

DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS DIVISION

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In The Matter of the Proposed
Adoption by the Minnesota
Department of Labor and Industry,
Labor Standards Division, of
Amendments to Rules Governing
Employment Agency

STATEMENT OF NEED AND
REASONABLENESS

The proposed rules are amendments to existing rules of the Department of Labor and Industry governing fee employment agencies. The authority to adopt rules for this industry arise under the statute governing the power and duties of the Department relating to employment agencies contained in Minnesota Statutes, section 184.24 (1986). Specifically, the Commission of Labor and Industry is responsible for promulgating rules needed to administer the provisions of Minnesota Statutes, sections 184.21 to 184.40.

The existing rules were originally adopted in 1974, amended in 1977 and again in April of 1985. Since the 1985 amendments were adopted, three job listing services have operated within the state while other job listing services have expressed interest in conducting business in Minnesota. The primary purpose of the proposed rule is to regulate the activities of fee employment agencies operating as job listing services under Chapter 184 as amended in 1988.

The 1988 statutory amendments identified a job listing service as a fee employment agency to be regulated in the same manner as a traditional fee agency with exceptions regarding placement activities and fee collection. Amendment to existing rules are needed in response to these 1988 statutory changes involving job listing services. Existing rules do not distinguish job listing services from actual placement services. Additionally, existing rules prohibit fee collection prior to actual job placement. The proposed amendments will allow job listing services to collect fees at the time the agency services are rendered. Amendments are also needed to make the rules consistent with the statute.

The rules proposed by the Department are reasonable because the rules are consistent with existing fee agency regulations with needed exceptions. The proposed rules are also reasonable because existing rules prohibit job listing services from operating in a prosperous manner in that fee collection is currently restricted until actual placement. Because job listing services do not make placements, they are currently unable to legally charge for their services.

IMPACT ON SMALL BUSINESS

All firms subject to the fee employment law are small businesses. Pursuant to Minnesota Statutes, section 14.115, subdivision 2, the Department has considered the impact of the proposed amendments to the rules on small business and concludes that the proposed rules have no greater effect on small business than that already placed on the fee employment industry by the legislature, specifically:

A) Establishing less stringent compliance or reporting requirements. The Department has considered Item A and determined that the proposed rules are less stringent for job listing services than for existing fee employment agencies because job listing services do not engage in placement activities. Most of the reporting requirements involve placement activities.

B. Less stringent schedule or deadlines for compliance or reporting requirements. The Department has determined that Item B is not applicable because there are no schedules or deadlines for compliance.

C. Consolidation or simplification of compliance or reporting requirements. The Department has considered Item C and determined the proposed rules are intended to simplify compliance and reporting requirements of job listing services.

D. Establishment of performance standards to replace design or operation standards. It is not the duty of the Department to measure performance within this industry. The proposed rule establishes minimal operation standards as required by law for job listing services.

E. The exemption of small business from any or all requirements. This consideration is clearly contrary to the statutory objectives that are the basis of the proposed amendment to the rules. The legislature has specifically authorized the Department to establish rules to regulate this industry.

FISCAL IMPACT

The proposed rule will not have a significant fiscal impact on the fee employment industry because currently there are no job listing services operating within the state; however, the proposed rules do not prevent existing fee agencies from adding job listing services to their current operation. For future operations the proposed rules will not have a significant fiscal impact on operations.

In summary, the amendments to existing rules for adoption are necessary to fulfill the Department's obligations and duties under the provisions of the fee employment law. The inclusion of job listing services in the fee employment regulations is intended to assure bonding of the service to protect the consumer who may be damaged by the job listing service not fulfilling the contract or going out of business prior to the expiration of the contract. The rules are also intended to verify the authenticity of the information supplied by the job listing service. The proposed amendments are consistent with existing fee employment regulations and also include needed exceptions for job listing services which will be effective in regulating the industry.

Minnesota Rule 5200.0500 subpart 2/Definitions

The proposed amendment clarifies when an applicant may withdraw an application after acceptance of a position. Minnesota Statutes, section 184.38, subd. 19 prohibits fee collection if an applicant withdraws acceptance, provided that the applicant did not start the job. The existing rule is inconsistent with statutory language in that the rule requires that the applicant may only withdraw the acceptance within three days after acceptance. Because the statute allows a withdrawal at any time before starting the job, the limiting language in the current rule is removed.

5200.0500 subpart 3/Fee Status

The proposed amendments identify and restrict the fee liability of job listing services to concurrent fee arrangements. Concurrent fee is defined as 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. The amendments are unchanged for placement agencies.

5200.0600 subpart 1/Fee Information on Contracts

The proposed amendment distinguishes employment agencies engaged in the placement of applicants from those performing only job listing services. The reporting requirements for job listing services are less stringent than those of placement services.

5200.0600 subpart 2

The amendment also mandates that the job listing service contract contain the statement that the fee to the job listing service shall be due at the time contractual arrangements are entered into and that no other fee shall be collected for services rendered under that contract. This contract provision informs the applicant of the fee arrangement, thereby protecting the applicant from being charged more than once for the service provided.

5200.0610 Acceptance Form Standards

The amendment exempts job listing services from using acceptance forms. Acceptance forms are used to contract specific arrangements when an applicant accepts a position. Job listing services do not make placements; therefore, the use of acceptance forms is not needed.

5200.0620 Paragraph E Fee Determination

The addition mandates that the fee charged for the service be uniform for all applicants served in accordance with the contract. This protects vulnerable applicants from being unfairly charged a higher fee than other applicants.

5200.0680 Collection of Fee From Applicant

The proposed amendment restricts all fee collection prior to actual placement except for concurrent fee arrangements. This rule is consistent with Minnesota Statutes, section 184.38 subd. 3 and 19. Because the applicant may withdraw acceptance of the position before starting the job, the fee is not unquestionably due until the applicant commences employment.

5200.0700 Subpart U Job Order Form

The addition indicates that job listing services may only charge a fee at the time service is rendered. All other fee arrangements allowed by the rules relate to placement activities.

5200.0800 Subpart 2 Annual Record of Service Report

The proposed additions state specific items to be included in the annual record of service report to be submitted to the Department by job listing services. The information required by job listing services is minimal compared to placement agencies. The proposed rule eliminates reporting on data not available to job listing service such as number of placements. The service report is required by Minnesota Statutes, section 184.38, subd.5.