

454 CMR 24.00: EMPLOYMENT AGENCY AND TEMPORARY WORKERS RIGHT TO KNOW REGULATIONS

Section

- 24.01: Purpose and Scope
- 24.02: Definitions
- 24.03: Requirements for Licensure of Employment Agencies and Registration of Placement Agencies
- 24.04: Application Requirements for Employment Agencies and Placement Agencies
- 24.05: Application Procedures and Pre-requisites for Issuance of Employment Agency Licenses
- 24.06: Renewal of Employment Agency Licenses and Placement Agency Registrations
- 24.07: Information Required to Be Furnished to Job Applicants or Workers by Employment Agencies
- 24.08: Information Required to Be Furnished to Job Applicants or Workers by Staffing Agencies
- 24.09: Provisions and Restrictions Relating to Applicant Fees and Client Fees and Charges Assessed by Employment Agencies
- 24.10: Provisions and Restrictions Relating to Charges by Staffing Agencies and Work Site Employers
- 24.11: Requirements and Restrictions Relating to the Placement of Domestic Employees by Employment Agencies
- 24.12: Unlawful Practices by Employment Agencies
- 24.13: Unlawful Practices by Staffing Agencies
- 24.14: Record-keeping Requirements
- 24.15: Limitations on Transportation Expenses Charged by Work Site Employers and Agencies
- 24.16: Inspections Conducted by the Department
- 24.17: Complaints
- 24.18: Revocation, Suspension of License
- 24.19: Violations of the Employment Agency Statute: Civil Administrative Penalty
- 24.20: Violations of the Temporary Workers Right to Know Law
- 24.21: Confidentiality
- 24.22: Severability

24.01: Purpose and Scope

454 CMR 24.00 governs matters relating to the operation, licensing and registration of permanent and temporary staffing agencies, and to implement the requirements of the Temporary Workers Right to Know Law.

24.02: Definitions

Applicant Fee. Any money or other valuable consideration paid or promised to be paid either by a job applicant or worker to an agency for the purpose of procuring or attempting to procure permanent or temporary help or employment or engagement, or for receiving information as to where and of whom such help, employment or engagement may be procured.

Application. A form prescribed by the director to be completed by any person applying to be licensed as an employment agency or registering as a placement agency doing business in Massachusetts.

Bona Fide Order. A written authorization by a client for the provision of services by a Staffing Agency, which shall include the specifics of the employment, engagement, work assignment, or job, including, but not limited to, the anticipated wages or compensation, the agency fee, and the expected daily starting time and anticipated end time and duration of the engagement. An email or written record of a telephone call shall be considered to be a *bona fide* work order, provided that the employment agency additionally records the name of the client, the contact person with whom the agency representative communicated and the date and time of the conversation or email.

Certificate of Registration. A document issued by the director to a Placement Agency indicating that said agency has submitted a completed initial or renewal application for registration, as applicable, that includes all submissions and documentation specified in the application.

Client. Any individual, business, organization, or entity that utilizes the services of an agency to obtain help.

24.02: continued

Client Fee. Any money or other valuable consideration paid or promised to be paid by a client to an agency for the purpose of compensating the agency for the provision of its services.

Complaint. A written protest against any person or entity alleging a violation of the Employment Agency Statute or the Temporary Workers Right to Know Law or 454 CMR 24.00.

Complainant. Any person filing a complaint under the Employment Agency Statute or the Temporary Workers Right to Know Law or 454 CMR 24.00.

CORI. Criminal Offender Record Information as provided by the Massachusetts Department of Criminal Justice Information Services (DCJIS).

Department. The Department of Labor Standards.

Director. The Director of the Department of Labor Standards.

Domestic Employee. Any worker who is paid directly by a household, family, or individual to perform work of a domestic nature, including, but not limited to, housekeeping, home management, nanny services, child monitoring, caretaking, laundering, cooking, home companion services, house sitting, and butler services for members of households or their guests in or about private homes. Domestic Employee does not include a person who performs services of a domestic nature as an employee of the business that places him or her, or a licensed medical professional, such as a medical doctor, registered or licensed practical nurse, or similarly trained and licensed individual who performs services relating to the delivery of specialized medical care.

Emigrant Agent. Any person who, on behalf of an Employment Agency and for a fee, procures or attempts to procure:

- (a) domestic or household employment in the Commonwealth for persons outside the Commonwealth who are seeking such employment; or
- (b) domestic employees from outside the Commonwealth for employers in the Commonwealth who are seeking to hire such employees.

Employee. An individual employed directly by an employer, including by a staffing agency, or an individual for whom an agency procures or arranges employment for a worksite employer.

Employer. An individual, company, corporation, partnership, or other entity that directly or indirectly engages the services of an employee or employees.

Employment Agency. Any person, business or entity engaged in the business, or organized for the purpose, of procuring or attempting to procure permanent or temporary help, employment or engagements, that meets any of the following three criteria:

- (a) Charges a fee to applicants or workers for procuring or attempting to procure permanent or temporary employment or engagements;
- (b) Procures or attempts to procure temporary or part time engagements or work assignments for domestic employees; or
- (c) Procures or attempts to procure temporary or part time engagements or work assignments for models.

An Employment Agency must be licensed by the Department of Labor Standards.

Employment Agency License. A license duly issued by the director to permit a person to operate an Employment Agency, as defined in 454 CMR 24.02: Employment Agency, subject to M.G.L. c. 140, §§ 46A through 46R and 454 CMR 24.00.

Employment Agency Statute. The employment agency statute, M.G.L. c. 140, §§ 46A through 46R.

Engagement. A period of employment as defined in M.G.L. c. 140, §§ 46A through 46R, or work which by its nature lasts for a limited period of time including, but not limited to, modeling engagements.

24.02: continued

Help. Any individual who performs work under the direction of another person or entity, for wages, regardless of whether the individual is an employee of that other person or entity, or whether the individual's wages are paid by that other person or entity, or are paid by a third party.

Job Applicant. An individual who an agency has referred or recommended for employment, engagement, a work assignment, or a job.

Job Application. A document completed by a person seeking employment, engagement, a work assignment, or a job or the process of applying for employment, engagement, a work assignment, or a job.

Job Order. A written notice given to a Job Applicant or Worker by the Agency describing the specifics of the employment, engagement, work assignment, or job, which shall include the information required to be furnished by Employment Agencies as set forth in 454 CMR 24.07, or the information required to be furnished by Staffing Agencies as set forth in 454 CMR 24.08.

License Applicant. A person applying for an Employment Agency License.

Licensee. A person who has been issued an Employment Agency License.

Model. Any worker who: wears, promotes, or displays garments or other items for the purpose of promotion or advertising; engages in product or industry promotions other than those related to garments or fashion to convey an image, vision, or idea; or demonstrates, displays, or provides merchandise or products to promote, market, publicize, sell, or increase consumer awareness.

Modeling Agency. An agency that procures or attempts to procure temporary or part time employment, engagements, or work assignments, for models.

Owner. Any person who owns an employment agency. In the case of a sole proprietorship, the owner shall be the sole proprietor; in the case of a partnership, any partner; and in the case of a corporation, the president and treasurer.

Person. Any individual, company, society, association, corporation, manager, contractor, subcontractor, or their agents or employees. For the purposes of the Employment Agency Statute only, Person, shall not include any labor organization, as defined in M.G.L. c. 150A, § 2; nor any agency operated by a religious, charitable, nonprofit organization, or accredited educational institution no part of the earnings of which inures to the benefit of any private shareholder or individual; nor any agency operated by the federal, state or municipal governments; nor any person validly licensed pursuant to M.G.L. c. 140, § 180C.

