed, 1Sp2001 c 4 art 2 s 41]

Subd. 3. MS 2000 [Repealed, 1Sp2001 c 4 art 2 s 41]

Subd. 4. MS 2000 [Repealed, 1Sp2001 c 4 art 2 s 41]

Subd. 5. MS 2000 [Repealed, 1Sp2001 c 4 art 2 s 41]

Subd. 6. **Exemptions.** (a) Except as otherwise provided, sections 184.21 to 184.41 do not apply to any person, firm, corporation, partnership, or association engaged in the business of management consulting, management search consulting, or personnel consulting, 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 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 defined in section 184.21, subdivision 2.

(b) 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 conditions in paragraph (a), clauses (1) to (4), 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 in paragraph (a) were not met, the search firm shall be considered an employment agency and be subject to 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 filed with the commissioner as a licensed employment agency; provided, that no search firm may offer licensed employment agency services at the same location.

Subd. 7. **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: *1967 c 884 s 2; Ex1967 c 1 s 6; 1971 c 95 s 1; 1974 c 423 s 3; 1979 c 5 s 1; 1982 c 424 s 130; 1983 c 375 s 1-4; 1986 c 444; 2005 c 134 s 1,2*

184.23 MS 1992 [Repealed, 1993 c 337 s 20]

184.24 POWERS AND DUTIES OF DEPARTMENT.

Subdivision 1. **Generally.** It is the duty of the department to administer the provisions of sections 184.21 to 184.41. The commissioner shall have power to compel the attendance of witnesses by the issuance of

subpoenas, administer oaths, and to take testimony and proofs concerning all matters within its jurisdiction. The department shall make all rules not inconsistent with law needed in performing its duties.

Subd. 2. **Supervisory and investigative authority.** The department shall have supervisory and investigative authority over all employment agents and counselors. The department shall have the right to examine only such records required to be kept by this chapter and Laws 1971, chapter 95 by employment agents and counselors and to examine the offices where business is or shall be conducted by them. The department shall have the right to investigate all advertisements, communications and materials published, disseminated, circulated, or placed before the public by an employment agency or counselor, for the purpose of determining whether the provisions of section 325F.67 or 184.38, subdivision 8 have been violated.

History: *1967 c 884 s 4; Ex1967 c 1 s 6; 1971 c 95 s 3; 1985 c 248 s 70; 2015 c 54 art 5 s 4; 2016 c 158 art 1 s 214*

184.25 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.26 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.27 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.28 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.29 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.30 Subdivision 1. MS 2014 [Repealed, 2015 c 54 art 5 s 16]

Subd. 2. MS 2002 [Repealed by amendment, 2004 c 251 s 1]

184.31 MS 1971 [Repealed, 1974 c 423 s 16]

184.32 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.33 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.34 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.35 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.36 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

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. Every employment agent engaged in the placement of applicants shall also include on either the face or the back of the contract the definition of "accept," "method of payment," "temporary position," and "charge for permanent position which proves to be temporary."

Subd. 2. MS 2002 [Repealed, 1Sp2001 c 4 art 2 s 41]

History: *1967 c 884 s 17; 1974 c 423 s 10; 1983 c 375 s 7; 1988 c 659 s 6*

184.38 RULES GOVERNING AGENCIES.

Subdivision 1. **Scope.** In addition to the foregoing rules, the rules prescribed in this section shall govern each and every employment agent.

Subd. 2. MS 2014 [Repealed, 2015 c 54 art 5 s 16]

Subd. 3. **No fee for application or registration.** No fee shall be solicited or accepted as an application of registration fee by any employment agent for the purpose of being registered as an applicant for employment, nor shall any other money be solicited or accepted for any reason prior to the actual start date, other than fees earned through concurrent fee arrangements in which the fee charged is not contingent upon actual placement of an applicant.

Subd. 4. **Receipts required.** Every employment agent shall give to every person from whom the payment of a service charge is received for services rendered or to be rendered, or assistance given or to be given, a receipt bearing the name and address of the employment agency, the amount of the payment, the date of the payment, and for what it is paid. Every receipt to an applicant by an employment agent shall be numbered and bound in duplicate form. Duplicate copy of each receipt shall be kept at least one year.

Subd. 5. **Record of services rendered.** Every employment agent shall keep a record of all services rendered employers and employees. This record shall contain the name and address of the employer by whom the services were solicited, the name and address of the employee, kind of position offered by the employer, probable duration of the employment, rate of wage or salary to be paid the employee, amount of the employment agent's service charge, dates and amounts of payments, date and amount of refund if any, and for what, and a space for remarks under which shall be recorded anything of an individual nature to amplify the foregoing report and as information in the event of any question arising concerning the transaction. Every employment agent engaged in the placement of applicants shall also keep a record of kind of position accepted by the employee. In the event the department has reason to question the detailed report so submitted by the employment agent, the department shall have authority to demand of the employment agent the production of these records for examination by it, or its agent, at such place as the department may designate.

