

Clearinghouse Rule 95-146

STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Docket No. 95-146

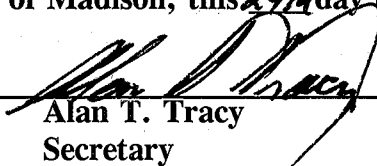
) ss.

CERTIFICATION:

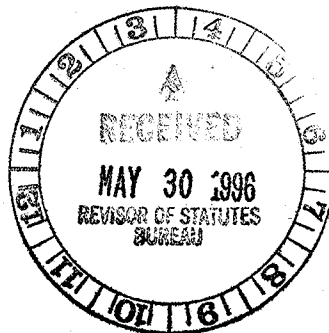
I, Alan T. Tracy, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the attached rulemaking order, Chapter ATCP 116, Wisconsin Administrative Code, relating to work recruitment schemes was signed and adopted by the Department on May 24, 1996.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 24th day of May, 1996.



Alan T. Tracy
Secretary





**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
REPEALING AND RECREATING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection adopts
2 the following order to repeal and recreate chapter ATCP 116, Wis. Adm. Code, relating
3 to work recruitment schemes.

**Analysis by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: s. 100.20(2), Stats.

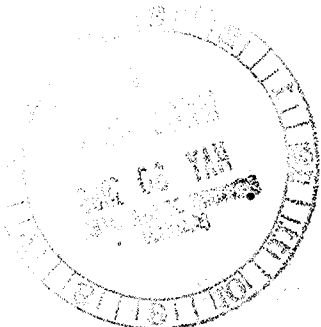
Statutes interpreted: s. 100.20, Stats.

Currently, under ch. ATCP 116, Wis. Adm. Code, the department of agriculture, trade and consumer protection ("department") regulates work recruitment schemes that are aimed at getting money from job applicants, not just recruiting them as workers. This rule strengthens and clarifies the department's current rules, which have not been updated since 1962.

CURRENT RULES

The current rules apply when a business recruits workers to sell "products," but requires them to make a "purchase or investment" in order to get the job. The current rules prohibit a recruiter from doing any of the following:

- Requiring recruits to make a "purchase or investment" unless the recruitment ads disclose the purchase or investment requirement.
- Misrepresenting the nature of the work or the amount that a worker will earn.
- Selling sales kits, inventory or other "goods" to a recruited worker, unless all of the following apply:
 - The contract for the sale of goods is in writing, and a copy is furnished to the sales worker. The sale contract must state whether it is assignable.
 - The sale contract discloses the total price of the goods, including interest and other charges.



The sale contract describes the terms and conditions of the sales work for which the worker was recruited, including the nature of the work, the worker's rate of pay, the usual hours of work and any minimum work commitment.

- The sale contract describes the "territory," if any, which is assigned to the sales worker, and states whether the territory is exclusive.

ADOPTED RULE

This rule strengthens and clarifies the department's current rules. Like the current rules, this rule regulates recruitment schemes that are aimed at getting money from job applicants, not just recruiting them as workers. This rule does not affect other businesses that recruit and hire workers.

Coverage

This rule expands the coverage of the current rules. The current rules apply when a business requires a "purchase or investment" from prospective employees, agents or independent contractors whom the business recruits to sell "products." This rule applies, more broadly, when a businesses requires or solicits a "purchase or investment" from either of the following:

- Prospective employees, regardless of the work for which they are recruited.
- Prospective sales workers, regardless of whether they are recruited as employees, agents or independent contractors. "Sales work" means any work that involves soliciting persons to purchase or lease goods, services or contract rights (not just "products") which the recruiter is in the business of selling or leasing.

"Purchase or Investment" Defined

The current rules do not define what is meant by a "purchase or investment." This rule clarifies that a "purchase or investment" means a direct or indirect payment to the recruiter. This definition is consistent with the Wisconsin Court of Appeals decision in Schinker v. Farmers Insurance Exchange et al., Case No. 89-0959, which held that an insurance agent required to establish his own office was not required to make a "purchase or investment" within the meaning of the current rules. (To establish his own office, the agent was not required to make any payment to the insurance company that recruited him.)

Required "Purchase or Investment;" Disclosure in Work Ads

This rule defines a "work advertisement" as any solicitation or representation, other than a

face-to-face statement, in which a recruiter invites one or more individuals to apply for work or accept a work offer. Under this rule, a work advertisement must clearly disclose all of the following:

- The nature and amount of every purchase or investment that a recruit must make in order to obtain a work offer.
- The nature and amount of every purchase or investment that a recruit must make in order to have a reasonable prospect of achieving the potential earnings suggested by a recruiter in the work advertisement. This disclosure requirement does not apply to a recruit's purchases of product inventory to fill customer orders obtained by the recruit.

