

Oklahoma Department of Labor

Oklahoma Statutes
Title 40 – Private Employment Agencies

Oklahoma Administrative Code
Title 380 – Department of Labor
Chapter 10 – Personnel Employment Agencies



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Commissioner of Labor

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Oklahoma Statutes

Title 40 – Private Employment Agencies

40 O.S. § 46 Refusal of Service to Employer Not Fulfilling Contracts

The Commissioner of Labor shall, after having determined by investigation that any employer in this state is not fulfilling contracts made through employment agents, order all employment agents in the state to refuse further service to such employer. Any employment agent violating this section shall be subject to the penalties as provided in Section Two (2) and Twelve (12) of this act.

40 O.S. § 47 Bringing in or Transferring Persons for Purpose of Employment Through Employment Agency

Every person, company, corporation or association doing business in this state, who shall have persons brought into this state or transferred from one point to another within the state, for the purpose of employment through or by means of any employment agency operating in this or any other state, shall immediately fulfill the terms of the contract made between such persons shipped in for the purpose of employment and the employment agency, or shall, within twelve (12) hours after the arrival of such persons desiring employment, in case of failure or refusal to furnish such employment provide such persons with transportation to their original starting point, and such meals and lodging as may be necessary for the proper sustenance of such persons until they arrive at their destination. Failure to comply with this section shall subject the offending parties to a fine of not less than Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00) for each offense.

40 O.S. § 52 Definitions

For the purpose of and when used in this act:

- (a) The "Administrator" of this act shall be the Commissioner of Labor.
- (b) "Director" shall mean the Deputy appointed by the Administrator to supervise administration of this act.
- (c) "Employee", as used in this act, shall mean any person performing or applying for work or service of any kind or character for hire.
- (d) "Employer" shall mean any person employing or seeking to employ any person for hire.
- (e) "Fees" shall mean anything of value, including any money or other valuable consideration exacted, charged, collected or received directly or

indirectly, or paid or promised to be paid for any services or act described or enumerated in subsection (g) of this section.

(f) "Employment" shall mean the act of employing or state of being employed, engaged, or hired.

(g) "Private employment agency" shall mean any business operated in this state by any person, firm or corporation for profit which secures employment or by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself, where any applicant may become liable for the payment of a fee to the private employment agency, either directly or indirectly. "Private employment agency" does not include:

- (1) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment; or
- (2) Any employment service operated by this state, the Government of the United States, or any city, county, or town, or any agency thereof; or
- (3) Any temporary help service that at no time advertises or represents that its employee, with the approval of the temporary help service, may be employed by one of its client companies on a permanent basis; or
- (4) Any newspaper of general circulation or other business engaged primarily in communicating information that does not purport to adapt the information provided to the needs or desires of an individual subscriber; or
- (5) Employment offices that charge no fee to the applicant other than union dues or to the employer and which are used solely for the hiring of employees under a valid union contract by the employer subscribing to this contract; or
- (6) Any organization that charges fees only for services other than securing employment, provided that such services are performed pursuant to a contract which includes a statement, in a type size no smaller than ten point, directly above the place for the signature of the client that reads as follows: "I have read and received a copy of this contract which I understand makes me legally obligated to pay a fee, I further understand that this contract does not guarantee employment"; or
- (7) Resume services whose service includes only the preparation and production of resumes, and does not purport to offer services that will result in employment; or

(8) A person employing individuals to render part-time or temporary personal services to, for, or under the direction of a third person, if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes, state and federal unemployment insurance, carries workers' compensation insurance as required by state law, and has responsibility for the acts of his employees while rendering services to or under the direction of a third person.

(h) "Temporary employment" shall mean any period of employment terminating at any time within sixty (60) days from date of employment.

(i) "Permanent employment" shall mean all employment exceeding sixty (60) days duration.

(j) "Person" shall mean any individual, copartnership, corporation, or other legal entity.

40 O.S. § 53 License

- (a) No person shall open, operate or maintain an employment agency in the State of Oklahoma without first procuring a license from the Administrator. Any person who shall open or conduct any such agency without first having procured a license shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 57 of this title. Application for the first license to be issued to any employment agency following the effective date of this act shall be accompanied by a fee of Two Hundred Fifty Dollars (\$250.00); renewal applications for a license to be issued to any employment agency shall be accompanied by a fee of Two Hundred Fifty Dollars (\$250.00). The license fee shall not be returnable, and shall be placed in the General Revenue Fund of the State Treasury.
- (b) Every applicant for a license shall have been a resident of the State of Oklahoma for at least one (1) year immediately preceding the filing of such application, and shall have had at least one (1) year of experience as a placement counsellor in a licensed employment agency either within or without the state. In the case of corporation applicants, at least one of the incorporators and one of the principal officers thereof, together with the person who is to be responsible for the general management of the office shall meet the above requirements as to Oklahoma residence and experience.
- (c) Every applicant for a license shall file with the Administrator a written application stating the name and address of the applicant; the street and number of the building in which the employment agency is to be conducted; the name of the person who is to be responsible for the general management of the office; the names and addresses of all