Placement Agency. Any person, business or entity engaged in the business, or organized for the purpose, of procuring or attempting to procure permanent or temporary help, employment or engagements, that do not meet the criteria necessary to be considered "employment agencies". Placement Agencies must be registered with, although need not be Licensed by, the Department of Labor Standards.

Professional Employee. An employee as defined in 29 U.S.C. § 152 (12). Any applicant or worker engaged in work:

- (a) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
- (b) involving the consistent exercise of discretion and judgment in its performance;
- (c) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (d) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or any employee, who:
  1. has completed the courses of specialized intellectual instruction and study described in 454 CMR 24.02: Professional Employee(d); and

24.02: continued

2. is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in 454 CMR 24.02: Professional Employee(a) through (d).

Examples of fields of science or learning may include law, medicine, theology, accounting, actuarial computation, engineering, information technology, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status. An employee must satisfy all the requirements of 454 CMR 24.02: Professional Employee(a) through (d) 1. and 2. to qualify as a professional employee; merely working in a field of science or learning is insufficient.

An employee does not have to be paid on a salaried basis to qualify as a professional employee.

Registration. The submission to the department by a placement agency of a completed initial or renewal registration application.

Registration Applicant. A person applying for Placement Agency registration.

Respondent. A person responding to a complaint or enforcement action issued by the department.

Retaliate. Any adverse action taken against a worker or job applicant by a work site employer or agency on account of such person exercising his or her rights under the Temporary Workers Right to Know Law, including, but not limited to discharging or firing a worker, discriminating against a worker or job applicant by demotion, scheduling changes or the like, assaulting a worker or job applicant, giving false negative references about a worker or job applicant regarding future work or assignments, or threatening a worker or job applicant's family with these or other negative consequences or harm.

Secretary or Administrative Assistant. An employee whose main or primary duties are described by the bureau of labor statistics of the United States Department of Labor as involving one or more of the following: drafting or revising correspondence, scheduling appointments, creating, organizing, and maintaining paper and electronic files and providing information to callers or visitors. A secretary or Administrative Assistant is exempt from the Temporary Workers Right to Know requirements, pursuant to 454 CMR 24.08.

Staffing Agency. An individual, company, corporation, or partnership that procures or provides temporary or part-time employment to an individual who then works under the supervision or direction of a worksite employer. All agencies send individuals to work sites; however, not all workers may be under the supervision or direction of a worksite employer. A Staffing Agency is subject to the Temporary Workers Right to Know Law and is either a licensed Employment Agency or a registered Placement Agency.

Temporary Employment. For the purposes of the Employment Agency Statute only, "any employment, engagement, work assignment, or job lasting fewer than ten weeks in duration."

Temporary Workers Right to Know Law. M.G.L. c. 149, § 159C.

Work Site Employer. An individual, company, corporation, or partnership with which an agency contracts or otherwise agrees to furnish persons to perform work.

Worker. Any individual hired, referred, recommended, placed, or sent to perform work.

#### 24.03: Requirements for Licensure of Employment Agencies and Registration of Placement Agencies

(1) Requirement for Licensure of Employment Agencies. No Person shall advertise, operate or maintain an Employment Agency in Massachusetts unless that Person is in possession of a current Employment Agency License issued pursuant to 454 CMR 24.04, regardless of whether or not said Person has an office for conducting Employment Agency work in Massachusetts.

24.03: continued

- (2) Requirement for Registration of Placement Agencies. Placement Agencies, as defined in 454 CMR 24.02, shall be registered in accordance with 454 CMR 24.04.
- (3) Names and Locations. Each name and each location being advertised, operated, or maintained by an Employment Agency must be individually licensed. Each name and each location being advertised, operated, or maintained by a Placement Agency must be individually registered.
- (4) Theatrical Booking Agencies. A theatrical booking agency, as defined at M.G.L. c. 140, § 180A, that also places Models, must, in addition to being licensed under M.G.L. c. 140, § 180C, be duly licensed with the Department as an Employment Agency or registered as a Placement Agency, as applicable.

24.04: Application Requirements for Employment Agencies and Placement Agencies

- (1) Requirement for Submission of a Completed Application for Licensure or Registration. An Owner of an Agency engaging in the activities of an Agency, including but not limited to recruiting workers, soliciting clients, or advertising such services in Massachusetts shall submit to the Department a completed Application for Employment Agency License or Placement Agency Registration with all required attachments on a form prescribed by the Director.
- (2) Information Required for Initial Employment Agency License Application. Applicants for an initial Employment Agency License shall submit the following information on or with the initial application form:
- (a) name of the Agency;
  - (b) name under which business will be conducted;
  - (c) physical and mailing addresses of the Agency. Persons wishing to use a post office box for mailing or public information purposes must specify to the Department the actual address where records will be kept and business will be conducted;
  - (d) name and address of the Agency Owner;
  - (e) copy of a government-issued photo identification for the Agency Owner;
  - (f) evidence that the person is properly registered as a business with local or state government as required by law;
  - (g) federal tax identification number;
  - (h) name of the Agency manager;
  - (i) types of jobs or Engagements which the Agency will refer or assign Job Applicants or Workers;
  - (j) information relating to any Applicant Fees or charges assessed to Job Applicants or Workers by the Agency;
  - (k) information relating to how Job Applicants or Workers are paid;
  - (l) certification of compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support in accordance with M.G.L. c. 62C, § 49A(a); unemployment insurance contributions in accordance with M.G.L. c. 151A, § 19A(a); workers' compensation insurance in accordance with M.G.L. c. 152, § 25C(6); and classification of employees in accordance with M.G.L. c. 149 § 148B;
  - (m) an affirmation of compliance with the requirement to post or distribute the Massachusetts Wage and Hour poster pursuant to 454 CMR 27.00: *Minimum Wage*;
  - (n) a surety bond filed in the penal sum of \$3,000 payable to the people of the Commonwealth on a form prescribed by the Director. A separate bond is required for each location licensed as an Employment Agency;
  - (o) two affidavits from reputable residents of the Commonwealth for each Owner attesting to the Owner's character, on a form prescribed by the Director; an affidavit supplied by a member of an Owner's immediate family or subordinate is not acceptable;
  - (p) a signed and dated CORI Request Form for each Owner;
  - (q) a copy of the Agency placement manager's most recent resume;
  - (r) a sample of every form, contract, agreement, time sheet, brochure, Applicant Fee schedule, job application, job description, and other document to be provided to Clients, Job Applicants, or Workers;

## 24.04: continued

- (s) non-refundable, annual application fee;
- (t) a certification of compliance with M.G.L. c. 140, §§ 46A through 46R;
- (u) certification of compliance with M.G.L. c. 149, § 159C, if applicable; and
- (v) such other information as the Director may reasonably require.

