

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 108

COMMERCIAL EMPLOYMENT AGENCIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-108-1 Objective. This chapter is intended to clarify and implement chapter 373, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-19)

§16-108-2 Definitions. As used in this chapter or in chapter 373, HRS: "Bona fide job order" means a single written or oral request from an employer for referral of one or more applicants to fill one or more existing or anticipated job openings.

"Department" means the department of commerce and consumer affairs.

"Employer paid fee" or "employer fee paid" means the total placement fee that is paid or promised to be paid by an employer to the employment agency without any limiting conditions or qualifications.

"Employer paid fee agency" means an employment agency that refers applicants to employer paid fee jobs only.

"Employment agency" as defined in section 373-1, HRS, shall not include any individual, partnership, corporation, or association engaged in a labor contracting service or business where a person is hired as an employee of the labor contracting service or business and is directed by the service or business to work at various job sites.

"Permanent employment" means employment lasting more than ninety calendar days.

"Placement fee" means any money or other valuable consideration charged or paid for providing employment information, procuring employment for applicants, procuring employees for placement with employers upon request, or any other service except resume writing performed by an employment agency.

Interest on over due payments and general excise tax charges are not considered placement fees.

"Temporary employment" means employment lasting ninety calendar days or less. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-1, 373-19)

## SUBCHAPTER 2

### FEES

§16-108-3 Fees. (a) Every application for an employment agency or principal agent license, employment consultant examination, renewal of a license, or restoration of a license shall be accompanied by the appropriate fees as provided in chapter 16-52 by the director.

(b) License and examination fees shall not be refundable. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-3, 373-5)

§16-108-4 Payment procedure. All fees shall be submitted to the department of commerce and consumer affairs, State of Hawaii. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-3, 373-5)

## SUBCHAPTER 3

### APPLICATIONS; EXAMINATION

§16-108-5 Application for license. (a) Each application for an employment agency or branch office license shall be made on a form prescribed by the director and shall contain the following information:

- (1) The business name of the employment agency, which may not be identical or similar to that of another employment agency;
- (2) The place or places of business and the main office address in Hawaii; and
- (3) The name of any required principal agent.

(b) If the applicant is a corporation, the following shall be shown: names, titles, and addresses of the officers of the corporation who have managing responsibility in Hawaii.

(c) If applicant is not a corporation, the names and addresses of all persons who are financially interested either as partners, associates, profit sharers,

or other persons receiving a share of the net profits from the operation of the employment agency and the share of said net profit each person is to receive.

(d) Questions related to the applicant shall be answered as to each officer and director of a corporation, or if the applicant is not a corporation, each person or profit sharer listed in the application, including but not limited to the following:

- (1) The person's business or occupation for the preceding three years;
- (2) Whether or not the person has ever been associated in any capacity in the operation or business of an employment agency;
- (3) Whether or not the person has had any license or permit revoked, suspended, or refused, or any disciplinary action taken by any agency of the State; and
- (4) Whether or not the person has been convicted of a felony or misdemeanor relating to moral turpitude or honesty in any state.

(e) Application, if by an individual, must be signed, giving full name; if by a partnership, must be signed by all partners; if by a corporation, must be signed by an officer of the corporation, affixing the seal of the corporation thereto.

(f) No employment agency license shall be issued to or maintained by a partnership, corporation, or association unless it has in its employ, a licensed principal agent who has passed a certified employment consultant examination. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-5, 373-6, 373-13)

§16-108-6 Certified employment consultant examination.

(a) Examinations shall be given at least four times per year by a professional testing agency.

(b) The passing score of the examination shall be seventy per cent.

(c) An examination shall not be required when the applicant has previously passed the written examination within a period of four years prior to the application or when the application is made within four years from the date of forfeiture of the license. [Eff and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-5)

SUBCHAPTER 4

STATUTORY SURETY BOND

§16-108-7 Amount of bond. Each employment agency shall obtain and maintain in force a statutory surety bond with the director in the penal sum of \$5000 that has been issued by a surety company admitted to conduct business in this state and as provided under section 373-4, HRS. The surety bond shall specifically provide that the surety shall be held liable for any violation by the licensee of chapter 373, HRS, as amended, and this chapter. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-4)

## SUBCHAPTER 5

### RENEWAL APPLICATIONS; FORFEITURE

§16-108-8 Renewal applications. (a) All licensees shall complete and file with the director a renewal application with the required fees by June 30 of each even-numbered year. If mailed, the postmark will be considered the date of filing. If a complete renewal application is not filed on or before June 30 of the even-numbered year, the license shall be automatically forfeited as of June 30 of that even-numbered year.

