

CHAPTER 38
EMPLOYMENT AGENCY LICENSING
[Prior to 9/24/86, Employment Agency Licensing Commissioner[350] Chs 1 to 10]

347—38.1(94,95) Definitions.

“*Applicant*” means a person who seeks employment with the assistance of a private employment agency.

“*Commissioner*” means the labor commissioner of the division of labor services of the department of employment services or the commissioner’s designee.

“*Licensee*” means a person, firm or corporation, who holds a valid license from the commissioner.

“*Private employment agency (agency)*” means a person, firm or corporation who shall procure or offer help or employment, or the giving of information where help or employment may be procured and where a fee, privilege or other thing of value is exacted, charged or received for the service.

This rule is intended to implement Iowa Code chapters 94 and 95.

347—38.2(95) Application and license.

38.2(1) *Application.* An application PEA-1(3096164) for a license must be made in writing to the commissioner upon forms designated by the commissioner. Forms to be completed include the application and affidavit form and two copies each of employer paid fee and applicant paid fee schedules.

38.2(2) *Name.* No licensee shall use any name, symbol or abbreviation deceptively similar to or reasonably likely to be confused with the name used by an existing licensee, any governmental agency, or nonprofit agency.

38.2(3) *Change in officers.* A change in the name of any person required to be reported on the application under Iowa Code section 95.2 shall be forwarded to the commissioner within ten days of the change.

38.2(4) *Change in address.* The licensee shall notify the commissioner of any change of address prior to the change.

38.2(5) *Multiple locations.* A separate license shall be required for each separate office location operated by a licensee.

38.2(6) *Nontransferable.* A license is nontransferable.

38.2(7) *Nonissuance of license.* The commissioner may refuse to issue a license when the commissioner finds that any of the following conditions exist:

1. The license applicant has violated any of the provisions of Iowa Code chapter 94 or 95;
2. The license applicant has violated any of the rules of this chapter;
3. The license applicant or persons connected therewith has engaged in fraudulent, deceptive or dishonest practices;
4. The license applicant is shown for good and sufficient cause to be unfit to operate an agency.

This rule is intended to implement Iowa Code section 95.2.

347—38.3(94,95,17A) Complaints. Complaints by aggrieved parties will be investigated by the commissioner. The commissioner shall notify the aggrieved party in writing of the outcome of the investigation. The commissioner may take any appropriate action including commencing an action against the licensee for license revocation.

347—38.4(94,95,17A) Revocation procedures. When any investigation discloses facts which may establish probable cause that the licensee has substantially violated any provision of Iowa Code chapter 94 or 95 or this chapter, a hearing may be called by the commissioner.

347—38.5(95,17A) Hearing procedures.

38.5(1) When a hearing for revocation is called, the commissioner shall give notice to the licensee of the intention to revoke the license. Notice shall be completed when the notice is deposited with the U.S. Post Office by restricted certified mail with return receipt requested and addressed to the licensee

at its last known place of business. Notice of hearing shall be not less than 20 calendar days prior to hearing. The procedures including notice, hearing and records shall be in accordance with Iowa Code chapter 17A relating to contested cases.

38.5(2) The hearing shall be conducted by the commissioner.

38.5(3) A licensee may be represented by an officer, employee, or attorney of the licensee.

38.5(4) The testimony shall be taken under oath or affirmation.

38.5(5) The commissioner shall give notice of the revocation proceedings to any interested person who has made a written request to the commissioner to be notified of revocation proceedings. The notice shall be sent by first-class mail at the time notice is sent to the licensee.

These rules are intended to implement Iowa Code sections 94.11, 95.5, and 17A.10 to 17A.18.

347—38.6(94) Permissible fees charged by agency.

38.6(1) The total amount charged to any applicant in any form by an agency shall not exceed 15 percent of the applicant's gross earnings from that employer for which the agency procured the job in any pay period for a period of time not to exceed the first 12 months from the date of employment. This subrule shall not apply to licensees exempted under Iowa Code section 94.6.

38.6(2) Fees due the agency are payable as earned, however, the applicant may knowingly agree to pay the fee in advance, with the full understanding that the applicant is not required to do so, and the agency guarantees to refund any amounts in excess of 15 percent of actual gross earnings, when ascertained. This subrule shall not apply to licensees exempted under Iowa Code section 94.6.

38.6(3) No licensee or any person connected therewith shall require any applicant to execute any negotiable instrument, assignment of earnings, or note except for that amount of fee which is past due to the licensee.

38.6(4) Each licensee shall keep conspicuously posted at its place of business, a copy of each schedule of fees on file with the commissioner. The schedules shall be printed in not less than 8-point type.

38.6(5) Applicants who have paid the fee in advance must be notified at their last known address by the licensee at the time they make the final payment on the fee that they may have a refund due if they have paid more than 15 percent of the gross earnings of their first year of employment. This rule shall not apply to licensees exempted under Iowa Code section 94.6.

38.6(6) The commissioner considers it to be contrary to public policy for employers to require applicants to contract with the employer to reimburse the employer for an employer paid fee. For positions where a representation is made to an applicant that the employer will pay the fee, the licensee shall guarantee that the fee payment shall be without cost to the applicant. Written notice of the provisions of this subrule shall be given to all applicants to which this subrule applies.