(3) Information Required for Initial Registration of Placement Agencies. Applicants applying for an initial Placement Agency Registration shall submit the following information on or with the initial application form:

- (a) name of the Agency;
- (b) name under which business will be conducted;
- (c) physical and mailing addresses of the Agency. Persons wishing to use a post office box for mailing or public information purposes must specify to the Department the actual address where records will be kept and business will be conducted;
- (d) name and address of the Agency Owner;
- (e) copy of a government-issued photo identification for the Agency Owner;
- (f) evidence that the person is properly registered as a business with local or state government as required by law;
- (g) federal tax identification number;
- (h) name of the Agency manager;
- (i) types of jobs or engagements to which the Agency will refer or assign Job Applicants or Workers;
- (j) information relating to Applicant Fees or charges assessed to Job Applicants or Workers by the Agency;
- (k) information relating to how Job Applicants or Workers are paid;
- (l) non-refundable, annual application fee;
- (m) certification of compliance with laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support in accordance with M.G.L. c. 62C, § 49A(a); unemployment insurance contributions in accordance with M.G.L. c. 151A, § 19A(a); workers' compensation insurance in accordance with M.G.L. c. 152, § 25C(6); and classification of employees in accordance with M.G.L. c. 149, § 148B;
- (n) certification of compliance with M.G.L. c. 149, § 159C, if applicable; and
- (o) such other information as the Director may reasonably require.

(4) Review of Application, Applicability and Classification. Upon receipt of a complete Application, the Department shall review said application and supporting documentation. The Department shall have the right to investigate any information provided by a License or Registration applicant. The Department shall determine whether an Agency must be Licensed or Registered. In making such determinations, the Department may utilize information from all sources legally available to it, including but not limited to, information provided by the applicant, information in the public domain and information supplied through government agencies, inspection, hearings, and testimony.

24.05: Application Procedures and Pre-requisites for Issuance of Employment Agency Licenses

(1) Application Requirements. In making the application for a License, the License Applicant must establish to the satisfaction of the Department that:

- (a) Persons who will conduct placement activities for the Employment Agency will have at least two years of experience as a placement employee, or have been engaged in equivalent personnel management-related activities.
- (b) The forms used by the Agency fairly, clearly, and fully represent the terms and conditions between the proposed Employment Agency and a Job Applicant or Worker, including the employment relationship among all parties and the contractual terms.
- (c) The Owner of the Employment Agency is a person of good character and responsibility. Determinations of character and responsibility will be made through affidavits supplied by the applicant pursuant to 454 CMR 24.04(1)(o), the Department's review of the applicant's CORI report in accordance with the Department's CORI policy, and sworn testimony offered by any person to the Department during the hearing referenced at 454 CMR 24.05(3).
- (d) The License Applicant is in compliance with state tax, unemployment insurance contributions, and workers' compensation insurance laws as determined by the applicable state agency.

24.05: continued

(2) Site Inspection Requirement. As a condition of applying for an Employment Agency License, the License Applicant shall submit to an inspection of the place(s) of business of the Employment Agency by the Department. In *lieu* of a physical site inspection, the Department may, at its discretion, require photographs and a written description of the Employment Agency premises. The Department may also require an inspection of Agency records at a designated location other than the premises of an Employment Agency. Said inspection(s) shall document the following:

(a) Location of Interviews. In addition to meeting the criteria set forth in 454 CMR 24.05(2), the License Applicant shall also establish that the location where Job Applicant interviews are conducted is not a room used for living purposes, a room where boarders or lodgers are kept, a room where meals are served, a room where persons sleep or a room where intoxicating liquors are sold.

(b) Agency Records. Employment Agency records shall be kept in an area of sufficient space to contain them, according to a filing system that permits expeditious retrieval, but limits to the extent possible unauthorized access. Records may be maintained in a home office, provided that the location of the home office is a clearly delineated space that is not in a room used for living purposes, a place where boarders or lodgers are kept, a place where meals are served, a place where persons sleep or a room where intoxicating liquors are sold. Records shall not be accessible to family members, visitors, guests, or other unauthorized persons.

(c) Workplace Posters. Required workplace posters shall be made readily accessible to Job Applicants and Workers.

(3) Hearing on Initial Application for Employment Agency License. Prior to issuing an Employment Agency License, the Department shall hold a hearing to determine the good character and responsibility of each new applicant. The Director, or his or her designee, may administer oaths, subpoena witnesses, and take testimony in respect to the matters contained in any application or protest and may receive evidence in the form of affidavits pertaining to such matters.

(a) Notice of Hearing. At least seven days prior to the hearing date, the Department shall mail either by first class mail or by electronic means a notice of the hearing to the License Applicant. A notice of the hearing shall also be published in a newspaper of general circulation in the city or town in which the Agency will be located and posted in a conspicuous area at the main office of the Department. Notice of the hearing shall also be provided to all licensed Employment Agencies in the city or town in which the License Applicant's office is to be located.

(b) Protests. Any person may file a written protest against the issuance of an Employment Agency License. Said protest shall be signed by the person filing the same, or by his or her authorized agent, and shall state the reasons why said License should not be issued. Said person may be interviewed by the Department and may be called upon to testify at a hearing. A copy of any protest and supporting documentation shall be supplied to the License applicant at least five days prior to a License hearing.

(c) Appearances and Testimony. The License Applicant and the manager may be required to appear at the hearing, at the discretion of the Department, to speak to his or her qualifications. If an Applicant or manager is not able to attend a scheduled License hearing, the Department must be notified at least two business days in advance of the hearing; any request for a continuation of the date of the hearing shall be submitted by the License Applicant in writing. A determination will be made by the Department to proceed as scheduled or to postpone the hearing.

(d) Investigation of Employment Agency License Applicant.

1. The License Applicant must affirm, to the satisfaction of the Department, his or her understanding of the Employment Agency Law and Regulations, M.G.L. c. 140, §§ 46A through 46R and 454 CMR 24.00, and the Temporary Workers Right to Know Law, M.G.L. c. 149, § 159C, if applicable.

2. The Department shall investigate the good character and responsibility of a License Applicant.

## 24.05: continued

(4) Decisions on License Applications. Each License Application shall be granted or denied by the Director within 40 days from the date on which all of the following have occurred: the complete application has been received and reviewed by the Department, the site has been inspected, the License hearing has been completed, and a License recommendation has been filed with the Director.

(a) Denial of License Application and Opportunity for Adjudicatory Hearing. If the Director finds that the License Applicant does not meet the requirements for licensure or that the License Applicant has provided incomplete, unclear, or untruthful information, or the License Applicant or authorized representative failed to appear at a License hearing as required by the Department, the License Application shall be denied and a License shall not be granted. In the event of a Denial of a License Application, the License Applicant shall be afforded an administrative hearing in accordance with the Executive Office for Administration and Finance Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01: *Formal Rules*, or as otherwise agreed by the parties.

(b) Issuance of License with Conditions. The Director may grant a License with conditions. Said conditions shall be clearly stated in the Director's decision.

(c) Opportunity to File Written Objections. If the Director proposes to deny a License or to grant a License with conditions, a copy of the recommended decision shall be mailed to the License Applicant, and said applicant shall have 30 days from the date of the issuance of the recommended decision in which to file written objections to said decision. Following the 30 day period, the Director shall issue a final decision.

(d) Failure to Uphold License Conditions. If a Licensee fails to uphold the conditions of any License, said License shall be suspended or revoked by the Director, pursuant to 454 CMR 24.18.

(e) Approval of Application. Persons who submit License Applications which are approved by the Director shall be notified in writing in the form of an Employment Agency License.

(5) Posting and Presentation of Employment Agency Licenses. All Licenses must be posted in a conspicuous place in each Employment Agency, and shall be made available at all times to any Job Applicant, Employee, Worker or Department representative. If interviews of applicants are conducted outside of the business office of the Agency, a true and correct copy of the License shall be presented to the Job Applicant at the interview.