those financially interested therein; the name under which the business is to be conducted; whether or not the applicant is pecuniarily interested in any other business or businesses, and if so the nature of same and where carried on. Said applicant shall also state on the application whether or not he is engaged at the time of making application or at any previous time has been engaged or financially interested in an employment agency business in Oklahoma or any other state; and, if so, the name and address of such employment agency or agencies and the dates he was so engaged or interested. If applicant is now or has previously been employed in any employment agency he shall state the name and address of such agency, the name of the person conducting such agency, the dates employed, and in what capacity. All applications shall be sworn to, under oath, and shall remain confidential in the files of the Administrator.

- (d) All applicants shall clearly state if they have operated or been employed by an employment agency in Oklahoma or any other state within the past fifteen (15) years and, if so, under what authority; and if ever cited for cause, give the final disposition of said breach of law or regulations charged governing such employment agency or employment. If applicant should be found guilty of perjury as to any material fact, after issuance of a license by the State of Oklahoma, after exhaustion of applicant's right of appeal, the Administrator shall rescind such license immediately thereafter, and no license shall subsequently be issued to such applicant.
- (e) The applicant shall give as reference the names and addresses of at least three (3) persons of reputed business or professional integrity. If applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the president and secretary, with seal affixed. If applicant is a copartnership, the application shall state the names and addresses of all partners therein and shall be signed and sworn to by all of them. The Administrator or Director shall be qualified to take sworn statements of applicants, under oath.
- (f) Upon the filing of an application for the first license after the effective date of this act, as herein provided, the Administrator shall cause an investigation to be made of the applicant and all those financially interested therein, such investigation to be made by appropriate state agencies and other sources of information, and shall finally rule thereon within thirty (30) days after the application is filed. Unless the application shall be rejected by the Administrator on the grounds that the applicant or associated party or parties have been convicted of a felony, or for other good and sufficient reason within the meaning and purpose of this act, the same shall be granted. If the application is rejected, the Administrator shall state in the written order the specific

reasons for such rejection. That there are already an adequate number of licensed employment agencies shall not be grounds for rejecting a license application. An appeal from an order of the Administrator rejecting an application for any reason other than conviction of a felony may be taken to the superior or district court of the county of applicant's residence, in accordance with the general statute of the state governing appeals from decisions of administrative agencies in individual proceedings.

- (g) A detailed report of such investigation and the action taken thereon by the Administrator shall be made in writing and become a part of the official records in the Administrator's office.
- (h) Every initial application for a license shall be accompanied by a bond in the sum of Five Thousand Dollars (\$5,000.00), issued by a duly licensed surety company authorized to do business in Oklahoma, to be approved by the Administrator and filed of record in his office, which bond shall be conditioned upon the applicant's complying with all the provisions of this act. Upon completion of one (1) year of operation, the amount of the bond shall be reduced to Three Thousand Dollars (\$3,000.00) and shall remain fixed at that amount until the completion of two (2) years of operation, at which time, the amount of the bond shall be reduced to One Thousand Dollars (\$1,000.00). The bond shall remain at One Thousand Dollars (\$1,000.00) so long as the agency remains under the management of the originally licensed operator. If at any time, in the opinion of the Administrator, any of the sureties shall become irresponsible the person holding the license shall, upon written notice and demand from the Administrator, furnish a new bond, subject to the provisions of this section. Failure to furnish a new bond within fifteen (15) days after receipt of such notice and demand shall, in the discretion of the Administrator, constitute just cause for revocation of such license, and each license when revoked shall be obtained by the Administrator for cancellation.
- (i) There shall appear on the license the name of the licensee, the location of the office where the employment agency is to be conducted, the name of the person who is to be charged with the general management and the precise name under which the employment agency is to be carried on. In the event of a change in location the Administrator shall be notified of same within ten (10) days and the license shall be endorsed to show the correct address. Each license shall be numbered and dated and posted in a conspicuous place in the office of the employment agency.
- (j) In the event the services of the person charged with the general management of the employment agency are terminated within the license year, the licensee shall so advise the Administrator and the name of the person taking over the management shall be substituted

