

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 270, SUPPLEMENT I

TO: The Employment Security Commission
FROM: Thomas S. Whitaker, Chief Counsel
SUBJECT: Temporary Help/Services Agencies
Fee-Charging Restriction

QUESTION:

(submitted by Taylor Temporary Services, Incorporated in a letter dated February 7, 1994):

Does the restriction on fee-charging of applicants referred by the Employment Security Commission to temporary help/services agencies prohibit such agencies requiring these applicants, after being hired, to pay for charges for work-related items such as drug tests, safety equipment, tools, and other similar items, incurred after employment commences?

ANSWER:

No.

DISCUSSION:

29 U.S.C. § 49(1)(b)(1) provides as follows:

Nothing in this chapter shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee. (Emphasis added.)

This provision permits a Job Service Office to refer an applicant to a temporary help agency who will employ the applicant as its own employee and assign him/her to perform various jobs for fee paying clients of the temporary help agency. As stated in Interpretation No. 270, adopted by the Employment Security Commission on June 2, 1992, a temporary help/services agency hiring of an applicant may not be premised on the willingness of the applicant to pay a fee to the agency, before or after hiring. This fee-charging restriction also extends to any requirement that an applicant, prior to being employed by the agency, be charged for work related items that may be required by the agency.

After the applicant becomes an employee of the temporary agency, the fee-charging restriction is not applicable to charges for required drug tests, safety equipment, tools, and similar work-related items incurred after employment commences. Non-temporary help/services agency employers may require payment for such charges by its employees and referrals to these employers by the Employment Security Commission are not terminated or limited because of this requirement. To restrict temporary agency employers who have hired applicants referred by the Employment Security Commission in this manner, but not non-temporary agency employers, would result in different treatment without a justifiable basis.

As with any other employer, a Job Service Office must inquire of the temporary help/services agency whether an applicant, after being hired, may be required to pay charges for work-related items, as described above, incurred after employment commences. This information must be noted on the job order and shared with the applicant by the Job Service Office at the time of referral.

SUMMARY:

Neither 29 U.S.C. § 49(1)(b)(1) nor Interpretation No. 270 would prohibit a temporary help/services agency employer from requiring an employee, hired after referral by the Employment Security Commission to pay charge for drug tests, safety equipment, tools, and similar work-related items incurred after employment commences. To ensure that the applicant knowledgeably accepts employment and any conditions applicable thereto, the Job Service Office must obtain this information from the temporary help/services agencies, as well as other employing entities, at the time the job order is submitted, and share this information with the applicant at the time of referral.

Adopted as an official Interpretation by the Employment Security Commission on February 25, 1994.