(6) Assignment or Transfer of Employment Agency Licenses. No Employment Agency License may be assigned or transferred without the prior written approval of the Director. Application for such approval shall be made in the same manner as an application for licensure. An unlicensed Agency may not work as an agent of a Licensed Employment Agency. A Licensed Employment Agency may not transfer the rights and privileges of licensure to an unlicensed Agency.

(7) Change of Location. The location of an Employment Agency shall not be changed without the prior written consent of the Director, and such change of location shall be endorsed upon the License issued to said Agency. Licensed Employment Agencies seeking to change a location must mail their original certificate to the Department with a letter explaining the circumstances and listing the new address. Supporting documentation and or a site visit may be required by the Department.

#### 24.06: Renewal of Employment Agency Licenses and Placement Agency Registrations

(1) License and Registration Period. Employment Agency Licenses and Registrations for Placement Agencies and any renewals thereof shall be valid for a period of one year following the date of issuance.

(2) Renewal Application. Agencies renewing their Employment Agency Licenses shall submit to the Department a completed Renewal Application for Employment Agency License on a form issued by the Director not later than 30 days prior to the expiration date of the License. Said application shall contain the items specified at 454 CMR 24.04(2). Agencies renewing their Registrations for Placement Agencies shall submit to the Department a completed Renewal Application for Placement Agency Registration not later than 30 days prior to the expiration of



## 24.06: continued

the Registration. Said application shall contain the items specified at 454 CMR 24.04(3). The Department shall make administrative decisions on the applicability and classifications of renewal applications for Employment Agency Licenses and Placement Agency Registrations in accordance with the provisions of 454 CMR 24.04(4).

(3) Operation of Agency Without a License or Registration. It is the responsibility of the Licensee or Registrant to keep the License or Registration current. The operation of an Agency without a License or Registration may subject the Agency to civil penalties pursuant to 453 CMR 9.04: *Civil Citations*.

(4) In addition to any civil administrative penalty assessed, any agency found to be operating without a current license or registration may, as a penalty, be back charged the initial or renewal fee for the period of time for which they were operating without said license or registration.

24.07: Information Required to Be Furnished to Job Applicants or Workers by Employment Agencies

(1) Each Employment Agency shall furnish each Job Applicant or Worker with the information specified at 454 CMR 24.07(1)(a) through (i) within two days of assignment or employment. All information provided to Job Applicants or Workers shall be in writing. The Agency is responsible for ensuring that each Job Applicant or Worker understands the specified information. Job Orders are available in multiple languages from the Department, and the Department may obtain additional translations at its sole discretion upon request. The Department recommends that Agencies provide Job Orders in a language that the Job Applicant or Worker understands.

(a) A written description of the nature of duties required for any employment, engagement, work assignment, or job to which the Job Applicant or Worker is placed, referred, or assigned by the Employment Agency;

(b) The name and address of the client to whom the Employment Agency has referred, placed, or assigned the Job Applicant or Worker;

(c) Anticipated wages or rates of compensation;

(d) The start date and, if known, anticipated duration of the assignment;

(e) The total fee to be paid by the Job Applicant to the Employment Agency;

(f) Transportation arrangements and charges;

(g) A copy of the contract executed between the Employment Agency and the Job Applicant or Worker, including the Job Applicant Fee schedule if the Employment Agency charges Applicant Fees. Any Employment Agency that assesses a Job Applicant or Worker a charge of any kind and for any goods or services shall contract in writing with the Job Applicant or Worker for payment of said charge. Charges are limited as set forth in M.G.L. c. 140 and 454 CMR 24.09, 24.11, 24.12, and 24.15, and may be further limited by M.G.L. c. 149, §§ 148 and 150, and c. 151 and its regulations. Written authorization does not make a charge lawful if it is otherwise unlawful. The contract shall contain at minimum:

1. the amount of the Applicant Fee paid, or to be paid, and any charges assessed to the Job Applicant or Worker by the Employment Agency;
2. the terms and conditions of the contract; and
3. the following statement: "I have read my contract with (name of Employment Agency) and accept its terms."

A sample of each such contract and any revised or updated versions of such contracts shall be filed with the Department, for approval in compliance with the provisions of M.G.L. c. 140, §§ 46A through 46R and 454 CMR 24.00.

(h) A receipt for every Applicant Fee or charge assessed by the Employment Agency to the Job Applicant or Worker and which the Job Applicant or Worker has paid.

(i) A multi-lingual statement issued by the department that the job order contains important information concerning the work, employment, engagement, work assignment, or job, and that the applicant or worker should have the form translated.

(2) A copy of the Employment Agency Statute with the Director's name and address shall be posted in a conspicuous place in the Employment Agency or otherwise made readily available to Job Applicants or Employees. The Employment Agency shall post the Employment Agency Statute in languages which persons commonly doing business with such office can understand.

24.07: continued

(3) A copy of the most current Massachusetts Minimum Wage poster shall be posted in a conspicuous place in the Employment Agency or otherwise made readily available to Job Applicants or Employees.

(4) At any time within the record retention period of three years, a Worker may request and the Employment Agency shall provide, within five business days of the request, a copy of the original contract or Job Order and any subsequent contracts or Job Orders.

24.08: Information Required to Be Furnished to Job Applicants or Workers by Staffing Agencies

(1) Before each new assignment, each staffing agency shall provide each Worker with the information specified at 454 CMR 24.08(1)(a) through (j). This information may be provided in person, in writing, electronically or by telephone; however, all of the information must be confirmed in writing and provided to the worker before the end of the first pay period for such assignment or employment. The Agency is responsible for ensuring that each Worker understands the specified information. Job Orders are available in multiple languages from the Department, and the Department may obtain additional translations at its sole discretion upon request. The Department recommends that Agencies provide Job Orders in a language that the Worker understands.

- (a) the name, address and telephone number of the:
  - 1. staffing agency or the contact information of the agent facilitating the placement;
  - 2. the workers compensation carrier of the staffing agency;
  - 3. the work site employer; and
  - 4. the department.
- (b) a description of the position and whether the position will require any special clothing, equipment, training or licenses and any costs charged to the worker or employee for supplies or training;
- (c) the designated pay day, hourly rate of pay and whether overtime pay may occur;
- (d) the start date and, if known, expected duration of employment;
- (e) the daily starting time and anticipated end time;
- (f) whether any meals shall be provided by the staffing agency or work site employer and the charge, if any, to the employee or worker;
- (g) details of the means of transportation to the work site and any fees charged to the employee by the staffing agency or work site employer for any transportation provided;
- (h) any charges to the employee or worker;
- (i) whether the work site location is on strike or lockout; and
- (j) a multi-lingual statement issued by the department that the job order contains important information concerning the work, employment, engagement, work assignment, or job and that the employee or worker should have the form translated.

(2) The written Job Order as defined in 454 CMR 24.02: Job Order shall be transmitted using a method of transmittal designated by the Worker; provided that the Staffing Agency may transmit the Job Order by a method of its choosing, including by facsimile, electronic mail, or first class mail, as long as the Staffing Agency apprises the Worker of the method of transmittal, and unless and until the Worker designates an alternative method of transmittal.

(3) A Worker paid on a daily basis shall be furnished with the written job order on the same day he or she commences work.

(4) Notwithstanding the first sentence of 454 CMR 24.08(1), a Staffing Agency may satisfy the requirements of 454 CMR 24.08 by having the Work Site Employer hand the Job Order to the Worker. The Staffing Agency shall remain fully responsible for compliance with the law.