- on the license for that of the former manager so that at all times the person charged with general management of the employment agency shall be known to the Administrator and shall appear on the license.
- (k) Every license shall remain in force for twelve (12) months next after its issuance, unless sooner surrendered, suspended or revoked.
 - (l) The Administrator shall notify all license holders of the expiration date of their licenses at least ten (10) days prior thereto, and application for renewal shall be accompanied by the required license fee and bond.
 - (m) In the event the Administrator shall find that an employment agency has violated any of the provisions of this act, or that any other good and sufficient reason therefor has arisen within the meaning and purpose of this act, he may suspend or revoke said license or refuse to grant a new license upon the termination thereof; but in any case no action shall be taken until a written notice has been served on said employment agency specifying the charges against said agency, and a fair public hearing, in which the procedure prescribed for individual proceedings by the general administrative procedure acts of the state shall apply wherever not in conflict with the specific procedures herein prescribed, has been given same within thirty (30) days after such written notice has been posted by registered mail to the licensee. If, after such hearing, the Administrator shall find cause to suspend, revoke or refuse to issue a license, the employment agency shall be given written notice of the Administrator's decision and the basis therefor, which decision shall become final at the end of thirty (30) days from the date of such notice, unless during the said thirty-day period the licensee shall take an appeal to the superior or district court of the county in which the license was issued from the Administrator's order, with opportunity for stay as provided in the general statutes of the state governing appeals from administrative orders in individual proceedings. All appeals from the Administrator's decisions and orders shall be taken in the manner prescribed by law.
 - (n) Every complaint against an employment agency shall be made in writing to the Administrator and shall be thoroughly investigated. A complete record of the investigation and disposition of the complaint shall be made and become a permanent record in the Administrator's office. Whenever, for any cause, a license is revoked, the Administrator shall not within two (2) years from the date of such revocation issue another license to the person whose license has been revoked.
 - (o) No license granted under the terms of this act shall be transferable, but an employment agency may, with the approval of the Administrator, at any time incorporate or admit a partner or partners to the business, or make changes in the corporate name, or sell the business; but no employment agency shall permit any person not

mentioned in the application for license to become connected with such agency, either as a partner or as an officer of a corporation, unless the Administrator's written consent thereto shall first have been obtained. Such consent may be withheld only for any reason for which an original application for license might have been rejected if the person or persons in question had been mentioned therein. Nothing in this act shall be construed to prevent any executor, administrator or heir of a deceased licensee from carrying on the employment agency's business for the remainder of the period for which licensed, or pending its sale to a qualified purchaser.

- (p) No sale of a franchise for an agency operation in Oklahoma shall be legal, or enforceable in the courts of this state, unless and until the qualifications of such franchise purchaser shall first have been submitted to the Administrator as a prospective licensee under the provisions of this act, and approved by the Administrator.

40 O.S. § 54 Fees

- (a) The service fee charged for helping to secure permanent employment shall be not to exceed the following schedule: Fifteen percent (15%) of the first full month's gross compensation if the position pays Seventy-nine Dollars and ninety-nine cents (\$79.99) or less; twenty percent (20%) of the first full month's gross compensation if the position pays Eighty Dollars (\$80.00) through One Hundred Nineteen Dollars and ninety-nine cents (\$119.99); thirty percent (30%) of the first full month's gross compensation if the position pays One Hundred Twenty Dollars (\$120.00) through One Hundred Forty-nine Dollars and ninety-nine cents (\$149.99); forty percent (40%) of the first full month's gross compensation if the position pays One Hundred Fifty Dollars (\$150.00) through Two Hundred Seventy-four Dollars and ninety-nine cents (\$274.99); forty-five percent (45%) of the first full month's gross compensation if the position pays Two Hundred Seventy-five Dollars (\$275.00) through Four Hundred Ninety-nine Dollars and ninety-nine cents (\$499.99). For procuring employment paying gross compensation of Five Hundred Dollars (\$500.00) or more per month, the fee shall be determined by written agreement between all parties concerned. The fee schedule shall be posted in a conspicuous place in each employment agency office.
- (b) In no event shall the fee for temporary employment exceed that for permanent placement. Any period of employment terminating at any time within sixty (60) days from the date of employment shall constitute temporary employment and a fee of not more than twenty percent (20%) of the amount earned shall be charged. All employment exceeding sixty (60) days' duration shall be considered a permanent placement. No licensed employment agency shall collect a fee before

an applicant has obtained employment. No fee shall be charged for registering with an employment agency or for instituting a search or investigation, or for other employment-related aids. Where the remuneration is in the form of a straight commission, the first three (3) months' gross earnings shall be divided by three to establish an average monthly compensation against which to compute the fee. No finance company or other purchaser of employment contracts shall be considered a holder in due course of such paper until after the temporary employment period shall have run and permanent employment shall have been established, and in no event shall the applicant for employment be liable for any charge to a finance company in addition to the legal placement fee as hereinabove set forth.

