

## SECTION .0100 – PRIVATE PERSONNEL SERVICES REGULATIONS

### 13 NCAC 17 .0101 DEFINITIONS

As used in G.S. 95, Article 5A and this Chapter, unless the context clearly requires otherwise:

- (1) "Accept an employer's offer of employment," as used in G.S. 95-47.1(1), means to consent orally or in writing to take the job the employer is offering. This offer or acceptance may be made directly between the employer and the applicant or may be communicated through a representative of the private personnel service acting as the applicant's agent.
- (2) "Advertising" means any material or method used by a private personnel service for solicitation or promotion of business. This includes, but is not limited to, newspapers, radio, television, the internet, business cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.
- (3) "Communication," as used in G.S. 95-47.1(4), means a written communication.
- (4) "Days" means calendar days.
- (5) "Division" means the Private Personnel Service Office of the North Carolina Department of Labor.
- (6) "Employer fee paid personnel consulting service" means any business that consults with employers in locating and placing employees where the sole obligation for the placement fee is assumed by the employer in all circumstances and the applicant is never obligated for the fee, directly or indirectly, even if the applicant quits or is terminated for cause.
- (7) "Employment agency" or "agency" means a private personnel service as defined in G.S. 95-47.1(16).
- (8) "Existing licensed business," as used in G.S. 95-47.2(f), means any existing licensed private personnel service or job listing service.
- (9) "Indirectly" being responsible for a fee to a private personnel service includes the applicant paying, or repaying, any portion of the fee paid to the private personnel service by the employer or any other person.
- (10) "Material information," as used in G.S. 95-47.2(d)(3)a, and the rules in this Section means any facts or knowledge that are relevant to operating a private personnel service.
- (11) "Meeting between an employer and an applicant" as used in G.S. 95-47.1(10) and the rules in this Chapter includes but is not limited to interviews in person, conducted by telephonic conference, video conference, or other electronic means.
- (12) "Operate" means to engage in the business of a private personnel service within the State of North Carolina. Within the State of North Carolina includes, but is not limited to, any of the following:
  - (a) Property, offices, or employees located in North Carolina;
  - (b) Use of a North Carolina phone number;
  - (c) Use of a North Carolina address;
  - (d) Interviewing applicants in North Carolina;
  - (e) Placing applicants in North Carolina;
  - (f) Collecting money from applicants in North Carolina;
  - (g) Directing North Carolina applicants to interviews;
  - (h) Directing applicants to interviews with North Carolina employers; and
  - (i) Advertising in North Carolina.
- (13) "Partnership" and "corporation," when used in the context of owners of a private personnel service, mean any similar state-chartered legal entity. Examples of similar state-chartered legal entities include, but are not limited to, limited liability partnerships and limited liability corporations.
- (14) "Person who uses or attempts to use the services of a private personnel service" as used in G.S. 95-47.1(2) includes applicants without regard to how or by whom the contact between the applicant and the private personnel service is initiated.
- (15) "Premises," as used in G.S. 95-47.2(d)(3)c., means the property occupied by any owner or manager of the private personnel service where the business of the private personnel service is conducted. Two businesses occupy the same premises if a person can move from one to the other without traveling through a public area available to non-customers.
- (16) "Private personnel service industry" means all private personnel services that are or may be required to be licensed to operate in the State of North Carolina.

- (17) "Refund policy" means a voluntary refund policy adopted by the private personnel service. It does not mean the fee reimbursement provisions mandated by G.S. 95-47.3A and such a fee reimbursement shall not be considered as a refund policy which would trigger operation of the "Termination of Employment" provisions under Rule .0107(f)(6) of this Section.
- (18) "Responsible for the operation" means to conduct the daily administrative functions required to direct and control the business. This includes, but is not limited to, current and ongoing knowledge and oversight of the following: all placement functions; hours the business operates; hiring, supervision, and dismissal of the business' personnel; the finances and financial records of the business; advertising; job orders; compliance with G.S. 95, Article 5A; and the needs of applicants and employers who work with the business to receive placement and hiring assistance. It further means that the person is available during working hours to answer questions and respond to the needs of applicants, employers, the business' own employees, and the Private Personnel Service Office.
- (19) Except in G.S. 95-47.2(d)(1), in G.S. 95-47.2(d)(3)b.2 and in G.S. 95-47.2(d)(3)b.3, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5A and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5A and G.S. 150B.
- (20) "Temporary help service" means any business which employs persons whom it assigns to assist its customers. The employer-employee relationship exists between the temporary help service and the employee. If a temporary help service ever charges the employee a fee for help in securing employment with an employer other than itself, then the service is a private personnel service.

