

13 NCAC 17 .0107 **CONTRACTS**

(a) **Types of Contracts.** There must be a contract for any service if a fee is charged to the applicant. An applicant may enter into either or both of the following types of contracts with a private personnel service:

- (1) A contract for employment placement with payment of a fee contingent on acceptance of employment;
- (2) A fee contract for services including, but not limited to, career and occupational counseling, resume and letter writing, networking assistance, interviewing techniques, job prospecting and salary negotiations.

(b) **Applicant to Receive Copy of Contract.** At the time of execution an applicant shall receive a copy of the contract signed by the applicant and the private personnel service.

(c) **Name of Applicant.** The applicant's name shall be typed or printed adjacent to the place for the applicant's signature.

(d) **Contract for Employment Placement.** All contracts for employment placement with an applicant shall set forth in clear and unambiguous terms the respective rights and obligations of the applicant and the private personnel service and shall include the following:

- (1) A statement of the fees to be charged the applicant at various salary levels;
- (2) If compensation is based, in whole or in part, on commissions, a description of how the private personnel service determines its fees;
- (3) An explanation of when the applicant becomes obligated to pay a fee;
- (4) Where the private personnel service has no refund policy, yet compensation is based, in whole or in part, on commissions, the private personnel service must give further information to the applicant in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). It shall inform both the applicant and the employer in writing of the provisions of G.S. 95-47.3A governing fee reimbursements from employers;
- (5) If the private personnel service chooses to be liable for any potential fee reimbursement under G.S. 95-47.3A, the service must provide to the applicant a clear description of how it provides the fee reimbursement. This description must be provided in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). The following is sample language that will fulfill this requirement:
REIMBURSEMENTS. If the applicant pays a service fee which is based, in whole or in part, on commissions and the applicant fails to earn at least 80 percent of the compensation amount stated by the employer in the job order, the applicant may file a written complaint with the Department of Labor in accordance with G.S. 95-47.3A. (Name of private personnel service) shall only pay a reimbursement within 10 days of receiving a written final determination from the Department of Labor that a reimbursement is due.

(e) **Contract for Other Services.** All contracts for other services with an applicant shall include the following:

- (1) A statement of what services will be provided and the fees for the various services;
- (2) A statement that the applicant becomes obligated to pay a fee once the service(s) is/are provided;
- (3) A statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services.

(f) **Definitions.** If the following undefined terms or provisions are used in a contract with an applicant, they shall be deemed to have the following meanings:

- (1) **Acceptance** - A position is accepted when the applicant begins work or agrees to begin work on a fixed date at an agreed remuneration for a specific employer.
- (2) **Placement or Employment** - All placements or employment shall be considered to be of an indefinite term unless clearly disclosed in the closing document.
- (3) **Fee or Service Charge** - The amount charged the applicant for any services rendered by the private personnel service.
 - (A) A fee or service charge for employment placement is due:
 - (i) When the applicant accepts employment as a result of a referral to an employer by the private personnel service within one year after the referral.
 - (ii) When the applicant fails to secure or does not accept the position to which the applicant was originally referred, but accepts another position with the employer or with another employer to whom the first employer refers the applicant within one year as a result, directly or indirectly, of the original referral.

- (B) A fee or service charge for any other service is due after the service is rendered.
- (4) Fee Schedule - A percentage or set fee on file with, and clearly stated in a manner approved by, the Commissioner for all fees to be charged the applicant.
- (5) Base Salary or Earnings - A fixed compensation for services paid to a person on a regular basis.
- (6) Termination of Employment:
 - (A) Termination by employer - An employee may be considered at fault for the following reasons (also includes termination for cause, discharge for just cause, and similar language):
 - (i) Willful absence from duty;
 - (ii) Having been convicted, subsequent to his or her employment, of a crime reflecting upon his or her employment;
 - (iii) Being impaired by alcohol or a controlled substance on the job;
 - (iv) Being disorderly or insubordinate on the job;
 - (v) Violating written company policies or rules;
 - (vi) Misrepresenting or withholding, without the knowledge of the licensee, any information regarding the applicant's ability to perform an essential core function with or without an accommodation.
 - (B) Termination by employee - An employee has "just cause" (also includes reasonable cause, good cause, justification, and similar language) for voluntarily terminating employment within the length of time upon which the fee was based and is due a prorated refund of the fee (if the private personnel service has a refund policy) when the conditions of employment were either knowingly misrepresented or withheld from the applicant by the private personnel service and said conditions would have, if known at the time of acceptance, caused the applicant to have reasonably refused employment. Such conditions of employment shall include, but not be limited to:
 - (i) Probationary or trial periods;
 - (ii) Bankruptcy or cessation of operation by the employer;
 - (iii) Failure to pay wages when due;
 - (iv) Conditions at the place of employment which are injurious to the employee's health or safety;
 - (v) Change in remuneration or lower status than was agreed to when the position was accepted.

In calculating the prorated refund, the length of time upon which the fee was based will be determined in days and that number of days will be divided into the fee to calculate the fee paid per day. Then the amount of the refund will be calculated by multiplying the number of days worked by the fee paid per day and subtracting the result of that multiplication from the total fee paid. For example, the calculation would be as follows: the fee paid by the applicant was three thousand six hundred and fifty dollars (\$3,650) and the length of time upon which the fee was based was one year (beginning January 1) so the fee paid per day was ten dollars (\$10); the applicant worked January 1 through June 30 or 181 days. The number of days worked times the fee paid per day is one thousand eight hundred and ten dollars (\$1,810) which is subtracted from the fee three thousand six hundred and fifty dollars (\$3,650) for a refund due of one thousand eight hundred and forty dollars (\$1,840).

(g) Refund Policy. A private personnel service shall abide by the refund policy (if any) stated on its contract by paying any refund due under the terms of the contract within 15 days of:

- (1) Receiving a request from any applicant; or
- (2) If the refund is in dispute, upon receiving a written final determination that a refund is due. Such determination may be issued by the Commissioner, an arbitrator, or a court of law.

History Note: Authority G.S. 95-47.3; 95-47.4; 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.