

CHAPTER 373
COMMERCIAL EMPLOYMENT AGENCIES

SECTION

373-1	Definitions
373-2	License required
373-3	Fees; biennial renewal; restoration
373-4	Bond
373-5	Application for license
373-6	Issuance of license
373-7	Repealed
373-8	Posting
373-9	Records and reports
373-10	Fees
373-11	Prohibition
373-12	Restitution of illegal fees
373-13	Director's rights
373-13.5	Requirements to maintain license
373-14	Revocation, suspension, and fines
373-14.3	Hearings
373-14.7	Repealed
373-15	Repealed
373-16	Repealed
373-17	Repealed
373-18	Repealed
373-19	Powers and duties
373-20	Penalties
373-21	Exemption of vocational rehabilitation services

§373-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Actual earnings from employment" means the total compensation, including reported amount of tips for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation, but shall not include the reasonable cost to an employer of furnishing an employee with fringe benefits or board, lodging, or other facilities and non-cash gratuities of any kind.

"Applicant" means any person who uses the services of an employment agency to secure employment for that person.

"Branch office" means an employment agency office maintained away from the principal employment agency office.

"Director" means the director of commerce and consumer affairs.

"Employer" means any individual, partnership, corporation, or association, employing or seeking to employ any person for hire.

"Employment agency" means any individual, partnership, corporation, or association engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received, but shall not include the United States or the State or instrumentalities thereof.

"Gross wages, salaries, or commissions" means the gross amount of the applicant's actual earnings from employment.

"Principal agent" means the responsible managing agent who is responsible for managing an employment agency and who is responsible for all business transactions and actions by the agency's employees.

§373-2 License required. No employment agency shall engage in business without a license obtained under this chapter and the rules of the director.

§373-3 Fees; biennial renewal; restoration. (a) No applicant shall be examined under this chapter until the appropriate fees have been paid.

(b) Every person holding a license under this chapter shall register with the director and pay a biennial renewal fee on or before June 30 of each even-numbered year. Failure to pay the renewal fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of the renewal and restoration fees.

(c) All fees shall be as provided in rules adopted by the director pursuant to chapter 91.

§373-4 Bond. Every employment agency that collects fees from applicants shall give and keep in force a bond with the director in the penal sum of \$5,000 with good and sufficient surety or sureties approved by the director, conditioned that:

- (1) The licensee shall not violate this chapter; and
- (2) The licensee shall faithfully, promptly, and truly refund all fees illegally or incorrectly obtained from applicants to the director.

§373-5 Application for license. (a) Every individual, partnership, corporation, or association seeking a license to operate an employment agency shall file a written application with the director that shall contain such information and shall be in such form as the director may prescribe; provided that in addition to complying with all other requirements of this chapter, no license shall be issued unless the applicant either has passed a certified employment consultant examination as designated by the director or has in the applicant's employ a principal agent.

(b) Every principal agent shall file a written application with the director that shall contain such information and shall be in such form as the director may prescribe and no license shall be issued unless the applicant has passed a certified employment consultant examination as designated by the director.

The examination shall cover the following:

- (1) Interview principles and techniques;
- (2) Job descriptions and specifications;
- (3) Placement procedure, including recruitment, solicitation, and referral;
- (4) Aids for applicants;
- (5) Agency management;
- (6) General principles of business law; and

(7) State statutes and rules relating to an employment agency.

(c) A principal agent who does not engage in the employment agency business in the State during the succeeding year shall not be required to pay the renewal fee as long as the principal agent remains inactive. Should the principal agent wish to resume work as a principal agent at some future time, the principal agent shall so notify the director and remit the renewal fee for the current biennial period.

(d) Every applicant, including all officers, directors, partners, members, or managers of the applicant, shall possess a reputation for honesty, truthfulness, financial integrity, and fair dealing and shall not have been convicted of a felony directly related to the operation of a commercial employment agency, unless the conviction has been expunged or annulled.

§373-6 Issuance of license. (a) Upon receipt of an application for a license to conduct an employment agency, the director may issue the license if the applicant has met the requirements of this chapter and chapter 436B.

(b) Every license issued shall be valid only as to the employment agency and any branch offices of the employment agency.

(c) No license shall be issued to an employment agency that establishes or maintains a place of business in, or conducts business from, a home, apartment, hotel room, or any other location where the premises may be considered not in the public interest, unless approved by the director.

(d) A license issued under this chapter shall not be transferable.

§373-7 REPEALED.