Required "Purchase or Investment" Documented

Under this rule, a recruiter must document every "purchase or investment" that a recruit must make in order to obtain a work offer. The recruiter must document the "purchase or investment" in writing, and must provide a copy of that document to the recruit before the recruit agrees to make the required "purchase or investment." The document must include all of the following:

- The name of the recruit.
- The name and permanent address of the recruiter.
- The nature of the "purchase or investment," and the terms under which it is made.
- The amount of the "purchase or investment," including any interest or other charges that may apply.
- The consideration given by the recruiter in return for the "purchase or investment."
- If the "purchase or investment" involves any separate contract or note, a copy of that contract or note. Each contract and each note must state whether it is subject to assignment.
- The terms and conditions of any work offer to which the "purchase or investment" is related. The terms and conditions must include all of the following:
 - The nature of the work offered.
 - The source from which the recruit will receive his or her earnings, if other than the recruiter.
 - The form, such as wages, salaries, commissions, or direct profits from sales, in which the recruit will receive his or her earnings.
 - The agreed rate of pay if applicable, or the agreed method by which earnings

will be determined.

- Fringe benefits if any.
- Applicable work terms and conditions, including work hours and location. If a recruit is offered sales work in a specific territory, the work offer must describe that territory and state whether it is exclusive.

Earnings Claims

Under this rule, if a recruiter makes any statement of potential earnings to recruits from whom the recruiter solicits any purchase or investment, the recruiter must disclose all of the following in connection with that statement:

- The source from which the worker would receive the earnings, if other than the recruiter.
- The form, such as wages, salaries, commissions, or direct profits from sales, in which the recruit would receive the earnings.
- The basis on which the earnings would be paid or received, such as per unit of time worked, per unit of work completed, or per volume of sales. The basis must be stated so that a recruit can readily understand, compare and evaluate the stated earnings.
- Requirements which the recruit must meet in order to qualify for the stated earnings, including any training or probationary service requirement.
- The nature and amount of every purchase or investment which the recruit must make in order to have a reasonable prospect of achieving the stated earnings. This disclosure requirement does not apply to a recruit's purchases of product inventory to fill customer orders obtained by the recruit unless the recruit is required to purchase the product inventory in order to obtain a work offer.

Prohibited Practices

Under this rule, no recruiter who solicits a "purchase or investment" from any recruit may do any of the following:

- Make any false, deceptive or misleading representation to that recruit.
- Misrepresent the nature of the work which the recruiter offers or may offer to that recruit.
- Misrepresent the nature or amount of earnings which the recruit may make.
- Misrepresent that an offer to engage that recruit as an independent contractor is an

offer to engage that recruit as an employee.

- Engage in a "bait and switch" scheme whose purpose is not to recruit workers to perform work.
- Misrepresent the recruiter's identity.

Employment Services

This rule prohibits any person from misrepresenting an advertisement or offer of employment service as an advertisement or offer of work. An "employment service" is a service designed to help individuals obtain work, other than work offered by the provider of the employment service. For example, "employment service" includes assistance with any of the following:

- Finding work announcements or obtaining work offers.
- Preparing resumes or portfolios.
- Obtaining or completing work application forms.

1 **SECTION 1.** Chapter ATCP 116, Wis. Adm. Code, is repealed and recreated to
2 read:

CHAPTER ATCP 116

WORK RECRUITMENT SCHEMES

5 **ATCP 116.01 DEFINITIONS.** In this chapter:

6 (1) "Earnings" means any compensation for work, and includes wages, salaries,
7 commissions, bonuses, profits and other compensation.

8 (2) "Employment service" means a service designed to help individuals obtain work,
9 other than work offered by the provider of the employment service. "Employment service"
10 does not include a person who is licensed as an employment agent under s. 105.05(1), Stats.
11 "Employment service" includes assistance with any of the following:

12 (a) Finding work announcements or obtaining work offers.

13 (b) Preparing resumes or portfolios.

1 (c) Obtaining or completing work application materials.

2 (3) "Individual" means a natural person.

3 (4) "Person" means any individual, corporation, partnership, limited liability company,
4 cooperative, business trust, or business association or entity. "Person" includes any employee,
5 agent or representative who acts on behalf of a person.

6 (5) "Purchase or investment" means any arrangement involving a direct or indirect
7 payment from a recruit to a recruiter. "Purchase or investment" includes all of the following:

8 (a) The purchase or rental of goods, services or contract rights.

9 (b) A deposit given, or a financial obligation incurred, in return for the loan or
10 custody of goods.

11 (c) A contract to make a purchase or investment.

12 (d) A deposit or installment on a purchase or investment.

13 (6) "Recruit" means an individual whom a recruiter solicits to apply for work, accept
14 a work offer or to perform work.

15 (7) "Recruiter" means a person who makes a work advertisement or work offer, or
16 who solicits individuals to apply for work or accept a work offer.

17 (8) "Sales work" means work in which the worker solicits persons to buy or lease
18 goods, services or contract rights which the worker's recruiter is in the business of selling or
19 leasing.

20 (9) "Work" means either of the following:

21 (a) Work of any kind which a recruit is to perform as an employee of a recruiter.

22 (b) Sales work which a recruit is to perform as an agent or independent contractor,

1 other than as a franchisee under ch. 553, Stats.