*History Note:* Authority G.S. 95-47.9;  
 Eff. February 27, 1995;  
 Amended Eff. April 1, 2001;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 17 .0102 LICENSING PROCEDURES**

(a) Each application for a private personnel service license shall be made on forms prescribed and furnished by the Commissioner and shall contain the following information in addition to the information required by G.S. 95-47.2:

- (1) The proposed mailing address, and telephone number of the private personnel service;
- (2) Four personal or business references who are not related to or currently employed by the applicant;
- (3) Whether the private personnel service will be affiliated in any way with a loan agency or collection agency;
- (4) Whether the private personnel service will operate under a franchise agreement;
- (5) Whether the applicant, owner, officer, director or manager ever made an application for a license to operate a private personnel service in North Carolina or elsewhere;
- (6) Whether the applicant, owner, officer, director or manager ever had a license revoked, suspended, or refused, or has been subjected to any disciplinary action by any governmental body;
- (7) Whether the applicant, owner, officer, director or manager has ever been convicted of a crime other than parking violations and misdemeanor traffic offenses;
- (8) Whether the applicant, owner, officer, director or manager of the service has any additional ownership investment interest in other businesses;
- (9) The name and address of a newspaper of general circulation in the area where the applicant now resides;
- (10) A copy of all contracts and forms to be used with applicants;
- (11) A copy of the fee schedule and a copy of the refund policy (if applicable) used with persons seeking employment and employers;
- (12) If the applicant is a corporation, a copy of the Articles of Incorporation;
- (13) If the applicant is a partnership, a copy of the Partnership Agreement;
- (14) The Surety Bond required by G.S. 95-47.2(j); and
- (15) Any other names, aliases, assumed business names, trade names, or doing business as ("DBA") names under which each applicant has operated.

(b) Assumed Name or Assumed Business Name. If the private personnel service has filed an assumed name with the register of deeds in its county, as required by North Carolina law (G.S. 66-68), the owner must notify the Division in writing of the assumed name. This notification shall be considered a request for an amendment to the application.

(c) Release of Information Authorization:

(1) By applicant:

(A) Each applicant for a private personnel service license shall sign a Release of Information authorizing the Commissioner to conduct a personal background investigation for purposes of determining the applicant's suitability to operate a private personnel service.

(B) The release shall be executed before a notary public.

(2) By officer, director or manager:

(A) The officer, director or manager of a private personnel service, not covered by Subparagraph (d)(1) of this Rule, shall sign a Release of Information authorizing the Commissioner to conduct a criminal background investigation for purposes of determining the suitability of that person to operate a private personnel service.

(B) The release shall be executed before a notary public.

(d) Interview with the Division. Each individual applicant shall come to the Division for an interview as part of the application process.

(e) Right to Protest. Individuals have a right to protest the issuance of a license in accordance with G.S. 95-47.2(d)(1):

(1) In determining whether the protest is of such a nature that a hearing should be conducted and for a cause on which denial of a license may properly be based, the Commissioner will look to the reasons for denying a license found in G.S. 95-47.2(d)(3) and G.S. 95-47.2(e).

(2) The hearing shall be conducted in accordance with the provisions of G.S. 150B-38 through G.S. 150B-42.

(f) Denial of License. Upon completion of the investigation, the Commissioner shall determine whether or not a license should be issued. In addition to the reasons for denial in G.S. 95, Article 5A, a license shall be denied if the applicant has failed to submit all of the necessary information and paperwork which is described under Licensing Procedures in Rule .0102 of this Chapter.

(g) Notice of Approval. If the Commissioner approves a private personnel service license, the applicant shall be notified and the license shall be issued.

