

Explanation of Proposed 429 CMR 10.00
Employment Agency and Temporary Workers Right to Know Regulations

The draft regulation covers two statutes:

- M.G.L. c. 140, sections 46A-46R (Employment Agency Law)
- M.G.L. c. 149, sec. 159C (Temporary Workers Right to Know Law).

The Employment Agency Law was last significantly amended in the 1960s; the Temporary Workers Right to Know Law was signed by Governor Patrick in August of 2012 and became effective January 31, 2013. Neither law has ever had regulations.

In brief, we have attempted to harmonize the two statutes, including conflicting provisions, and we have brought clarity to ambiguous provisions of the statutes.

High level summary of what the regulations do

- The draft regulation addresses definitions of key terms, record-keeping requirements, and clarifies processes so that the Department of Labor Standards may effectively administer the two laws, enforce the Employment Agency Law, and the Office of the Attorney General may enforce the Temporary Workers Right to Know Law.
- In order to clarify how agencies are covered under the statutes, the regulations establish three terms for labor market intermediaries/ labor brokers/providers: (a) Employment agency; (b) Placement agency; and (c) Staffing agency.
- The regulations:
 - Clearly establish how to categorize businesses into the above terms;
 - Clearly itemize the obligations of each entity in terms of licensure or registration requirements;
 - Outline the legal requirements for providing information to workers or job applicants;
 - Establish record-keeping requirements on the part of agencies;
 - Outline prohibited business practices.
- The regulations establish a definition of a “domestic employee” as being a worker performing work of a domestic nature who is paid directly by a household or a family (the worker is the employee of the family or household). The consequence of this definition is that businesses that directly employ workers for domestic service are excluded from licensure or registration requirements. For example, a home care agency which directly employs, assigns, and manages its workers to service the needs of the business’ clientele is not “providing domestic employees” under M.G.L. c. 140, sec. 46A-46R, and is not regulated by the Employment Agency Statute. The definition of a domestic employee also excludes 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.
- There is a practical conflict regarding applicant fee restrictions in the two statutes when a business qualifies as both an “employment agency” and a “staffing agency.” While the Employment Agency statute (M.G.L. c. 140, sec. 46L) allows applicant fees for job placement, the Temporary

Workers Right to Know law (M.G.L. c. 149, sec. 159C(c)(1)) prohibits such fees by any entity defined as a staffing agency. The DLS has reconciled the conflict by deferring to the prohibitions of the latest statute made into law.

Section-by-section summary

Section 10.02: Definitions

Separate definitions for “Applicant Fee” and “Client Fee”. We included separate definitions of these terms to clarify that the regulations do not regulate client fees.

“Domestic Employee” is defined, in part, as a worker who is paid directly by a household or a family.

“Employment Agency” and “Placement Agency” are defined in accordance with the statutory definition and exceptions to the term “Employment Agency” in M.G.L. c. 140, sec. 46A.

“Professional Employee” tracks the definition from §159C.

“Job order” is the term DLS has given to the job notice requirements of the Temporary Workers Right to Know Law. The definition contains all of the information required by the law to be given by a Staffing Agency to a job applicant or worker for any job other than a professional, secretary, or administrative assistant assignment.

Section 10.03: Requirements for Licensure of Employment Agencies and Registration of Placement Agencies.

This section, as reflected by its title, provides general requirements for licensure and registration of Employment and Placement Agencies.

Section 10.04 Application Requirements for Employment Agencies and Placement Agencies

This section, as reflected by its title, prescribes the application requirements for licensure of employment agencies and registration for placement agencies under c. 140, §46A through 46R.

Section 10.05 Application Procedures and Prerequisites for Issuance of Employment Agency Licenses.

This section lays out the application requirements, site inspection requirements and process by which the department makes licensing determinations. The section also sets forth the procedure for an applicant or licensee to appeal the denial, revocation or suspension of a license to operate an employment agency.

Also contained within this section is language which solidifies a departmental practice to not require a formal hearing of license application when there are no questions or protests about the application. DLS has found that it is an unnecessary burden to require business owners to appear for a formal hearing when no issues are raised about their applications. Instead, DLS has moved to pro forma hearings for the vast majority of new license applications, while reserving the right to conduct a formal hearing when necessary.

Lastly, it should be noted that this section allows for the issuance of licenses with conditions. DLS has found that it often serves everyone’s interest when a license does not have to be denied, but rather, can be issued with conditions. In practice, this has worked out well, with most licensed agencies in this situation satisfying the conditions and moving into an unconditional license status.

Section 10.06 Renewal of Employment Agency Licenses and Placement Agency Registrations

This section lays out the requirements for renewal as reflected by the title.