- (5) (a) A Staffing Agency shall require the Work Site Employer to inform the Staffing Agency by the end of the business day following changes to the current Job Order that:
- 1. would alter the assignment's job description and such alteration is reasonably expected to continue or recur over the length of an assignment;
  - 2. would require new or different special clothing, equipment, training, or licenses;

24.08: continued

3. would result in any additional fees, including costs for meals and transportation, charged to the Worker by the Work Site Employer; or

4. would reasonably be expected to continue or recur over the length of an assignment.

(b) Whenever reasonably possible, the Staffing Agency should notify the Worker of any changes set forth in 454 CMR 24.08(5)(a)1. before they go into effect. In any case, the Staffing Agency shall furnish the Worker with a new Job Order by the end of the business day following the date it is informed by the Work Site Employer of changes set forth in 454 CMR 24.08(5)(a)1., or by the end of the next pay period following such notice, whichever is sooner. The new Job Order shall be provided in the same manner in which the current Job Order was provided to the Worker. The Worker shall acknowledge the changes in whatever manner the Worker usually communicates with the Staffing Agency, which may be orally, electronically, or in writing.

(c) A Staffing Agency shall provide a Worker with a new Job Order setting forth changes to the following:

1. the name, address and telephone number of:

a. the Staffing Agency, or the contact information of the staffing agent facilitating the placement;

b. its worker's compensation carrier; or

c. the Work Site Employer;

2. the designated pay day or the hourly rate of pay;

3. whether any meals shall be provided by the staffing agency and the charge, if any, to the employee; and

4. details of the means of transportation to the worksite and any fees charged to the Worker by the Staffing Agency.

Whenever reasonably possible, the Staffing Agency should notify the Worker of such changes before they go into effect. In any case, the new Job Order shall be provided by the end of the next business day following such change(s), or by the end of the next pay period, whichever is sooner. The new Job Order shall be provided in the same manner in which the current Job Order was provided to the Worker. The Worker shall acknowledge the changes in whatever manner the Worker usually communicates with the Staffing Agency, which may be orally, electronically, or in writing.

(d) A Worker may decline to accept such changes, stop work on any assignment at any time, and request that the Staffing Agency consider the Worker for future assignments. Any Staffing Agency that sends a Worker to a Work Site Employer for employment that day where the assignment is substantially different from that described in the Job Order or otherwise described by the Staffing Agency to the Worker beforehand will refund any reasonable costs of transportation expended by the Worker if the Worker chooses to decline such assignment. Similarly, if a Staffing Agency or Work Site Employer changes a Worker's assignment or duties during work hours, and the new duties are substantially different from those described in the Job Order or otherwise described by the Staffing Agency to the Worker beforehand, the Staffing Agency will refund any reasonable costs of transportation if no work fitting the job description is available and the Worker chooses to stop working for the day.

(e) Any changes to a current Job Order that are not reasonably expected to continue or recur over the length of the assignment shall not necessitate a new Job Order to be provided by a Staffing Agency to a Worker, except for changes that:

1. would require new or different special clothing, equipment, training, or licenses; or

2. would result in any additional fees, including costs for meals and transportation, charged to the Worker.

(6) At any time within the record retention period of three years, a Worker may request and the Staffing Agency shall provide, within five business days of the request, a copy of the original Job Order and any written confirmation of changes to the Job Order.

(7) 454 CMR 24.08(1) through (6) shall not apply to Professional Employees, Secretaries or Administrative Assistants.

24.08: continued

(8) Each Staffing Agency shall post in a conspicuous place in each location where it does business, a written notice provided by the Department of a worker's rights under the Temporary Workers Right to Know Law and the name and telephone number of the Department. The Department shall make the notice available in English and other languages as appropriate.

(9) If a staffing agency or worksite employer or a person acting directly or indirectly in either's interest offers transportation services, the staffing agency shall post the written notice of rights in English and in other languages as appropriate in a conspicuous place in each vehicle used for such service.

24.09: Provisions and Restrictions Relating to Applicant Fees and Client Fees and Charges Assessed by Employment Agencies

(1) Client Fee Restrictions. There are no restrictions on Client Fees charged by an Employment Agency.

(2) Workers or Job Applicants Who Are Hired at an Annual Wage of over \$40,000.00. The provisions of 454 CMR 24.09(4) and (5) shall not apply to Workers or Job Applicants who are hired at an annual wage of over \$40,000.00, provided that any Fees or Charges assessed by an Employment Agency to the Worker or Job Applicant do not violate M.G.L. c. 151 or 454 CMR 24.00.

(3) Written Disclosure to Job Applicant. Any Employment Agency that is not the Employer of the Job Applicant or Worker that it places, refers, or assigns, and that charges an Applicant Fee to the Job Applicant or Worker, is required to disclose in writing to the Applicant, or Worker, the amount of the Client Fee paid by the Employer or Client to the Employment Agency for placing the Job Applicant or Worker.

(4) Applicant Fee Restrictions. In accordance with M.G.L. c. 140, § 46L, an Employment Agency may charge Applicant Fees only if each of the following conditions are met:

- (a) The Employment Agency is not also a "Staffing Agency" as defined in 454 CMR 24.02: Staffing Agency.
- (b) The Applicant Fees must be enumerated in a written contract between the Job Applicant or Worker and the Employment Agency.
- (c) The Employment Agency has referred the Job Applicant or Worker to a job in which the Job Applicant or Worker has been hired.
- (d) No Applicant Fee may be charged by an Employment Agency to register Job Applicants or Workers.
- (e) Applicant Fee amounts must be based on the wage or salary at which the Job Applicant or Worker is hired, as further illustrated by 454 CMR 24.09(4)(i): *Chart A*.
- (f) No Job Applicant or Worker shall be required to pay any Applicant Fee in fewer than four equal installments, each of which shall be payable at the end of the first four pay periods following the Employment or within a period of eight weeks, whichever is shorter.
- (g) All Applicant Fees are subject to M.G.L. c. 151, § 1, and 455 CMR 2.00: *Minimum Wage*. In addition, no Applicant Fee shall be charged that would result in the Job Applicant or Worker's average hourly wages for that period to fall below the rates established by any applicable federal law or by M.G.L. c. 151, § 1, or by any applicable collective bargaining agreement.
- (h) In no case may an Applicant Fee be charged for a Temporary Employment, Engagement, work assignment, or job that exceeds the Applicant Fee charged for permanent employment.
- (i) The total Applicant Fees charged may not exceed the following schedule:

24.09: continued

CHART A

TYPE OF WORK	MAXIMUM APPLICANT FEE	M.G.L.
Any Domestic Employee agreement for an assignment shorter than one month in duration	<ul style="list-style-type: none"> <li>• If no meals or lodging are provided: 10% of salary or wages actually received</li> <li>• If one meal per working day is provided: 12% of salary or wages actually received</li> <li>• If two meals per working day are provided: 14% of salary or wages actually received</li> <li>• If three meals and lodging per working day are provided: 18% of salary or wages actually received</li> </ul>	c. 140, § 46L(C)(1)(b)
Any Temporary Employment shorter than ten weeks in duration	Total fee may not exceed 10% of the wages or salary actually received	c. 140, § 46L(C)(2)
Any employment agreement for an assignment shorter than four months in duration	Fees shall not exceed in percentage the first full month's salary or wages of the following: <ul style="list-style-type: none"> <li>• less than \$225, not to exceed 12.5%</li> <li>• at least \$225 but less than \$270, not to exceed 17.5%</li> <li>• at least \$270 but less than \$300, not to exceed 20%</li> <li>• at least \$300 but less than \$330, not to exceed 22.5%</li> <li>• at least \$330 but less than \$365, not to exceed 25%</li> <li>• at least \$365 but less than \$400, not to exceed 27.5%</li> <li>• at least \$400, not to exceed 30%</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• 10% of wages actually received, whichever is less</li> </ul>	c. 140, § 46L(C)(4)(c)
Model Employment/Assignments/Engagements	Total fee may not exceed 10% of the wages or salary actually received by the model for Employment/Assignment/Engagements	c. 140, § 46L(C)(3)
Permanent domestic (household) employment, permanent employment of unskilled or untrained workers for manual work/ laborers, or permanent employment in agricultural work	<ul style="list-style-type: none"> <li>• If no meals or lodging are provided: 10% of first full month's salary or wages</li> <li>• If one meal per working day is provided: 12% of first full month's salary or wages</li> <li>• If two meals per working day are provided: 14% of first full month's salary or wages</li> <li>• If three meals and lodging per working day are provided: 18% of first full month's salary or wages</li> </ul>	c. 140, § 46L(C)(1)
Permanent domestic employment by workers from outside MA but within the U.S., having been placed in a job by an employment agency using the services of an emigrant agent	If three meals per day and lodging are provided: not more than \$80	c. 140, § 46L(C)(1)(a)
Permanent non-professional trained or skilled industrial workers or mechanics	Total fee may not exceed one week's wages	c. 140, § 46L(C)(2)
All other permanent employment	Fees shall not exceed in percentage of the first full month's salary or wages the following: <ul style="list-style-type: none"> <li>less than \$225, not to exceed 25%</li> <li>• at least \$225 but less than \$270, not to exceed 35%</li> <li>• at least \$270 but less than \$300, not to exceed 40%</li> <li>• at least \$300 but less than \$330, not to exceed 45%</li> <li>• at least \$330 but less than \$365, not to exceed 50%</li> <li>• at least \$365 but less than \$400, not to exceed 55%</li> <li>• at least \$400, not to exceed 60%</li> </ul>	c. 140, § 46L(C)(4)(a)
Permanent employment paid on a straight commission basis	Total fee to be based on the percentages prescribed above, equivalent to one twelfth of the computed first year earnings as estimated by the employer	c. 140, § 46L(C)(4)(b)

## 24.09: continued

(5) Restrictions on Charges for Goods and Services.

(a) Employment Agencies may offer a range of ancillary services for Job Applicants or Workers, but no charges for goods or services may be required of any Job Applicant or Worker except pursuant to a written agreement voluntarily entered into by the Job Applicant or Worker. Charges may be further limited by M.G.L. c. 149, §§ 148 and 150, and c. 151 and its regulations. Written authorization does not make a charge lawful if it is otherwise unlawful.

(b) Agreements for the purchase of all services or products must be in writing, signed by the Job Applicant or Worker and maintained as records pursuant to 454 CMR 24.14. Such agreements must explicitly state that the purchase of said service or product is optional and not a condition of representation, acceptance or placement by the Employment Agency.

(c) Employment Agencies are prohibited from requiring Job Applicants or Workers to pay for training, consultation, or education at any specific school, course, seminar, or class, or to participate in any specific convention, scouting event, search, competition, or pageant, or to post information or photographs on any specific website, or in any publication which charges for such participation or services, as a prerequisite to signing with an Employment Agency or to maintain representation by an Employment Agency.

(d) Employment Agencies are prohibited from requiring that a Job Applicant or Worker use a specific vendor for the purchase of goods or services.

(e) Charges shall not be assessed to a Job Applicant or Worker for the provision of any bank card, debit card, payroll card, voucher, draft, money order or similar form of payment of wages, criminal offender record information (CORI) check, drug screen, or any other service that exceeds the actual cost for providing such service.

(6) Provisions Relating to Goods or Services Required by Modeling Agencies. Where Models (or prospective Models) are required to receive training, education, styling, fashion consultation, photographs, or printing for composite cards, the Modeling Agency shall provide a list of at least three names of providers of such services, with contact information. In the event that any Model chooses to use the services of a school, trainer, photographer, consultant, stylist, or printer that is not on the Modeling Agency's referral list, the Modeling Agency may not deny its representation services to the Model Job Applicant or Worker for that reason. Modeling agencies may not charge prospective or working Models for inclusion in an Agency promotional book, agency website, or other promotional material.

(7) Advances. If the Employment Agency has advanced money to a Job Applicant or Worker for any purpose, the Employment Agency shall provide a written statement to the Job Applicant or Worker indicating the amounts due the Employment Agency and the deadline for repayment.

(8) Refunds. Any Employment Agency that collects, receives, or retains an Applicant Fee, deposit, or other payment contrary to or in excess of the provisions of the Statute and 454 CMR 24.09 shall return the payment or the excess portion thereof within seven days of the receipt of a demand for the same.

24.10: Provisions and Restrictions Relating to Charges by Staffing Agencies and Work Site Employers

(1) No Staffing Agency or Work Site Employer or a person acting directly or indirectly in either's interest shall deduct any costs or charges from the wages of a Job Applicant or Worker except for those deductions permitted by law. Unlawful deductions include but are not limited to deductions for damaged, lost, or stolen property of the Work Site Employer, Staffing Agency, or third parties, deductions for transportation other than those expressly allowed by 454 CMR 24.15, deductions for the purchase or cleaning of uniforms, deductions for supplies or equipment used by the Job Applicant or Worker, deductions for any other business-related or job-related expenses or losses incurred by the Work Site Employer or Staffing Agency, and any other deductions prohibited by M.G.L. c. 151 and its regulations and M.G.L. c. 149, §§ 148 and 150. No staffing agency or work site employer or a person acting directly or indirectly in either's interest shall deduct any costs or fees from the wages of an employee without the express written authorization of the employee. A staffing agency or work site employer shall furnish to the employee a copy of the signed authorization in a language that the employee understands. Written authorization does not make a deduction lawful if it is otherwise unlawful.

24.10: continued

(2) No Staffing Agency or Work Site Employer shall charge or accept any form of consideration from a Worker or Job Applicant for:

- (a) the cost of registration of the Staffing Agency or the cost of procuring employment;
- (b) Any good or service unless under the terms of a written contract with a Worker or Job Applicant which clearly states in a language which the Job Applicant or Worker can understand that the purchase is voluntary and which provides that the Staffing Agency will not gain a profit from any charge to the Worker or Job Applicant;
- (c) The provisions of any of the following that exceed the actual cost per Job Applicant or Worker: bank card, debit card, payroll card, voucher, draft, money order, or similar form of payment of wages, or any drug screen;
- (d) A CORI request;
- (e) transportation, except as provided in 454 CMR 24.15; or
- (f) any good or service the payment of which would cause the Worker or Job Applicant to earn less than the applicable minimum wage.

24.11: Requirements and Restrictions Relating to the Placement of Domestic Employees by Employment Agencies

(1) Requirements Relating to Transportation. If an Employment Agency has directly or indirectly arranged for the transportation of a Job Applicant or Worker from outside the Commonwealth into the Commonwealth to work as a Domestic Employee, said transportation of such Job Applicant or Worker shall be by duly licensed common carriers of passengers.