(h) Notice of Opportunity to Withdraw:

(1) If the application for a license is incomplete, the applicant shall be notified by telephone of this fact at least seven days prior to the end of the 30 day investigative period. The applicant may either complete the application within that seven days or withdraw the application.

(2) If the applicant elects to withdraw the application, the Division will deem any supporting documents which the Division has obtained, such as the criminal background check and references, current for an additional 30 days within which time the applicant may refile the application.

(3) Failure to withdraw an incomplete application (one that omits material information) before the end of the original 30 day investigative period shall result in the denial of a private personnel service license. However, the applicant may re-apply.

(i) Notice of Denial. If the Commissioner denies a private personnel service license, the applicant shall be notified of this fact by certified mail sent to his or her last known address.

*History Note: Authority G.S. 95-47.2; 95-47.3; 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.*

### **13 NCAC 17 .0103 DURATION AND RENEWAL OF LICENSE**

(a) Period Issued. A license to operate a private personnel service shall be valid for one year from the date of issuance, which is the date that appears on the actual license.

(b) Renewal:

(1) At least 60 days prior to the date of expiration, the Commissioner shall notify each licensee in writing of the expiration of the license.

- (2) Renewal applications, completed on a form provided by the Private Personnel Service Office, shall be submitted to the Private Personnel Service Office at least 30 days prior to the expiration date of the license. The renewal application shall be executed before a notary public and shall include all material changes in the operation of the private personnel service from the latest application for licensure or renewal or shall certify that no such changes have occurred.
- (3) The Commissioner shall deny the application for renewal of license if any grounds exist that would have caused denial of the original license application or if the private personnel service has any unrectified violations of G.S. 95, Article 5A or the rules in this Section.

*History Note: Authority G.S. 95-47.2; 95-47.9;  
Eff. February 27, 1995;  
Amended Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **13 NCAC 17 .0104 CHANGE OF PRIVATE PERSONNEL SERVICE STATUS**

**(a) Change of Private Personnel Service Name:**

- (1) Licensees desiring to change the name of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) In addition, the licensee must obtain a rider to the surety bond showing the new name and submit it to the Division before the new name can become final.
- (3) In addition, when a change in name requires a new filing of an assumed business name, a copy of the new filing must be provided to the Commissioner before the new name can become final.
- (4) A change in the name does not require a new license, only an amendment to the current license.
- (5) After completion of the requirements in this Paragraph, the licensee shall return his current license to the Division for such amendment and reissuance.

**(b) Change of Private Personnel Service Location:**

- (1) Licensees desiring to change the location of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) A change in the location of the private personnel service does not require a new license, only an amendment to the current license.
- (3) The licensee shall return his current license to the Division for such amendment and reissuance.

**(c) Assignment/Transfer of License:**

- (1) Licensees desiring to assign or transfer their license to a new owner must give the Commissioner 30 days advance written notice.
- (2) In addition, the proposed new owner must file an application for license with the Commissioner and obtain a new surety bond.
- (3) After completion of the requirements in this Paragraph, the Commissioner shall issue a temporary license in accordance with G.S. 95-47.2(i).

**(d) Relinquishment of License. Licensees desiring to relinquish their license must:**

- (1) Notify the Commissioner in writing;
- (2) Return the actual license to the Division; and
- (3) Comply with the provisions in G.S. 95-47.5 and Rule .0109 of this Chapter.

**(e) Cancellation of the Bond by the Surety:**

- (1) Upon receipt of a Notice of Cancellation of the bond by the surety, the Commissioner shall advise the licensee in writing of such cancellation. The Division must receive a new bond prior to the effective date of cancellation of the existing bond.
- (2) If a new bond is not received prior to the cancellation of the existing bond, the Commissioner shall advise the licensee in writing that the Commissioner will seek injunctive relief to suspend operation of the private personnel service under G.S. 95-47.10 pending receipt of the surety bond required by G.S. 95-47.2(j).
- (3) Failure to maintain the surety bond at all times shall be grounds for revocation of the license by the Commissioner.

