

**ADOPTED REGULATION OF THE LABOR COMMISSIONER**

**LCB File No. R089-04**

Effective August 4, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-4, 6-9, NRS 607.160 and 611.023; §5, NRS 239B.010, 607.160 and 611.023.

A REGULATION relating to private employment agencies; establishing requirements for applying for a license to conduct a private employment agency; prohibiting a licensee from changing the premises of a private employment agency without the prior approval of the Labor Commissioner; providing requirements relating to the maintenance of records; requiring certain notification or certification concerning bonds or deposits; establishing requirements concerning fees charged by private employment agencies for securing employment for applicants; and providing other matters properly relating thereto.

**Section 1.** Chapter 611 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Licensee” means a person licensed to conduct a private employment agency pursuant to chapter 611 of NRS.*

**Sec. 4.** *“Private employment agency” has the meaning ascribed to “employment agency” in NRS 611.020. The term does not include a person who facilitates business engagements between self-employed persons and their clients.*

**Sec. 5. 1.** *A person who submits an application for a license to conduct a private employment agency must have the authority to legally bind the private employment agency.*

*2. An applicant for a license to conduct a private employment agency must submit to the Labor Commissioner:*

*(a) An application on a form prescribed by the Labor Commissioner.*

*(b) On a form prescribed by the Labor Commissioner, information regarding the background of:*

*(1) If the applicant is a natural person, the applicant; or*

*(2) If the applicant is not a natural person, a principal who has the authority to legally bind the applicant.*

*(c) Two sets of fingerprint cards for the applicant, if the applicant is a natural person, or two sets of fingerprint cards for a principal who has the authority to legally bind the applicant, if the applicant is not a natural person. The sets of fingerprint cards must be completed by a recognized law enforcement agency and must be accompanied by:*

*(1) An executed Law Enforcement Record Form No. 3321-SA or equivalent authorization for the release of information contained in records of law enforcement;*

*(2) Written authorization for the Labor Commissioner to submit the fingerprint cards to the Central Repository for Nevada Records of Criminal History for further submission to the Federal Bureau of Investigation and to receive reports regarding the criminal histories of the subjects of the fingerprint cards; and*

*(3) An amount sufficient to pay the fees charged by any local agencies of law enforcement, the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for the handling of the fingerprint cards and issuance of the reports of criminal histories.*

*(d) Affidavits from two reputable persons who reside in this State attesting to the good moral character of the applicant, if the applicant is a natural person, or a principal who has the authority to legally bind the applicant, if the applicant is not a natural person.*

*(e) If the private employment agency is:*

*(1) Required to register with the Office of the Secretary of State, a copy of the corporate information regarding the private employment agency filed with the Office of the Secretary of State.*

*(2) Not required to register with the Office of the Secretary of State, proof that the applicant is a legal resident of this State.*

*(f) A fee of \$100 for each premises to be licensed.*

*(g) A bond or deposit that meets the requirements of NRS 611.070 and section 8 of this regulation in the amount of \$1,000 for each premises to be licensed.*

*(h) If the private employment agency is to be conducted in a residence, certification from the appropriate local government agency that operating a private employment agency at that location is permissible under local ordinances.*

**Sec. 6.** *A licensee may not change the premises at which the licensee conducts a private employment agency without obtaining the prior approval of the Labor Commissioner. The licensee's failure to obtain such prior approval will invalidate the license of the licensee.*

**Sec. 7.** *All records that a licensee is required to maintain pursuant to NRS 611.020 to 611.320, inclusive, must be kept at the premises identified on the license unless, upon written request from the licensee, the Labor Commissioner grants the licensee permission to keep the records at an alternative location.*

**Sec. 8. 1.** *A licensee that elects to deposit a surety bond with the Labor Commissioner pursuant to NRS 611.070 must notify the Labor Commissioner of any changes in coverage provided by the bond not later than 1 business day after the licensee becomes aware of the change. Failure to inform the Labor Commissioner of such a change is a ground for revocation of a license.*

*2. A licensee that elects to deposit a savings certificate with the Labor Commissioner pursuant to paragraph (b) of subsection 3 of NRS 611.070 must provide a statement signed by an officer of the bank, credit union or savings and loan association that issued the savings certificate, certifying that the terms and conditions of the savings certificate comply fully with the requirements of NRS 611.070.*

**Sec. 9. 1.** *A private employment agency may charge a fee to either an applicant for employment or the employer of the applicant, but not to both, for securing the employment of the applicant with the employer.*

*2. A fee charged by a private employment agency to an applicant for securing employment for the applicant must:*