(b) The director or the director's authorized representative may refuse to renew the license if the agency does not maintain a bond in full force and effect, or if the agency does not have in its employ, a principal agent holding a current and active license. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-3, 373-4, 373-5, 373-13.5)

§16-108-8.1 Forfeiture. Any license to conduct an employment agency business may be forfeited if the licensee fails to timely renew the license, allows the bond to expire or be cancelled, or fails to employ a required principal agent holding a current license. [Eff and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-3, 373-5, 373-13.5)

§16-108-8.2 Restoration. A forfeited license may be restored within one year of the forfeiture upon filing of an application, the surety bond, and submittal of all fees, including restoration fees. [Eff and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-3, 373-4, 373-5, 373-13.5)

## SUBCHAPTER 6

### APPLICATION CHANGES

§16-108-9 Report of changes. Each employment agency or principal agent shall notify the director in writing of any change of the information provided on the application or any subsequent information provided to the director within thirty days of the change. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-5)

## SUBCHAPTER 7

### PLACE OF BUSINESS

§16-108-10 Suitability of premises. (a) Where the application is for a license to operate an employment agency in a place used for the conduct of another business or in rooms or quarters used for living purposes, the director may refuse to grant such license, if such refusal would be in the public interest.

(b) Illustrative but not limited to the following are the types of premises which may be considered not in the public interest:

- (1) Where intoxicating liquors are sold or consumed; or
- (2) In connection with a pool hall; or
- (3) In an eating establishment; or
- (4) In a private residence; or
- (5) In connection with a loan company or collection agency. [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-6)

## SUBCHAPTER 8

### ADVERTISING

§16-108-11 Requirements. Each employment agency which advertises through newspapers or other media shall indicate its name in the advertisement. [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-11)

§16-108-12 Records. Each employment agency shall maintain a record of all newspaper or other printed advertisements initiated by the agency for at least two years. The record shall show the date and publication in which the advertisement appeared and the job order number of each job advertised. [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-9)

§16-108-13 Restrictions. (a) Advertisements shall not contain both employer paid fee job openings and other job openings which are not employer paid fee jobs in the same listing. "Employer Paid Fee" jobs shall be listed separately from jobs designated as "Applicant Pays Fee" jobs.

(b) Advertisements shall not include any jobs as "Fee Paid", "Employer Paid Fee" or other statements when payment of the fee is based on meeting certain conditions such as an applicant remaining on the job for a specified period of time.

(c) Advertisements with "100% Free" or "All Free" or similar wording as headings are prohibited unless the agency is an employer paid fee agency and exclusively handling fee paid jobs.

(d) No salary amount shall appear in an advertisement except one which appears in the actual job order from the employer. If the top salary range is to appear in an advertisement, it must be preceded by the word "to". [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-11)

## SUBCHAPTER 9

### APPROVAL OF CONTRACTS OR DOCUMENTS

§16-108-14 Submittal of forms. (a) Each employment agency shall submit two copies of its contract with an applicant to the director, and approval shall be indicated by an endorsement thereon by the director or the director's authorized representative. One copy shall be returned to the employment agency to be kept as part of its record. Approval shall not be withheld unless such proposed instrument, contract, or document is vague, misrepresentative, unfair, oppressive, or contains provisions which violate a law or does not satisfy the requirements for contract form and content under section 16-108-16.

(b) Employer paid fee agencies in which employers promise to pay fees without any limiting conditions or qualifications shall so inform the director and shall not collect any registration or placement fees from any applicant. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-10, 373-11)

§16-108-15 Form approval. No document or contract form which an employment agency shall require an applicant or the applicant's legal representative to execute or become a party to shall be used unless the form and contents thereof have been approved by the director or the director's authorized representative. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-10, 373-11)



§16-108-16 Contract form and content. (a) Any contract between an applicant and the employment agency shall be in writing and shall contain statements of the following matters and requirements:

- (1) In bold print enclosed within a conspicuous border the gross amount of the estimated fee charged and the time period on which the fee is based;
- (2) A statement indicating that the fees charged are in accordance with the fees filed with the department and that a listing of the fees charged to applicants by all commercial employment agencies licensed in the State is available for public inspection;
- (3) A prominently displayed statement that no fee 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;
- (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;
- (6) A statement that the agency shall be entitled to charge and collect a placement fee from the applicant if the applicant accepts within ninety calendar days from the date of referral the position for which the applicant was referred by the employment agency or the applicant accepts any position other than that for which the applicant was referred by the agency to that employer within thirty calendar days of the referral;
- (7) A statement that refunds shall be made promptly by the employment agency but no later than ten working days from the date the request was made, and that the refund shall be mailed if it is so requested; and
- (8) A statement that no registration fee or advance payment for services to be rendered in finding employment will be charged or collected.

(b) A copy of the contract shall be provided to the applicant. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §§373-10, 373-19) (Imp: HRS §§373-10, 373-12)

## SUBCHAPTER 10

## RECORDS

§16-108-17 Job order record. Each employment agency shall keep a complete record in the English language of all job orders received from prospective employers. This record, which shall be called the "Job Order Record", shall contain the following: date when the job order was received; name and address of the employer seeking the services of an employee; name of the person placing the job order; type of job offered; occupational qualifications; salary or rate of pay if known; person whom the job applicant is to report to for the position; probable duration of the job; the job order number; and names of applicants referred to the job. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-9, 373-11)

§16-108-18 Applicant's record. Each employment agency shall also keep a complete record in the English language of each applicant to whom employment is offered or promised and of each referral by the employment agency to secure a job or for an interview for a job. This record which shall be called the "Applicant's Record", shall contain the following: full name of the applicant; date when the applicant was referred for an interview in response to a job order; name of the prospective employer; job order number; and results of the referral. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-9, 373-11)

§16-108-19 Fee transaction record. Each employment agency shall issue a receipt to the applicant or the payer for any fee collected which shall contain the following information: receipt number consecutively stated; date of each transaction; total gross amount of the applicant's actual earnings on which the fee is based; name of the applicant; name of the person making the remittance; amount paid; and a designation indicating whether the amount paid is in full or on account and, if so, the balance due. This receipt shall also be used for payment of any refund to the applicant or payer and shall include the date, amount, and to whom refunded. Each employment agency shall keep a record of all receipts. This record shall be called the "Fee Transaction Record". [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-9, 373-10)

§16-108-20 Investigation record. Each employment agency shall keep a record of any and all investigations of the nature of the employment or engagement and the duties thereof and reputation of the employer which the

agency is required to make under the provisions of section 373-11, HRS. [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-9, 373-11)

## SUBCHAPTER 11

### REQUIREMENTS TO MAINTAIN LICENSE

§16-108-21 Requirements to maintain license. (a) In addition to the requirements to maintain a bond pursuant to section 373-13.5, HRS, employment agencies shall have in their employ a principal agent holding a current and active license.

(b) Failure to employ a required principal agent holding a current and active license shall cause the automatic suspension of the employment agency's license as of the date the principal agent is no longer employed.

(c) Failure to reinstate the suspended license by employment of another principal agent within sixty days of the suspension shall cause the automatic forfeiture of the employment agency's license. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-5, 373-13.5)

## SUBCHAPTER 12

### PLACEMENT FEES

§16-108-22 Filing requirements; placement fee schedule. (a) Each employment agency shall file with the director a schedule, which may not be changed more than once during each calendar year, of its placement fees to be charged applicants.

(b) Placement fee schedules shall be filed by January 31 of each calendar year.

(c) Agencies who fail to file their placement fees by January 31 shall not be allowed to amend its placement fees until January 31 of the following year.

(d) Agencies may not charge or collect placement fee until the fees are approved by the director or the director's authorized representative.

(e) Agencies who have filed as an employer paid agency need not submit annual fee schedules unless the agency elects to charge or collect placement fees from applicants.

(f) The director or the director's authorized representative shall compile a listing of the fees charged by all commercial employment agents and shall make

the list available to the general public. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-10, 373-11)

§16-108-23 Content requirements. (a) The schedule of placement fees shall include a statement that the agency shall be entitled to charge and collect a placement fee from the applicant provided that the applicant accepts within ninety calendar days from the date of referral the position for which the applicant was referred or the applicant accepts any position, other than that for which the applicant was referred, with the employer within thirty days of the referral.