(2) Requirements for Lodging and Meals. If an Employment Agency is directly or indirectly responsible for bringing a Job Applicant or Worker from outside the Commonwealth into the Commonwealth to work as a Domestic Employee, the Employment Agency shall provide at its own expense, suitable lodging and meals for any Job Applicant or Worker who is not placed in Employment on the day that he or she arrives in the Commonwealth until he or she is placed, or is returned to the place from which he or she was recruited, or is given the option of returning to such place. The Employment Agency shall keep complete and accurate records of the places of lodging and the costs of that lodging for each Job Applicant or Worker brought to the Commonwealth to work as a Domestic Employee.

(3) Requirements for Return Fare. If an Employment Agency is directly or indirectly responsible for bringing into the Commonwealth, a Job Applicant or Worker from outside the Commonwealth to work as a Domestic Employee, the Employment Agency shall provide, at its own expense, the return fare and reasonable allowance for one day's meals to any such Job Applicant or Worker who was not placed in Employment, or who was placed in Employment and said Employment terminated within 30 days thereafter and who is without Employment, and desires to return to the place from which he or she was recruited. The Employment Agency shall make available to the Department, proof of payment of said travel and meals expenses.

24.12: Unlawful Practices by Employment Agencies

An Employment Agency shall not engage in any of the following activities or conduct:

- (1) Distribute, circulate or provide any false, fraudulent or misleading information, representation, promise, notice or advertisement to any Job Applicant or Worker;
- (2) Advertise or utilize any printed materials using any name or address other than that which has been licensed by the Department.
- (3) Direct a Job Applicant or Worker to an Employer or Client without having first obtained a recent *bona fide* Order; provided, that:
  - (a) a qualified Job Applicant or Worker may be directed to an Employer or Client who requests interviews with qualified Job Applicants or Workers; and

24.12: continued

(b) an Employment Agency may attempt to sell the services of a Job Applicant or Worker to an Employer or Client from whom no work order has been received, as long as this information is disclosed to the Job Applicant or Worker in writing before he or she is directed to said Employer or Client. An Agency may direct a Job Applicant or Worker to an employment, engagement, work assignment, or job by telephone, but such telephone message shall comply with the disclosure requirements of 454 CMR 24.07, and shall be, within two business days of the date of assignment, confirmed in writing or electronically by the Agency and sent to the Job Applicant or Worker. Any Job Applicant or Worker who is referred to a Client contrary to the provisions of 454 CMR 24.12(3)(b) without obtaining employment, engagement, work assignment, or job, shall be fully reimbursed by the Employment Agency for all ordinary and necessary travel expenses incurred by the Job Applicant or Worker as a result of such referral, within one business day of requesting such reimbursement.

(4) Send or cause to be sent any person to any Employer or Client where the prospective Employment is or would be in violation of state or federal laws governing minimum wages, child labor, or compulsory education, including, but not limited to, M.G.L. c. 151, §§ 1 through 22, c. 149, §§ 56 through 105 or M.G.L. c. 76, § 1.

(5) Send or cause to be sent any person to any place which is maintained for illegal or illicit purposes or where illegal or illicit activity takes place.

(6) Compel any Job Applicant or Worker to enter into an employment, engagement, work assignment, or job by use of force, fraud or otherwise.

(7) Require Job Applicants or Workers to subscribe to any publication, purchase any service, or contribute to the cost of advertising. Any service or product offered by an Employment Agency must be expressly voluntary, and there must be a written agreement, in a language that the Job Applicant or Worker understands, that clearly indicates the Job Applicant or Worker is under no obligation to purchase said service or product.

(8) Refuse to return, upon demand of a Job Applicant or Worker, any personal property belonging to such Job Applicant or Worker.

(9) Send or cause to be sent any Job Applicant or Worker to any place that is on strike or lockout, unless the fact of such strike or lockout is made known to the Job Applicant or Worker in writing.

(10) Solicit, persuade, induce, or attempt to induce any Worker or Job Applicant to leave employment, engagement, work assignment, or job, if such soliciting, persuading, or inducing is for the purpose of securing a new fee from a Job Applicant or Worker, provided that nothing in 454 CMR 24.00 shall prohibit notifying a Job Applicant or Worker that a position exists where the Job Applicant or Worker has requested placement.

(11) Divide or share, or offer to divide or share, Applicant Fees with an Employment Agency Client.

(12) Solicit, persuade, induce or attempt to induce an Employer to create a vacancy by discharge of any Worker or Employee.

24.13: Unlawful Practices by Staffing Agencies

A Staffing Agency shall not engage in any of the following activities or conduct:

(1) Knowingly issue, distribute, circulate or provide any false, fraudulent or misleading information, representation, promise, notice or advertisement to any Job Applicant or Worker;

(2) Use any name that has not been registered with the Department under M.G.L. c. 140 in the advertisement of its services;



## 24.13: continued

- (3) Assign or place a Job Applicant or Worker in employment by force or fraud, for illegal purposes or where the employment is or would be in violation of state or federal laws governing minimum wages, child labor, or compulsory education, including, but not limited to, M.G.L. c. 151, §§ 1 through 22, c. 149, §§ 56 through 105 or c. 76, § 1, or required licensure or certification, or in any location that is on strike or lockout without notifying the job applicant or worker of this fact;
- (4) Refuse to return on demand any personal property belonging to a Job Applicant or Worker or cost that is charged or accepted by the Staffing Agency or Work Site Employer in excess of the amounts allowable under the Temporary Workers Right to Know Law;
- (5) Retaliate against a Job Applicant or Worker in connection with the Job Applicant or Worker exercising his or her rights under the Temporary Workers Right to Know Law as provided under M.G.L. c. 149, § 148A.

24.14: Record-keeping Requirements

- (1) All Agencies shall maintain a separate file for each Worker or Job Applicant which shall, at a minimum, contain the following information:
  - (a) his or her name, phone number, email address, if any, and mailing address;
  - (b) dated job application, or resume;
  - (c) the Job Order;
  - (d) anticipated duration of assignment;
  - (e) total Applicant Fees, if any; and
  - (f) transportation arrangements and related charges, if any; and
  - (g) other charges, if any.
- (2) Client Records. Employment Agencies shall maintain a separate file for each Client to whom Job Applicants or Workers are referred or assigned, which shall, at a minimum, contain the following information:
  - (a) *bona fide* orders;
  - (b) each Client's name, phone number, email address, if any, and mailing address;
  - (c) the date when services of the Agency were requested;
  - (d) the names of the Job Applicants or Workers sent;
  - (e) the total amount of the Client Fee received or charged; and
  - (f) the rate of salary or wages agreed upon.
- (3) Special Record-keeping Requirements for Employment Agencies Placing Domestic Employees. Each Employment Agency that places or attempts to place Domestic Employees shall maintain, in addition to the records specified by 454 CMR 24.11, the following records:
  - (a) the result of at least one reference check for each Job Applicant for work as a Domestic Employee;
  - (b) the name and address of any Emigrant Agent used to recruit or obtain, or used to attempt to recruit or obtain, Job Applicants or Workers;
  - (c) the names and addresses of all persons to whom the Employment Agency has made payments in connection with the recruitment of the Job Applicant or Worker and the amounts of such payments;
  - (d) an itemization of all fees and charges assessed to the Job Applicant or Worker by the Employment Agency including but not limited to:
    - 1. charges made for transportation;
    - 2. other charges; and
    - 3. Applicant fees paid by the Job Applicant or Worker to the Agency; and
  - (e) evidence that CORI checks on Domestic Employee Job Applicants or Workers are being conducted in accordance with M.G.L. c. 6, § 172C.
- (4) Financial Records. Each Employment Agency shall keep complete and accurate written records of all receipts and income received or derived directly from the operation of his or her Employment Agency.