*(a) Except as otherwise provided in this paragraph, be refunded to the applicant by the private employment agency in the manner specified in NRS 611.250 if the applicant fails to obtain employment or without fault refuses to accept employment, or if the period of employment of the applicant with the employer is less than 7 days. If the private employment agency places an applicant for a babysitting position and the length of employment is less than 7 days, the private employment agency may not charge the applicant a fee that exceeds 15 percent of the gross cash wage paid to the applicant for that period of employment.*

*(b) Not exceed 40 percent of the gross cash wage paid to the applicant for the period of employment of the applicant with the employer if the period of such employment is 7 or more days but less than 30 days.*

*(c) Not exceed 65 percent of the gross cash wage received by the applicant for the first month of employment with the employer if the period of employment of the applicant with the employer is 30 days or more.*

*3. There is no limitation on the fee that a private employment agency may charge an employer for securing the employment of an applicant with the employer.*

*4. For the purposes of subsection 2, the period of employment commences on the first day on which the applicant begins employment with the employer.*

*5. Upon the written authorization of an applicant for whom a private employment agency has secured employment, deductions may be taken from the paychecks of the applicant by the employer and paid to the private employment agency for the amount of the fee charged by the private employment agency for securing the employment. The total amount of such payroll deductions is subject to the limitation on the amount of a fee charged by a private employment agency for securing employment set forth in subsection 2.*

*6. As used in this section:*

*(a) "Babysitting" has the meaning ascribed to it in NRS 611.020.*

*(b) "Day" means a calendar day.*

*(c) "Gross cash wage" has the meaning ascribed to it in NRS 611.020.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R089-04**

The Office of the Labor Commissioner adopted regulations assigned LCB File No. R089-04 which pertain to chapter 611 of the Nevada Administrative Code on June 29, 2004.

**Notice date:** 5/25/2004  
**Hearing date:** 6/28/2004

**Date of adoption by agency:** 6/29/2004  
**Filing date:** 8/4/2004

**INFORMATIONAL STATEMENT**

Pursuant to NRS 233B.066, the Office of the Labor Commissioner provides the following information concerning newly adopted regulations for NAC 611.

**(a) A description of how public comment was solicited, a summary of the public response, and an explanation how other interested persons may obtain a copy of the summary.**

Public comment on the proposed rule was solicited on the agency website, posted notices, e-mail, and direct mail to persons on the agency 233B mailing list. Copies are available through the agency website or upon request from the agency.

**(b) The number of persons who:**

**(1) Attended each hearing:**

Two people attended the hearing, none in Carson City and two in Las Vegas. The two attendees represented a law firm engaged in entertainment and employment law.

**(2) Testified at each hearing:**

Two individuals testified at the hearing.

**(3) Submitted to the agency written statements:**

Written comments were received from one of the individuals who testified.

**(c) A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:**

Comments were solicited through posted notices, by direct mail to organizations and individuals on the agency mailing list, posting on the agency website, and by e-mail.

**(d) If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:**

Testimony was received concerning the applicability of the private employment agency statutes to talent agencies and booking agents. While this appears to be an area of legitimate concern, it is unclear whether this regulation is the appropriate vehicle for addressing the issue. The applicability of the regulations to talent agencies and booking agents requires a case by case analysis of the specific practices of the agencies and agents. In some cases, the

employment agency rules will apply, in others the provisions applicable to employers generally found in Chapter 608 of the NRS and NAC is more appropriate, and in some cases the businesses would not be jurisdictional in any event.

**(e) The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

**Impact on businesses that are regulated:**

**(1) Both adverse and beneficial effects:**

The regulation generally clarified existing practices and interpretations. By clarifying the employment relationship, some businesses, particularly those related to the entertainment industry, will no longer be considered private employment agencies and will no longer have to be pay an annual licensing fee or carry a bond.

**(2) Both immediate and long-term effects:**

The immediate effect is the normal confusion that results whenever a change is made and the parties adjust to the new rules.

**Impact on the public:**

**(1) Both adverse and beneficial effects:**

The regulation should be neutral in terms of impacts on the public.

**(2) Both immediate and long-term effects:**

The regulation should be neutral in terms of short-term and long-term effects on the public.

**(f) The estimated cost to the agency for enforcement of the proposed regulation:**

There is no anticipated cost to the agency for enforcement.

**(g) A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**

The regulation does not overlap the regulations of any other agency.

**(h) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:**

Not applicable

**(i) If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used:**

There is an increased cost to businesses seeking a license because the scope of the criminal background investigation has been expanded from Nevada-only to nationwide. This is a one time, pass through cost from the Highway Patrol. The increase is from \$21 to \$45.