(b) The schedule of placement fees shall include a statement that refunds shall be made promptly by the employment agency but no later than ten working days from the date the request is made by the person who has paid the fee and, further, that the refund shall be mailed to the person if it is so requested.

(c) An employer paid fee agency shall submit a fee schedule which states: "All fees paid by employers without any conditions or qualifications." [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-10, 373-11, 373-12)

§16-108-24 Size and posting requirements. The schedule of placement fees shall be printed or lettered in a size not less than eighteen printing points and the printing or lettering shall be in a legible style with adequate separation between lines. The effective date shall appear on all copies of the schedule and a copy of the approved fee schedule shall be posted in a conspicuous place within each agency including branch offices. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-8, 373-10)

§16-108-25 Effective date. The schedule, or change of schedule shall become effective upon approval of the director or the director's authorized representative provided that the director or the director's authorized representative shall approve or disapprove within sixty days after the schedule, or change of schedule, is filed. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-10)

## SUBCHAPTER 13

### PROHIBITED PRACTICES

§16-108-26 Prohibited practices. (a) No employment agency shall charge or collect any registration fee or advance payment for providing employment information, procuring employment for applicants, or procuring employees for placement with employers, or any fee which is greater than the applicable fee listed in its schedule of placement fees unless of benefit to and agreed upon, by full signature, in writing by the applicant.

(b) No employment agency shall charge or collect from an applicant a fee for placement within the employment agency.

(c) No employment agency shall charge or collect from an applicant any fee when placement is made with an employer, an agent, spouse, or person who has a financial interest in the employment agency.

(d) No employment agency shall charge or collect from an applicant any fee or portion of a fee in an "Employer Paid Fee" placement. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-10, 373-11)

## SUBCHAPTER 14

### RESTRICTIONS

§16-108-27 Sale of contracts. No employment agency shall sell any employment contract of an applicant to a finance company or other purchaser until after the temporary employment shall have run or permanent employment shall have been established. [Eff 8/20/81; comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §373-19)

## SUBCHAPTER 15

### SUSPENSION OR REVOCATION OF LICENSE

§16-108-28 Cause for suspension or revocation. The director may suspend or revoke the license of an employment agency for willful violation of the provisions of chapter 373, HRS, or any rules promulgated pursuant thereto, after a hearing conducted pursuant to chapter 91, HRS, and the uniform rules of administrative procedure of the department of commerce and consumer affairs. [Eff 8/20/81; am and comp 11/26/90] (Auth: HRS §373-19) (Imp: HRS §§373-11, 373-12, 373-13, 373-13.5, 373-14, 373-14.3)

## SUBCHAPTER 16

## ADMINISTRATIVE PROCEDURES

§16-108-35 Administrative practice and procedure. The rules of practice and procedure for commercial employment agencies shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs which are incorporated by reference and made a part of this chapter. [Eff and comp 11/26/90] (Auth: HRS §§91-2, 91-3, 91-8, 91-9, 373-19) (Imp: §§91-2, 91-9, 373-14.3)

Amendments to and compilation of chapter 16-108, Hawaii Administrative Rules, on the Summary page dated October 1, 1990, were adopted on October 1, 1990, following a public hearing held on September 6, 1990, after public notices were given in the Honolulu Star- Bulletin, Honolulu Advertiser, Maui News, West Hawaii Today, Hawaii Tribune-Herald on August 12, 1990, and the Kauai Times on August 10, 1990.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robert A. Alm  
ROBERT A. ALM  
Director of Commerce and Consumer Affairs

APPROVED AS TO FORM:      Date 10/15/90

/s/ Winfred K. T. Pong  
Deputy Attorney General

APPROVED:      Date 11/14/90

John Waihee  
JOHN WAIHEE  
Governor of Hawaii

November 15, 1990  
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-108  
Hawaii Administrative Rules

October 1, 1990

SUMMARY

1. Title amended.
2. §§16-108-1 through 16-108-5 are amended.
3. §16-108-6 is added.
4. §§16-108-7 and 16-108-8 are amended.
5. §§16-108-8.1 and 16-108-8.2 are added.
6. §16-108-9 is amended.
7. §§16-108-13 through 16-108-18 are amended.
8. §§16-108-21 through 16-108-26 are amended.
9. §16-108-28 is amended.
10. A new subchapter 16 (§16-108-35) is added.
11. Chapter 108 is compiled.