Section 10.07 Information Required to be Furnished to Job Applicants or Workers by Employment Agencies

This section lays out the information which employment agencies are required to provide to workers pursuant to c. 140, §46I, and differs slightly from the information which staffing agencies are required to provide pursuant to the Temporary Workers Right to Know Law. If an agency qualifies as both an employment agency, under c. 140, and a staffing agency, under c. 149, the agency will be required to satisfy both sets of requirements. *See Section 10.08 immediately following.*

This section also contains a provision which has been long-standing in practice, to require that employment agencies provide the Massachusetts Minimum Wage poster to job applicants or employees when agencies do not meet applicants or employees in an office where the poster is required to be posted. Due to the fact that many workers using employment agencies do not report to offices in order to receive assignments, it was agreed, after discussions with the Attorney General's Fair Labor Division, that DLS would require employment agencies to make the poster available to workers and employees.

Section 10.08 Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies

This section prescribes the information which must be furnished to job applicants and workers pursuant to the Temporary Workers Right to Know Law.

Section 10.09 Provisions and Restrictions Relating to Applicant Fees and Client Fees and Charges Assessed by Employment Agencies

This section sets forth the prohibitions and restrictions on worker fees that may be charged by employment agencies under c. 140, §46L. As with the job information, the prohibitions listed here are similar, but not identical to, the prohibitions on worker fees set forth in the Temporary Workers Right to Know Law. Accordingly, if a company qualifies as both an employment agency and as a "staffing agency", both sets of restrictions will apply. *See Section 10.10, immediately following.* Note that this presents a substantial business model problem for many modeling agencies that charge applicant fees. The two statutes conflict and DLS sees no manner in which to reconcile the conflict, other than to defer to the prohibitions of the latest statute made into law.

Section 10.10 Provisions and Restrictions Relating to Charges by Staffing Agencies and Work Site Employers

As discussed above, this section sets forth the prohibitions and restrictions on worker fees that may be charged by staffing agencies to workers pursuant to the Temporary Workers Right to Know Law. The language in the draft regulation tracks the statutory language except that the regulation clarifies that staffing agencies and work site employers may not deduct any costs or charges from the wages of workers except for those deductions permitted by law. The Massachusetts Wage and the Minimum Fair Wages laws may provide for more stringent restrictions on deductions.

Section 10.11 Requirements and Restrictions Relating to the Placement of Domestic Employees by Employment Agencies

This section reflects the requirements and restrictions relating to domestic employees set forth in c. 140, §46 J.

Section 10.12 Unlawful Practices by Employment Agencies

Because the prohibited practices by employment agencies under c. 140, §46K, closely resemble the prohibited practices by staffing agencies under the Temporary Workers Right to Know Law, the department had considered combining the two into one section in an attempt to harmonize the two statutes. However, we have separated out the two statutory provisions into two sections.

Section 10.13. Unlawful Practices by Staffing Agencies

See comment to immediately preceding section.

Section 10.14 Record Keeping Requirements.

Record-keeping requirements are prescribed in Section 10.14 for both staffing agencies and employment agencies.

Section 10.15 Limitations on Transportation Charges by Work Site Employers and Agencies.

This section covers the limitations on transportation charges to workers contained in the Temporary Workers Right to Know Law.

Section 10.16 Inspections Conducted by the Department.

We combined and harmonized the inspection provisions of the Employment Agency Statute and the Temporary Workers Right to Know Law. With regard to licensed employment agency inspections, M.G.L. c. 140, §46Q requires that DLS inspect licensed agencies no less frequently than once every six months. This requirement has proven in some cases to be overly burdensome on our regulated entities and it constricts DLS's ability to allocate staff resources as it sees fit. This section allows for documentary inspections, which uphold the requirement of the law but do not place an unnecessary burden on regulated entities or the DLS.

Section 10.17 Complaints.

This section lays out the process for persons to file complaints about Agencies and for the department to handle complaints, depending upon whether the complaint involves activity covered under the Employment Agency Law or under the Temporary Workers Right to Know Law.

Section 10.18 Revocation Suspension of License.

The provisions of this section track the statutory provisions of G.L. c. 140, sec. 46Q.

Section 10.19: Violations of the Employment Agency Statute: Civil Administrative Penalties.

This section lays out the penalties for Agencies that violate the Employment Agency Statute.

Section 10.20: Violations of the Temporary Workers Right to Know Law.

This section lays out the penalties for violations of the Temporary Workers Right to Know Law.

Section 10.21: Confidentiality.

This section clarifies that not all information secured pursuant to G.L. c. 140, sec. 46A-46R is confidential.

Section 10.22: Severability.

This section means that if any particular section of the regulations is found to be illegal, the other sections will still remain in effect.