2 (10) "Work advertisement means any solicitation or representation, other than a face-
3 to-face statement, in which a recruiter invites one or more individuals to apply for work or
4 accept a work offer.

5 (11) "Work offer" means an offer of work which, if accepted, becomes a contract
6 between the recruiter who makes and the recruit who accepts the offer.

7 **ATCP 116.02 REQUIRED PURCHASE OR INVESTMENT; DISCLOSURE IN**
8 **WORK ADVERTISEMENTS.** A work advertisement shall clearly disclose all of the

9 following:

10 (1) The nature and amount of every purchase or investment that a recruit must make
11 in order to obtain a work offer.

12 (2) The nature and amount of every purchase or investment that a recruit must make
13 in order to have a reasonable prospect of achieving the potential earnings suggested by a
14 recruiter in the work advertisement. This subsection does not apply to a recruit's purchases of
15 product inventory to fill customer orders obtained by the recruit.

16 NOTE: See s. ATCP 116.01(5) and (10).
17

18 **ATCP 116.03 PURCHASE OR INVESTMENT DOCUMENTED.** If a recruit is
19 required to make a purchase or investment in order to obtain a work offer, the recruiter shall
20 document that purchase or investment in writing, and shall provide a copy of that written
21 document to the recruit before the recruit agrees to make the purchase or investment. The
22 document shall include all of the following:

23 (1) The name of the recruit.

1 (2) The name and permanent address of the recruiter.

2 (3) The nature of the purchase or investment, and the terms under which it is made.

3 (4) The amount of the purchase or investment, including any interest or other charges
4 that may apply.

5 (5) The consideration given by the recruiter in return for the purchase or investment.

6 (6) A copy of any separate contract or note involved in the purchase or investment.

7 Each contract and each note shall state whether it is subject to assignment.

8 (7) The terms and conditions of any work offer to which the purchase or investment
9 is related. The terms and conditions shall include all of the following:

10 (a) The nature of the work offered.

11 (b) The source from which the recruit will receive his or her earnings, if other than
12 the recruiter.

13 (c) The form, such as wages, salaries, commissions, or direct profits from sales, in
14 which the recruit will receive his or her earnings.

15 (d) The agreed rate of pay if applicable, or the agreed method by which earnings will
16 be determined.

17 (e) Fringe benefits, if any.

18 (f) Applicable work terms and conditions, including work hours and location. If a
19 recruit is offered sales work in a specific territory, the work offer shall describe that territory
20 and state whether it is exclusive.

21 **ATCP 116.04 EARNINGS CLAIMS.** If a recruiter makes any statement of
22 potential earnings to recruits from whom the recruiter solicits any purchase or investment, the

1 recruiter shall disclose all of the following in connection with that statement:

2 (1) The source from which the worker would receive the earnings, if other than the
3 recruiter.

4 (2) The form, such as wages, salaries, commissions, or direct profits from sales, in
5 which the recruit would receive the earnings.

6 (3) The basis on which the earnings would be paid or received, such as per unit of
7 time worked, per unit of work completed, or per volume of sales. The basis shall be stated so
8 that a recruit can readily understand, compare and evaluate the stated earnings.

9 (4) Requirements which the recruit must meet in order to qualify for the stated
10 earnings, including any training or probationary service requirement.

11 (5) The nature and amount of every purchase or investment which the recruit must
12 make in order to have a reasonable prospect of achieving the stated earnings. This subsection
13 does not apply to a recruit's purchases of product inventory to fill customer orders obtained
14 by the recruit unless the recruit is required to purchase the product inventory in order to
15 obtain a work offer.

16 **ATCP 116.05 PROHIBITED PRACTICES.** No recruiter who solicits a purchase
17 or investment from any recruit may do any of the following:

18 (1) Make any false, deceptive or misleading representation to that recruit.

19 (2) Misrepresent the nature of the work which the recruiter offers or may offer to that
20 recruit.

21 (3) Misrepresent the nature or amount of earnings which a recruit may make.

22 (4) Misrepresent that an offer to engage a recruit as an independent contractor is an

1 offer to engage that recruit as an employee.

2 (5) Make any statement or representation which is part of a scheme whose purpose is
3 not to recruit workers to perform work.

4 NOTE: See also s. 100.18(9), Stats., which prohibits "bait and switch" advertising.

5
6 (6) Misrepresent the recruiter's identity.

7 **ATCP 116.06 MISREPRESENTING EMPLOYMENT SERVICE OFFER AS**
8 **WORK OFFER.** No person may misrepresent an advertisement or offer of employment
9 service as an advertisement or offer of work.

10 **SECTION 2.** The rules contained in this order shall take effect on the first day of
11 the month following publication in the Wisconsin administrative register, as provided under s.
12 227.22 (2) (intro.), Stats.

13 Dated this 24th day of May, 1996.

14 STATE OF WISCONSIN
15 DEPARTMENT OF AGRICULTURE,
16 TRADE AND CONSUMER PROTECTION

17
18 By 
19 Alan T. Tracy, Secretary