§373-8 Posting. Every license to conduct an employment agency together with a copy of the fee schedule shall be posted in a conspicuous place in the main room of the agency.

§373-9 Records and reports. Every employment agency shall keep records and make such reports with respect to the operation of the business as the director by rule may prescribe. Such records as required by rule shall be preserved by the agency and kept in the office of the employment agency for a period of at least two years.

§373-10 Fees. (a) Each employment agency shall file with its application, an initial schedule of placement fees to be charged to applicants. Any change to the schedule of placement fees shall be filed with the director within thirty days of the change, unless the time is extended by the director for good cause. The schedule of placement fees shall be available to the general public at the department.

(b) The schedule, or change of schedule shall become effective upon approval of the director; provided that the director shall approve or disapprove within sixty days after the schedule is filed.

(c) Any contract between an applicant and the employment agency shall be in writing and shall contain:

(1) In bold print enclosed within a conspicuous border, the gross amount of the estimated fee to be charged and the time period on which the fee is based;

(2) A statement indicating that the fees charged are in accordance with the schedule of placement fees filed with the department;

- (3) A prominently displayed statement that no fees shall be paid until the job applicant obtains employment and receives the first paycheck, provided that this shall not apply to employer fee paid placements;
- (4) The name and license number of the commercial employment agency; and
- (5) A statement that the applicant has the right to have the agency produce for review a copy of the law and rules regulating the practices of commercial employment agencies.

A copy of the contract shall be provided to the applicant. The director may adopt rules pursuant to chapter 91 to prescribe the form and content of the contract.

(d) No employment agency shall charge to or collect from any applicant a registration fee or advance payment for services to be rendered in finding employment.

(e) It shall be a violation of this chapter for an employment agency to charge, demand, or collect any registration fee or advance payment for services from an applicant, or any fee which is greater than the applicable fee listed in the schedule which it has filed with the director.

§373-11 Prohibition. No employment agency licensed under this chapter and no agent or employee of an employment agency shall do, make, or cause to be made or done any of the following acts herein prohibited and every employment agency, its agents, and employees shall do and perform every act, duty, or requirement hereinafter prescribed.

- (1) No employment agency shall cause to be printed, published, or circulated any false, fraudulent, or misleading information, notice, or advertisement, nor shall an employment agency give or cause to be made or given any false promise, misrepresentation, or misleading statement or information.
- (2) No employment agency shall send out any resume or applicant for employment without having first obtained either orally or in writing a bona fide job order from the prospective employer.
- (3) No employment agency shall knowingly send out any applicant for employment to any place where a strike, walk-out, or other labor dispute exists without first furnishing the applicant with a written statement as to the existence of the labor dispute, and the employment agency shall retain on file for two years after the date thereof, a copy of the statement of fact, signed by the applicant so sent.
- (4) No employment agency shall divide or share, or offer to divide or share with any employer, the employer's employees, agents, or representatives, any fee, charge, or compensation received from any applicant. No employment agency shall cause or attempt to cause the discharge of any person not an employee of the employment agency for the purpose of obtaining other employment through the agency for such person.
- (5) No employment agency shall send out any minor applicant for employment without making an investigation of the nature of the employment or engagement and the duties thereof and reputation of the employer. No employment agency shall wilfully or knowingly send or direct any applicant for employment to any employment of an immoral character. No employment agency shall wilfully or knowingly procure or place or attempt to place any minor in any employment in any place where intoxicating liquors are served or sold.
- (6) No employment agency shall wilfully or knowingly place or assist in placing any applicant in employment in violation of any law of this State or any lawful order, rule, or regulation prescribed by the director.
- (7) No employment agency shall require an applicant to pay any advance fee or any other fee, deposit, or compensation other than as prescribed in this chapter.

- (8) No employment agency shall display, on any sign or window or in any publication the name "United States Employment Service" or "State of Hawaii Employment Service".
- (9) No employment agency or any person connected therewith shall receive or require any applicant to execute any power of attorney, promissory note, negotiable instrument, assignment of wages or salary, note authorizing a confession of judgment, or any instrument or document relating to the liability of the applicant.
- (10) No employment agency or any person connected therewith shall make representations to applicants concerning prospective positions, the character and probable length of employments, hours, salary, and other relevant terms and conditions of employment which are not, to the best of its knowledge, accurate.
- (11) No employment agency shall withhold from applicants written disclosure of any fees or charges for services rendered prior to the rendering of such services.
- (12) No employment agency shall provide information relating to an applicant's personal record, employment record, qualifications, and salary requirement to an employer directly, by mail, or otherwise, unless such information is accurate and complete to the best of its knowledge, and the employer has expressed an interest in the applicant.
- (13) No employment agency shall charge an applicant any fee or service charge until such time as an applicant is employed by an employer as a result of the employment agency's efforts and has received actual earnings from employment.
- (14) No employment agency shall require the employer to withhold from the applicant's actual earnings from employment any fee or service charge that has been negotiated by contract between the applicant and the employment agency unless the withholding of such fee or service charge is specifically authorized or requested, by full signature, in writing by the applicant.