Subd. 6. **Job orders.** (a) No employment agent 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 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 from directing an applicant to an employer where the employer has previously requested 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 from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent; 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.

Subd. 7. **Inducements to leave or discharge prohibited.** No employment agent shall, individually, or by an agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or agents of the employment agent have placed the employee, nor shall any agent, individually or through any agents, persuade or induce or solicit any employer to discharge any employee.

Subd. 8. **False or fraudulent notice.** No employment agent 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:

(1) 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;

(2) 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;

(3) the advertisement of any job opening of the type described in subdivision 6, paragraph (b);

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

(5) if an applicant appears at any agency 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 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. **Unlawful employment.** No employment agent shall place or assist in placing any person in unlawful employment.

Subd. 10. **Strike or lockout notice.** No employment agent 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 has knowledge that such condition exists.

Subd. 11. **No fee splitting.** 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. A violation of this subdivision shall be punished by a fine of not less than $100, and not more than $3,000, 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.

Subd. 12. **Temporary or permanent position.** "Temporary position" means a position lasting less than 90 days, and "permanent position" means a position lasting 90 days or more. A permanent position becomes temporary where the employee is discharged within 90 days for any reason other than misconduct. Intermittent employment on certain days each week or month shall be designated as temporary employment, and no fee shall be charged on earnings in such employment after 90 days from the first day of such employment, nor after an interruption in such employment of more than 30 days within such 90-day period. A position presumed to be permanent, but which is contingent upon satisfactory service, shall continue to be presumed permanent until the employee is discharged before 90 days.

Where a temporary position merges into a permanent position, or where an employee accepts a permanent position within 90 days after termination of a temporary position, such permanent position may be considered the result of the reference to the temporary position and the fee based on such permanent position, due credit being given for money paid for the temporary position.

Subd. 13. **Temporary position refund.** When a permanent position becomes a temporary position as defined in subdivision 12 the employment agent shall, within five calendar days, refund to the employee any amount paid by said employee in excess of a temporary position employment charge.

Subd. 14. **Fee schedule.** The schedule of fees for all positions must be filed with the department. No change in fees shall be effective until 30 days after filing with the department.

Subd. 15. **Agency fee note requirement.** Any note having as consideration the payment of an employment agency fee shall contain the following statement: "NOTE FOR EMPLOYMENT AGENCY FEE." The defense of no or insufficient consideration shall be good as against a holder in due course of any such employment agency fee note.

Subd. 16. MS 2014 [Repealed, 2015 c 54 art 5 s 16]

Subd. 17. **Applicant information restrictions; agency shutdown requirements.** Except for applicant information given in the course of normal agency operations, no employment agent shall voluntarily sell, give, or otherwise transfer any files, records, or other information relating to its employment agency applicants and employers to any person other than an employment agent. Every employment agent who ceases to engage in the business of or act as an employment agent 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 its employment agency business.

Subd. 18. **Job order forms.** Every job order communicated to an agency shall be recorded by the agency 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 for a period of one year.

Subd. 19. **Applicant withdrawal.** 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. **Truthful representations.** No employment agent 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: *1967 c 884 s 18; Ex1967 c 1 s 6; 1971 c 95 s 8; 1973 c 780 s 2-4; 1974 c 423 s 11-14; 1977 c 220 s 1; 1983 c 375 s 8-16; 1984 c 628 art 3 s 11; 1986 c 444; 1988 c 659 s 7,8; 1Sp2001 c 4 art 2 s 12-19; 1Sp2015 c 1 art 5 s 6; 2017 c 68 art 1 s 2*

184.39 MS 1971 [Repealed, 1974 c 423 s 16]

184.40 MS 2014 [Repealed, 2015 c 54 art 5 s 16]

184.41 VIOLATIONS.

(a) An employment agent, manager, or counselor who violates the provisions of this chapter is guilty of a misdemeanor.

(b) In addition to the penalties for commission of a misdemeanor, the department may bring an action for an injunction against any employment agent, manager, or counselor who violates the applicable provisions of this chapter.

History: *1971 c 95 s 9; 1974 c 423 s 15; 1983 c 375 s 17; 1Sp2001 c 4 art 2 s 20; 2015 c 54 art 5 s 5; 2017 c 68 art 1 s 3*