24.14: continued

(5) Language Requirement for Records. Records required by 454 CMR 24.14 shall be maintained in the English language, or translated from a language other than English to the English language upon request by the Department, as necessary for inspection by the Department.

(6) Format. Records may be maintained in electronic or paper form, provided that they can be retrieved and reviewed by the Department upon request.

(7) Retention Period. Employment Agencies and Staffing Agencies are required to keep a copy of all documents, communications, confirmations, financial records, and contracts necessary for the operation of the business for three years or the time within which any final determination of any appeal made pursuant to 454 CMR 24.17 and 24.18, is issued, whichever occurs later.

24.15: Limitations on Transportation Expenses Charged by Work Site Employers and Agencies

If an Agency or Work Site Employer or a person acting directly or indirectly in either's interest offers transportation services that Temporary or Part-time Workers may utilize, the Agency or the Work Site Employer or a person acting directly or indirectly in either's interest is prohibited from charging more than the actual cost of each Worker's transportation or 3% of the Worker's daily wages, whichever is less. The transportation charge shall not reduce the Worker's total daily wages below the applicable minimum wage earned for that day. If an Agency or Work Site Employer or a person acting directly or indirectly in either's interest requires the use of transportation services, there shall be no charge or cost to the Job Applicant or Worker. Any Agency that sends a Job Applicant or Worker to a Work Site Employer to work where, in fact, no work exists, shall fully refund any reasonable costs of transportation expended by the Job Applicant or Worker to the Worker within seven calendar days of the date the Job Applicant or Worker was sent to the Work Site.

24.16: Inspections Conducted by the Department

(1) Right of Inspection. The Department shall have the right to inspect the premises and records of all Agencies and to interview Clients, Employers, Job Applicants and Workers. The Director may suspend or revoke the license of any Employment Agency that fails to furnish agency records and requested information to the Department and its inspector, or if the Employment Agency hinders or interferes with any authorized inspector while in the performance of his or her duties.

(2) Subpoena Authority. The Director, when investigating any matter pertaining to the issuance, transfer, revocation, or suspension of a License, may take such testimony as may be necessary on which to base an official action. When taking such testimony, the Director may subpoena witnesses and also direct that the Department be furnished with necessary materials, books, papers, and other records.

(3) Semi-annual Inspections of Licensed Employment Agencies. The Department shall inspect the Employment Agency every six months, except that, following the initial inspection of the premises and records of the Employment Agency, if the location of the Employment Agency has not changed since the initial inspection, and the Employment Agency has no outstanding violations or complaints pending against it, the Department may elect to engage in a documentary inspection of the Employment Agency.

24.17: Complaints

(1) Filing of a Complaint. Any individual may file a Complaint with the Department against an Agency. The Complaint shall be filed in writing, with the Department, in a form prescribed by the Director.

(2) Review of Complaint. Upon receipt of a Complaint, the Department will proceed to review and investigate the complaint to determine if further action is warranted.

## 24.17: continued

(3) Temporary Workers Right to Know Law. If the Director, after investigation, has cause to believe that the Temporary Workers Right to Know Law has been violated, the Director may refer said Complaint to the Office of the Attorney General for further action, as provided in 454 CMR 24.20.

(4) Hearings on Complaints Made Pursuant to the Employment Agency Statute. Notice of any Complaint shall be provided to the Agency owner against whom the Complaint has been filed, within five days of the filing of the Complaint with the Department. The Department will hold any hearing on alleged violations of the Employment Agency Statute not later than two weeks from the date of receipt of a Complaint by the Department.

(a) Notice. Both the Complainant and Respondent shall be given at least five days' notice of a Complaint hearing. Said notice shall be in the form of a hearing notice stating the nature of the complaint and section(s) of the Employment Agency Statute and 454 CMR 24.00 alleged to have been violated, and shall be mailed to Complainant and Respondent by certified mail at the addresses provided to the Department by the Complainant and Respondent. The hearing notice shall also be posted at the Department at least one day prior to the hearing date. A hearing shall commence not later than ten business days from the date the hearing notice is posted or as otherwise agreed by the parties.

(b) Appearances. Complainant and Respondent shall appear at the appointed time and place of the hearing. Any request for a continuance shall be made in writing and received at the Department not later than two business days prior to the scheduled hearing date. Hearings are not open to the public. Only those directed to appear at the hearing shall be allowed to participate in the proceedings. If a Complainant or Respondent wishes to bring a witness or other person to the hearing, such notice shall be made in writing and received at the Department not later than two business days prior to the scheduled hearing date.

(c) Record. A record of all Complaints and hearings shall be maintained by the Department.

(d) Recommended Decision. If the Director has presided at the hearing, a Recommended Decision shall not be issued. If the Director has not presided at the hearing, a Recommended Decision shall be issued, pursuant to M.G.L. c. 30A, § 11(2), if either party makes a written request for one, either prior to or at the hearing.

(e) Decision. The Director shall render his or her decision on a Complaint hearing not later than eight days from the date that either a recommended decision is provided to him or her or from the date upon which the record of a hearing over which he or she has presided as the hearing officer has closed.

24.18: Revocation, Suspension of License

If it is revealed, through inspection, investigation, hearing, or any other means, that an Employment Agency or any representative thereof is guilty of any fraudulent or illegal conduct in connection with the operation of such Agency, or of any violation of the provisions of M.G.L. c. 140, §§ 46B through 46R and 454 CMR 24.00, the Director may suspend or revoke the license of such Employment Agency. If the Director suspends or revokes the license of any Employment Agency, said action shall be subject to judicial review in proceedings brought pursuant to M.G.L. c. 30A. If a license is revoked, another license shall not be issued within three years from the date of such revocation to said licensed person or his representative.

24.19: Violations of the Employment Agency Statute: Civil Administrative Penalties

Violations of the Employment Agency Statute and regulations promulgated thereunder subject violators to civil penalties as provided in 454 CMR 29.00: *Civil Administrative Penalties* and to criminal penalties as provided in M.G.L. c. 140, § 46R.

24.20: Violations of the Temporary Workers Right to Know Law

Violations of the Temporary Workers Right to Know Law and regulations promulgated thereunder subject violators to civil citations, orders, penalties or redress as provided in M.G.L. c. 149.

24.21: Confidentiality

Information secured pursuant to M.G.L. 140, §§ 46A through 46Q shall be confidential and for the exclusive use and information of the Director in the discharge of his or her duties hereunder or as otherwise permitted or required by applicable law. If the Director takes an action against any person operating an Employment Agency or Placement Agency, the action may be disclosed to the public. The Department shall make available to the public lists of Licensed Employment Agencies and Placement Agencies who have received a Certificate of Registration pursuant to 454 CMR 24.04(3) and 24.06(2). Such lists shall contain, at a minimum, the name which has been Licensed or Registered, the Licensed or Registered Agency's address, telephone number, the License or Registration number assigned by the Department, and whether the Agency is a staffing agency as defined in M.G.L. c. 149, § 159C and 454 CMR 24.02.

24.22: Severability

The provisions of 454 CMR 24.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 454 CMR 24.00.

REGULATORY AUTHORITY

454 CMR 24.00: M.G.L. c. 140, §§ 46A through 46R, c. 149, § 159C; c. 23, § 1.