

13 NCAC 17 .0105 FEE REIMBURSEMENT

This Rule addresses requests for fee reimbursement by an applicant who accepts employment, the compensation for which is based, in whole or in part, on commission and who pays a fee based on the commission-based earnings.

- (1) Complaints Against Employers:
 - (a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a fee reimbursement from an employer in accordance with G.S. 95-47.3A(a) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.
 - (b) Contents of the Complaint. The complaint shall state the name and address of the employer complained against, the licensee's name and address, and shall fully detail the nature of the complaint.
 - (c) Copy of Complaint to Employer. When a complaint is filed, the Commissioner shall serve a copy of the complaint upon the employer complained against either personally, by certified mail, by overnight express, or faxed as long as the employer acknowledges receipt. Likewise, the Commissioner shall send a copy of the complaint by the same means to the licensee responsible for making the placement. The employer and the licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which either the employer or the licensee has in its possession concerning the particular complaint and other material as requested by the Division.
- (2) Complaints Against Private Personnel Services:
 - (a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a fee reimbursement where the private personnel service is responsible for any potential fee reimbursement in accordance with G.S. 95-47.4(h) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.
 - (b) Contents of the Complaint. The complaint shall state the name and address of the licensee complained against and shall fully detail the nature of the complaint.
 - (c) Copy of Complaint to Licensee. When the complaint is filed, the Commissioner shall serve a copy of the complaint upon the licensee complained against either personally, by certified mail, by overnight express, or faxed as long as the licensee acknowledges receipt. The licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which the licensee has in its possession concerning the particular complaint and other material as requested by the Division.
- (3) Investigation:
 - (a) The Commissioner shall investigate the complaint to determine whether the applicant is entitled to a fee reimbursement.
 - (b) If the employer is liable for a potential fee reimbursement, the burden of proof is on the employer to show that a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.
 - (c) If the private personnel service is liable for a potential fee reimbursement, the burden of proof is on the private personnel service to show that a statement in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.
 - (d) In addition, the Commissioner may consider such factors including, but not limited to, the following:
 - (i) What compensation other people in the same job as the applicant are making or have made;
 - (ii) The market and economy;
 - (iii) Competition.

The Commissioner shall look at these factors in the context of the complainant's job training, relative experience, number of hours worked, number of calls made in person or over the phone, and a determination of the complainant's ability and effort to do the job.

- (4) Determination. The Commissioner shall make a determination within 60 days from the date of the filing of the complaint and shall notify both the complainant, and either the licensee or the employer, as is appropriate, of the determination.
- (5) Hearing:
 - (a) Request for Hearing. Either party may file a written request for a hearing before the Commissioner within seven days from the receipt of notice of the Commissioner's determination.
 - (b) Notice of Hearing. Notice of the hearing shall be given in accordance with G.S. 150B-38.
 - (c) Conduct of Hearing.
 - (i) Parties may appear in their own behalf or be represented by counsel. When an attorney represents a party, he or she shall advise the Commissioner of his or her name, address and telephone number in advance of the hearing as soon as practicable after assuming representation.
 - (ii) All witnesses at the hearing shall testify under oath or affirmation.
 - (iii) The Commissioner may issue subpoenas requiring the attendance and testimony of witnesses and take depositions as deemed necessary.
 - (iv) Within 30 days after the conclusion of a hearing, the Commissioner shall render a decision in writing. Copies of the Commissioner's findings and order shall be sent by certified mail to the parties.
 - (v) A party aggrieved by the Commissioner's decision may seek a review of the decision in accordance with G.S. 150B-43 through G.S. 150B-52.

History Note: Authority G.S. 95-47.3A; 95-47.9;
Eff. February 27, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.