- (c) This section shall not apply to an employment agency acting as a search consultant that is retained and compensated solely by the employer on a retainer or consulting basis.

40 O.S. § 55 Rules and Regulations

- (a) Every employment agency shall enter into a written agreement with every applicant for services to be rendered and the time and method of payment, and on which there shall appear the definition of "Temporary Employment", "Permanent Employment" and "Method of Payment". Provided, that nothing herein shall be construed to prohibit an employment agency from making arrangements by wire or telephone without said employee having first entered into a written agreement with the agency; and provided further, if by oversight or intention an applicant fails to sign an employment contract, but is placed and accepts such employment, the employment agency shall be entitled to its fee for such placement. Every employment agency shall provide the applicant with a copy of any written agreement between the applicant and the agency. All contracts or agreements shall clearly state the fee and in no case shall the employment agency collect more than the stated fee or agreed percentage of the first year's total income.
- (b) In all instances wherein permanent employment is terminated within the definition of temporary employment, every employment agency shall give to every person from whom an overpayment of fee has been received, if requested within six (6) months of such termination, a refund in the amount of such overpayment, such refund to be made promptly within ten (10) days following the agency's receipt of verification from the employer of the inclusive dates of employment and the total gross earnings of the employee. This subsection shall not apply to any employment agency acting as a search consultant that is

- retained and compensated solely by the employer on a retainer or consulting basis.
- (c) Every employment agency shall give to every person from whom a payment is received for services or assistance rendered or to be rendered a receipt bearing the name and address of the employment agency, the name of the employee, amount of the payment, date of payment, and for what it is paid. Each such receipt shall be numbered and bound in duplicate form. The duplicate copy shall be kept for two (2) years at the office of the employment agency.
 - (d) A record shall be kept of the name and address of every employee accepting employment, the name and address of the employer with whom employment is accepted, the nature of the employment, the rate of wage or salary to be paid the employee, the amount of the employment agency's service charge, the dates and amounts of payments, the date and amount of refund, if any, and for what, together with a space for remarks under which shall be recorded anything of an individual nature to amplify the foregoing account or record and as information in the event of any question arising concerning the transaction. Such records shall be open to inspection by the Administrator or Director during business hours, at the address where the employment agency is conducted, for the purpose of enforcing the provisions of this act. The Administrator may also by rules and regulations require reports from all agencies giving information on job placements, monthly or quarterly, both within and without the state, and classified by type of employment, to conform generally with employment data gathered and published by the Oklahoma Employment Security Commission.
 - (e) The Administrator may require of the employment agency against whom a written complaint is made, a detailed account in writing, under oath, of the transaction referred to in the complaint.
 - (f) No employment agency shall direct an applicant to employment without having obtained, either orally or in writing, permission or authorization of the employer. No applicant for employment shall be required by any agency to list prospective employers to whom he shall previously have been referred by other agencies.
 - (g) No applicant for employment shall knowingly make false or misleading statements to an employment agency regarding age, education, training, experience or references; and no employment agency shall be held responsible for misinformation given it by an applicant and transmitted by it in good faith to an employer.
 - (h) No employment agency shall advertise openings for which it does not hold orders from employers or knowingly cause to be printed, published or circulated misleading, false or fraudulent information about employment opportunities.

- (i) Other than the prescribed placement fee, no employment agency shall require either the employee or employer to contribute to the cost of its employment-related services, advertising, or incidental expenses. This subsection shall not apply to any employment agency acting as a search consultant that is retained and compensated solely by the employer on a retainer or consulting basis.
- (j) No employment agency shall place, or cause to be placed, promotional advertising in any media without licensee's identification as to agency and address.
- (k) No employment agency shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees, or whose employees or a part of them are out on strike, without first apprising said person of the existence of such lockout or strike.
- (l) Any licensed agency, or agent thereof, who shall be guilty of dividing fees with any superintendent, manager, foreman or other employees of any person, company, corporation or association for whom employees are furnished, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 57 of this title.
- (m) No licensed agency shall furnish employment to or refer any child to any vocation or establishment in violation of the laws regulating the labor of children or their compulsory attendance at school.
- (n) No employment agency shall discriminate in the employment of its personnel because of the race, national origin, sex or religious belief of the applicant seeking employment with the agency.