**(f) Disassociation of Manager:**

- (1) Should any manager become disassociated with a licensee for any reason, the licensee shall notify the Commissioner of this fact within 10 days and shall at that time designate another manager

- unless there was more than one manager and the remaining manager(s) will be managing the private personnel service without replacement of the disassociating manager.
- (2) A newly designated manager shall sign a Release of Information authorization pursuant to Rule .0102 of this Chapter.
  - (3) Upon completion of the investigation and approval of the newly designated manager, the licensee shall return his current license to the Division for such amendment and reissuance.

*History Note: Authority G.S. 95-47.2; 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.*

### **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.

### **13 NCAC 17 .0106 JOB ORDERS**

(a) Bona Fide Job Order Required. No private personnel service shall offer or hold itself out as being able to secure a specific position of employment for an applicant without having a bona fide job order. A bona fide job order is one which:

- (1) Is recorded on a form;
- (2) Contains, at a minimum, the following:
  - (A) Name and title of the person communicating the job order to the private personnel service;
  - (B) Date recorded or last verified, whichever is most recent;
  - (C) Name and address of the employer;
  - (D) Job title and requirements;
  - (E) Wages or salary, including any bonus that is included in the stated anticipated annual earnings;
  - (F) Anticipated hours worked;
  - (G) Any compensation that is based on commission;
  - (H) Whether it is the applicant or the employer that is responsible for the placement fee; and

- (1) Name of the person recording the job order.
- (b) Private Personnel Service Responsible for Explaining Conditions of Employment. At a minimum, the private personnel service shall fully disclose to the applicant all of the required information in Subparagraph (a)(2) of this Rule. The private personnel service shall ask the employer for the following information, at a minimum, and shall disclose it to the applicant if received from the employer:
  - (1) Name and title of person to whom the applicant is to report for an interview;
  - (2) Requisite education and experience; and
  - (3) All known conditions of employment, including regular and overtime wages, commissions, benefits, hours, work schedule, whether overtime is expected, whether overtime is included in the expected annual earnings and actual days worked per week.
- (c) Disclosure requirements. Disclosure required by this Rule shall occur prior to the applicant's interview with the employer. The private personnel service shall base its disclosure upon documents received from the employer or conversations with the employer which shall be reduced to writing. Disclosure shall be accurate to the best of the private personnel service's knowledge.
- (d) Commission-based Compensation:
  - (1) If an applicant is to be compensated, in whole or in part, by commissions and the employer will be responsible for a potential fee reimbursement, then the job order must also be signed by the employer.
  - (2) A private personnel service may, however, forego the written job order requirement if it is willing to assume liability for a potential fee reimbursement in accordance with G.S. 95-47.4(f) and G.S. 95-47.4(h)(2).
- (e) Job Order Verification. At least once a month, the private personnel service shall verify job orders for which applicants are referred or for which advertisements are placed.

*History Note: Authority G.S. 95-47.3A; 95-47.6; 95-47.9;  
Eff. February 27, 1995;  
Amended Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **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.

### **13 NCAC 17 .0108 RECORDS**

(a) Job Orders or Job Specifications. Every private personnel service shall maintain records of job orders or job specifications for two years from the date on which the job order was last verified.

(b) Licensees Going Out of Business. If a licensee goes out of business records must be maintained pursuant to this Rule. Those records must be available to the Commissioner and the licensee must inform the Commissioner in writing as to where its records will be kept.

*History Note:* Authority G.S. 95-47.5; 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.

### **13 NCAC 17 .0109 ADVERTISING**

(a) Bona Fide Job Order Required. No licensee shall publish or cause to be published any advertisement soliciting persons to register for a specific job unless the licensee has on file a bona fide job order covering all known conditions of employment set forth in the advertisement.

(b) False or Misleading Advertisements. No licensee shall circulate any false or misleading information by advertisements or make any statements known to be false to any applicant or employer.

(c) Advertising of Salaries. All salaries, where the dollar amount is advertised, must be substantiated by the job order.

*History Note:* Authority G.S. 95-47.6; 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.

### **13 NCAC 17 .0110 PROHIBITED ACTS**

A private personnel service shall not engage in any of the following activities or conduct:

- (1) Accept an advance fee from an applicant for any of its services;

- (2) Coerce an applicant into accepting employment by applying or using duress, undue influence, fraud or misrepresentation.