§373-12 Restitution of illegal fees. Whenever in the course of an investigation made pursuant to this chapter, it is determined that there has been an illegal collection of fees, the employment agency shall refund the fee illegally collected upon the order of the director or the director's authorized representative. Failure to refund the fee shall constitute a violation of this chapter subject to the penalties provided herein.

§373-13 Director's rights. The director and the director's authorized representatives may enter any office, building, premises, or other place in which an employment agency is operated for the purpose of making investigations for the proper enforcement of this chapter and such rules and regulations as the director may prescribe. No person shall refuse the director or the director's authorized representative admittance to any such office, building, premises, or other place. The director and the director's authorized representatives shall for the purpose of examination have access to and the right to copy any book, account, receipt, contract, or other paper or document relating to the business of conducting an employment agency. Every person shall furnish to the director or the director's authorized representative such information relating to the business of conducting an employment agency. The rights as specified above shall be limited to regular business hours and at such other times as the director feels will be necessary to effectuate the purpose of this chapter.

§373-13.5 Requirements to maintain license. (a) Every employment agency that collects fees from applicants shall have and maintain in full force and effect a bond as required under section 373-4. Failure, refusal, or neglect to maintain a bond in full force and effect shall cause the automatic forfeiture of the license effective as of the date of expiration or cancellation of the bond. The license shall not be restored until a bond as required under section 373-4 is received by the director.

(b) Failure to effect a restoration of a forfeited license within sixty days of the forfeiture shall cause the license to remain forfeited. No fees paid shall be refundable. A licensee who fails to restore a license as provided in this section shall apply and pay fees as a new applicant.

(c) The director may assess a fee not to exceed \$200 as a condition for the restoration of a license forfeited pursuant to this section.

(d) A licensee, within fifteen calendar days after receipt of notification of the license forfeiture, may request an administrative hearing pursuant to chapter 91 to review the forfeiture.

(e) Every employment agency shall have in its employ a principal agent who is currently licensed under this chapter. The principal agent shall be responsible for the direct management of the employment agency, all business transactions of the employment agency, and all actions by the employees of the employment agency.

(f) No employment agency shall be deemed to have violated any provision of this chapter by acting or assuming to act as an employment agency after the death or dissociation of the principal agent responsible for managing the employment agency; provided that within sixty days from the date of the death or dissociation of the principal agent, the employment agency employs another licensed principal agent or employs an individual who has filed an application for a principal agent license.

§373-14 Revocation, suspension, and fines. In addition to any other actions authorized by law, after affording all interested parties reasonable opportunity for a fair hearing, the director may revoke or suspend any license, or impose a fine not to exceed \$1,000 per violation, for cause. In addition to any other grounds for disciplinary action authorized by law, "cause" means violation of this chapter or a rule of the director.

§373-14.3 Hearings. In all proceedings, the director or hearings officer duly appointed by the director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, producing documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order or subpoena issued by the director or hearings officer, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the director or hearings officer, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§373-14.7 REPEALED.

§373-15 REPEALED.

§373-16 REPEALED.

§373-17 REPEALED.

§373-18 REPEALED.

§373-19 Powers and duties. In addition to any other powers and duties authorized by law, the director may adopt, amend, or repeal such rules as the director may deem proper to fully effectuate this chapter and may delegate to the executive officer or other designee any powers or duties the director deems reasonable and proper.

§373-20 Penalties. Any employment agency which violates this chapter is punishable upon conviction by a fine of not more than \$1,000, or imprisonment for not more than six months, or both.

[§373-21] Exemption of vocational rehabilitation services. Providers of vocational rehabilitation services for injured workers covered by approved worker compensation plans under section 386-25 shall not be considered employment agencies under this section; provided that the providers confine their services to those specified under section 386-25 and do not hold themselves out to the public as employment agencies under this chapter.