40 O.S. § 57 Enforcement – Rules and Regulations

It shall be the duty of the Administrator and/or Director to enforce the provisions of this act. When informed of any violation thereof it shall be his duty to investigate same, and he may institute criminal proceedings for enforcement of this act, or apply to any court of competent jurisdiction and/or the Attorney General in order to seek injunctive relief on behalf of the State of Oklahoma. In order to make more effective the foregoing statutory provisions and rules and regulations, the Administrator is hereby authorized to prepare and promulgate such rules and regulations as may from time to time be deemed necessary, not inconsistent with the provisions of this act. A violation of such rules and regulations shall be deemed to be a violation of this act, and any person convicted of violating the provisions of this act shall be guilty of a misdemeanor and shall be fined not less than Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00), or the fee charged for the service, whichever is greater, for each offense, or be imprisoned in the county jail for a period of not exceeding six (6) months, or both such fine and imprisonment, at the discretion of the court.

Oklahoma Administrative Code

Title 380 – Department of Labor

Chapter 10 – Personnel Employment Agencies

380:10-1-1. Purpose

The purpose of the rules of the Department of Labor found in Chapter 10 is to provide guidance to Personnel Employment Agencies in the regulations and requirements for licensing their operations in the State of Oklahoma as mandated by State law.

380:10-1-2. Definition

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context already indicates otherwise:

"Employment" means the date the employee is placed on the payroll.

380:10-1-3. Prospective employers

If anywhere within the confines of an employment contract, any mention is made wherein the applicant is asked to disclose to the agency a list of prospective employers to whom he shall previously have been referred by other agencies, the clause must also contain language to the effect that it is optional on the part of the applicant to disclose said information.

380:10-1-4. Required clauses

All employment contracts shall contain the following clauses:

- (1) CLAUSE #1: Employment agency laws are administered by the State Department of Labor.
- (2) CLAUSE #2: All contracts shall contain a clause regarding refunds as follows: "in all instances wherein employment is terminated within sixty (60) days, if a refund is requested by the employee, the agency shall have ten (10) days to request verification of the inclusive dates of employment and the total gross earnings of the employee and shall make all refunds within ten (10) days of verification."

380:10-1-5. Percent service fee

If anywhere within the confines of an employment contract a mention is made to the effect that the Department of Labor administers the law with regard to the percent to be charged as a service fee, the agency shall also publish a sentence within the contract regarding the limits of the earning and percentages not regulated by this Department; and in no way shall any be misleading in regard to the portion or upper limits of earning not regulated by this Department.

380:10-1-6. Interest on credit

When an employment agency procures employment for a client and extends individual credit for the payment of the fee, the employment agency may not charge interest on the credit so extended.

380:10-1-7. Corporate residency

Under the provisions of Title 40, Oklahoma Statutes, Section 53(b), which requires in the case of corporate applicants, that at least one of the incorporators and one of the principle officers thereof, together with the person who is to be responsible for the general management of the office, meet the requirements as to residence and experience, it is possible for one individual to meet all the requirements of the statute.

380:10-1-8. General manager

Under the provision of Title 40, Oklahoma Statutes, Section 53(i), the same person is not prohibited from being the general manager of a number of separate employment agency offices.

380:10-1-9. Attorney General's opinion

The Department of Labor was asked to request an Attorney General's Opinion clarifying certain portions of the Private Employment Agency law. In answer to this request, the Attorney General has issued Opinion No. 79-300, dated October 22, 1979, which basically states the following:

- (1) Agencies operating on an employer paid fee basis only are included within the definition of a private employment agency and are required to obtain a state license.
- (2) Where the employment procured pays \$500.00 or more per month, the statute requires the fee to be determined by written agreement between all parties concerned. This includes the employer, the employment agency and the applicant.
- (3) Any employer who pays a fee is entitled to a refund as provided in the statutes.

380:10-1-10. Application for license

In order to expedite an application for a private employment agency license, the following materials should be included with the application:

- (1) A license fee of \$100.00.
- (2) Surety Bond.
- (3) Notarized statement from the licensee of the agency or agencies where applicant has been employed, containing inclusive dates of employment and job title.
- (4) On the last page of the application, applicant is required to list three personal references. Submit NOTARIZED reference letters with the application, or the Department will request the reference letters by mail upon receipt of the application.

- (5) If submitting a corporate application, include a copy of the Articles of Incorporation and Organizational Minutes. The Minutes should reflect that the applicant is an incorporator, an officer of the corporation and General Manager of the agency.
- (6) Please direct all inquiries to the Employment Standards Division. The number to call in Oklahoma City is (405) 528-1500. The number in Tulsa is (918) 581-2400.