This rule is intended to implement Iowa Code section 94.6.

347—38.7(94) Agency placement procedures.

38.7(1) *Employment availability verified.* No licensee shall refer an applicant for an employment interview unless the licensee has verified within the past five calendar days that the situation of employment is still available.

38.7(2) *Deceptive representations.* No licensee shall pursue a continued or flagrant course of misrepresentation, or make false promises through advertising or otherwise.

38.7(3) *Advertising.* Advertising shall not be written in a form that is intended to deceive. A licensee shall not advertise any salary information which has not been received from the employer. Written communication of licensee shall not contain language which directly or indirectly is likely to cause the public to be confused, mistaken, or deceived that licensee is other than a private employment agency business.

This rule is intended to implement Iowa Code section 94.7.

347—38.8(94,95) Contracts and fee schedules.

38.8(1) *Schedules furnished.* Any schedule of fees to be charged by a licensee to applicants shall be furnished to all applicants at the time of making an application with the licensee.

38.8(2) *Required content of all contracts.*

- a. Contracts and fee schedules shall not contain smaller than 8-point type.
- b. Contracts and fee schedules shall contain no ambiguous, false or misleading information.
- c. All contracts and fee schedules must clearly state that the agency is licensed by the labor commissioner and that inquiries may be submitted to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, telephone (515)281-3606.

38.8(3) *Additional required content for applicant paid fee contracts.*

a. Each applicant paid fee contract shall contain a provision limiting to one year from the date of referral the period for which a licensee may assess a placement fee for referral of that applicant to that employer.

b. Where the licensee provides the option for advance payment, the contract and applicant paid fee schedule must clearly state that the applicant knowingly agrees to pay the fee in advance with the full understanding that the applicant is not required to do so, and that the licensee guarantees to refund any amount in excess of 15 percent of the applicant's gross earnings from that employer for which the agency procured the job for a period of time not to exceed the first 12 months from the date of employment, when ascertained. This paragraph shall not apply to those licensees exempted by Iowa Code section 94.6.

c. All applicant paid fee contracts and fee schedules must state the fee in dollar amounts as well as percentages.

38.8(4) *Additional required content for entertainment enterprises.* Contracts and fee schedules of a licensee who solely furnishes or procures vaudeville acts, circus acts, theatrical, or stage or platform attractions or amusement enterprises shall contain language to that effect.

This rule is intended to implement Iowa Code sections 94.8 and 95.2.

347—38.9(94) Required records and report.

38.9(1) *Applicant's record.* Every licensee shall maintain records on all applicants referred for job interviews. The record shall include:

1. Name and address of applicant;
2. Name of employer to whom the applicant is referred;
3. The date that the applicant was referred to a prospective employer for a job or an interview;
4. Type of job offer; and
5. Earnings the employer proposed to pay, if known.

38.9(2) *Business transaction record.* Every licensee shall maintain a record called a business transaction record containing consecutively numbered entries. Each entry shall include:

1. The name and address of the applicant placed;
2. Name and address of employer;
3. Name and title of employer representative;
4. Starting date of position;
5. Starting salary;
6. Whether the fee was employer or applicant paid;
7. If the applicant paid fee:
 - a. Method of payment;
 - b. Amount of fee paid;
8. If applicant paid fee in advance:
 - a. Amount of earnings paid by the employer to the applicant, unless such information is refused by applicant and employer;
 - b. Amount of fee paid;
 - c. Amount of refund, if any.

38.9(3) *Retention of records.* All records listed in subrule 38.9(1) shall be retained for at least two years and all records listed in subrule 38.9(2) shall be retained for at least five years. If records are kept at

a location other than the licensee's office the licensee shall give written notification to the commissioner of the address of the location.

38.9(4) Reports. Each licensee shall file a report with the commissioner upon Form PEA-4(3096167). The report shall be submitted annually by July 1 for the preceding calendar year from January 1 to December 31. No license shall be renewed unless Form PEA-4(3096167) has been completed and returned to the commissioner.

This rule is intended to implement Iowa Code sections 94.10 and 94.11.

347—38.10(95) Forms.

38.10(1) PEA-1. This form shall contain the name of the agency, and if the agency is a firm, the names of the members, and if the agency is a corporation, the names of the corporate officers. The form shall contain the name, number and address of the building and place where the business of the agency is to be conducted. The form shall specify the period for which the license is requested. When an agency is applying for a license for the first time, the agency shall fill out that portion of the form which contains the affidavits of two reputable citizens of the state in no way connected with the agency, or, if a firm or corporation, of each of the members or officers thereof, and that the agency is a citizen of the United States, if a natural person. That portion of Form PEA-1 dealing with the affidavits of two reputable citizens need not be completed when an agency is applying for a new license prior to the expiration of a current license.

38.10(2) PEA-2. This form shall contain the schedule of employer paid fees. The form shall state the name and address of the agency, and the period for which the schedule is effective.

38.10(3) PEA-3. This form shall contain the schedule of applicant paid fees. The form shall state the name and address of the agency, and the period for which the schedule is effective.

38.10(4) PEA-4. This form shall list the number of placements, applicant paid fees, employer paid fees, and applicant paid fees for each percentage charged.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.18, 94.6 to 94.8, 94.10, 94.11, 95.1 to 95.3 and 95.5.

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