

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 270

TO: The Employment Security Commission

FROM: Thomas S. Whitaker, Chief Counsel

SUBJECT: Temporary Help/Services Agencies
(1) Job Listings Requirement;
(2) Fee-Charging Restriction

QUESTION #1:

Does the Vietnam Era Veterans Readjustment Act of 1974 require temporary help/services agencies who have subcontracts with Federal contractors to list all suitable employment openings with the Employment Security Commission?

ANSWER:

Yes.

DISCUSSION:

In a letter dated March 25, 1992, the Regional Director of the U.S. Department of Labor Employment Standards Administration Office of Federal Contract Compliance Programs responded to this and similar questions posed by the General Counsel of the National Association of Temporary Services, Incorporated. The following is a verbatim excerpt from that letter which supports the foregoing answer:

The Act does require temporary help firms/agencies that have subcontracts with Federal contractors to list all suitable employment openings received from customers with the State Employment Service including those occurring at an establishment of the subcontractor other than at the establishment at which the contract work is being performed.

Even though the temporary help firm regularly maintains a list of qualified temporary employees previously screened or hired, it is not exempt from the requirements to list the opening with the State Employment Security Commission upon receipt of the job orders. The interpretation that customer orders filled from within the temporary agency's own organization is within the meaning of the regulatory requirements is incorrect. The temporary agency is not filling job openings within its organization; it is filling orders for the Federal

contractors. The regulations at 60 CFR 250.4(b)(3) should not be interpreted in a manner to circumvent the intent of the requirements under the Act.

In addition, when a Federal contractor uses an employment agency to recruit, screen, and refer potential employees, both the temporary agency and the Federal contractor may be liable if there is any violation of the Job Listing Requirements.

In summary, the focus is targeted at job opportunities and the emphasis placed on proceeding with good faith efforts toward making job opportunities available to covered veterans where there is federal contract coverage.

QUESTION # 2:

Is 29 U.S.C. § 49(1)(b)(1) applicable if an individual who is referred by a Job Service Office to a temporary help agency is required as a condition of his/her employment with the temporary help agency to sign a contract specifying that the applicant will become an applicant of the fee-charging unit of the temporary help agency beginning when the applicant obtains permanent employment with a client of the temporary help agency?

ANSWER:

Yes.

DISCUSSION:

299 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. Even though the temporary help unit may be a part of or attached to an applicant fee-charging agency, 29 U.S.C. § 49(1)(b)(1) will still permit a Job Service Office to refer the applicant to the temporary help unit provided it is made clear to the dual—unit agency that only its temporary help unit is being served by the Job Service Office. Furthermore, the applicant must be made aware at the time of referral that the

referral is to the temporary help unit, and that the temporary help unit is a part of or attached to an applicant fee-charging agency.

The foregoing presumes, however, that the two (2) units of the dual agency operate independently to the extent that the applicant's employment with the temporary help unit is not dependent on his/her either becoming or potentially becoming an applicant of the fee-charging unit. If the Job Service Office knows or have reason to believe that as a condition of employment with the temporary help unit, the referred applicant will be required to contract to become an applicant of the fee-charging unit and be liable for a fee upon the occurrence of a specific event, the referral by the Job Service Office is to the temporary help unit and the fee-charging unit. That the fee would only become due and owing if the applicant obtains permanent employment with a temporary help unit's client does not alter the fact that the applicant must contract to pay this fee to the fee-charging unit in order to obtain employment with the temporary help unit.

In summary, 29 U.S.C. § 49(1)(b)(1) would prohibit a Job Service Office from referring an applicant to a temporary help agency that would require, as a condition of employment, the applicant to sign a contract to become an applicant of its fee-charging operations.

Adopted as an official Interpretation by the Commission on June 2, 1992.