*History Note:* Authority G.S. 95-47.6; 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.

**13 NCAC 17 .0111 PENALTY**

Any fine levied pursuant to G.S. 95-47.9(d) shall be in the amount of two hundred and fifty dollars (\$250.00).

*History Note:* Authority G.S. 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.

**SECTION .0200 - GENERAL PROVISIONS**

**13 NCAC 17 .0201 ACCEPTING FEES FROM APPLICANT AND EMPLOYER**

If a private personnel service accepts a fee in a single placement from both an applicant and an employer it shall disclose that fact and the fact that it does not represent the applicant exclusively to the applicant. The required disclosures shall be in writing.

*History Note:* Authority G.S. 95-47.2; 95-47.6;  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

**13 NCAC 17 .0202 ACTIVITIES OF BUSINESS CONSIDERED TO BE A PRIVATE PERSONNEL SERVICE**

(a) A business that engages in the activities below, and is not covered by G.S. 95-47.1(16)a (16)f; shall be considered to be a private personnel service if it:

- (1) operates in North Carolina;
- (2) operates for profit or is a nonprofit business that charges a fee;
- (3) holds, or may hold, the applicant liable for a direct or indirect fee to the business; and
- (4) performs one of the following:
  - (A) secures employment for the applicant with any employer other than itself; or
  - (B) by any form of advertising, holds itself out to applicants as able to:
    - (i) secure employment with any employer other than itself; or
    - (ii) provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself.

(b) "Secure [or secures] employment for the applicant," as used in Items (a)(4)(A) and (a)(4)(B)(i) of this Rule means find work or a job in any location or for any duration. Examples of a business that secures employment for an applicant may include: employment agency; staffing service; model or talent agency; job listing service; escort service; computer consultant; nurses pool; nurses service; medical care service such as respiratory therapist or home health care agency; companion care service; home, pet, or baby sitting service; nanny or au pair agency; outplacement service; head hunter; retained search business; contingency search business; employee leasing service; career coach; career consultant; or temporary service.

(c) Examples of activities that "provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself" as used in Subpart (a)(4)(B)(ii) of this Rule shall include, but not be limited to, the following:

- (1) recommending a specific potential employer to an applicant;
- (2) preparing a résumé or cover letters to be sent to an employer suggested or recommended by the business;

- (3) setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
  - (4) counseling an applicant on techniques for job search, interview, salary or benefits negotiations, or any other job seeking methodology to be used with a potential employer suggested or recommended by the business;
  - (5) advertising to applicants that the business can help the applicant find employment. Examples of such advertising include: "job hunting?" "help people find a job;" "open the floodgates to employment opportunity;" "take care of the pragmatic details of career research" or "take care of creation of a client's personal marketing materials" where the business suggests specific potential employers; provides access to "inside job leads," "unpublished information," or the "hidden job market;" or provides "outplacement;" or
  - (6) conducting industry research for an applicant in order to determine specific potential employers.
- (d) The name of the business, or description of services the business offers, does not control whether the Commissioner finds the service to be a private personnel service.

*History Note:* Authority G.S. 95-47.1; 95-47.4; 95-47.6;  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 17 .0203      RESERVED FOR FUTURE CODIFICATION**

### **13 NCAC 17 .0204      REVIEW OF LICENSEE'S RECORDS**

In matters relating to complaints, licensure and re-licensure, the license applicant or private personnel service shall permit the Commissioner to inspect records required by G.S. 95, Article 5A and the rules in this Chapter.

*History Note:* Authority G.S. 95-47.2; 95-47.3A; 95-47.5; 95-47.6; 95-47.8; 95-47.9; 95-47.14; 95-47.15;  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.

### **13 NCAC 17 .0205      DISCLOSURE OF FINANCIAL RELATIONSHIPS**

Unless clearly disclosed in writing in advance, the private personnel service shall not, directly or indirectly, receive a fee from a collection agency (as defined in G.S. 58-70-15) or a loan agency (as defined in G.S. 105-88).

*History Note:* Authority: G.S. 95-47.2; 95-47.3; 95-47.3A; 95-47.4; 95-47.6; 95-47.9;  
Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.