

Chapter ATCP 116

WORK RECRUITMENT SCHEMES

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Note: Chapter Ag 116 was renumbered chapter ATCP 116 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 116 as it existed on July 31, 1996 was repealed and new chapter ATCP116 was created effective August 1, 1996.

ATCP 116.01 Definitions. In this chapter:

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

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

- (a) Finding work announcements or obtaining work offers.
- (b) Preparing resumes or portfolios.
- (c) Obtaining or completing work application materials.

(3) "Individual" means a natural person.

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

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

- (a) The purchase or rental of goods, services or contract rights.
- (b) A deposit given, or a financial obligation incurred, in return for the loan or custody of goods.
- (c) A contract to make a purchase or investment.
- (d) A deposit or installment on a purchase or investment.

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

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

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

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

- (a) Work of any kind which a recruit is to perform as an employee of a recruiter.
- (b) Sales work which a recruit is to perform as an agent or independent contractor, other than as a franchisee under ch. 553, Stats.

(10) "Work advertisement" means 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.

(11) "Work offer" means an offer of work which, if accepted,

becomes a contract between the recruiter who makes and the recruit who accepts the offer.

History: Cr. Register, July, 1996, No. 487, Eff. 8-1-96; CR 01-028: am. (10), Register September 2001 No. 549, eff. 10-1-01.

ATCP 116.02 Required purchase or investment; disclosure in work advertisements. A work advertisement shall clearly disclose all of the following:

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

(2) 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 subsection does not apply to a recruit's purchases of product inventory to fill customer orders obtained by the recruit.

Note: See s. ATCP 116.01 (5) and (10).

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

ATCP 116.03 Purchase or investment documented.

If a recruit is required to make a purchase or investment in order to obtain a work offer, the recruiter shall document that purchase or investment in writing, and shall provide a copy of that written document to the recruit before the recruit agrees to make the purchase or investment. The document shall include all of the following:

(1) The name of the recruit.

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

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

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

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

(6) A copy of any separate contract or note involved in the purchase or investment. Each contract and each note shall state whether it is subject to assignment.

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

(a) The nature of the work offered.

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

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

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

(e) Fringe benefits, if any.

(f) Applicable work terms and conditions, including work hours and location. If a recruit is offered sales work in a specific

territory, the work offer shall describe that territory and state whether it is exclusive.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

ATCP 116.04 Earnings claims. If a recruiter makes any statement of potential earnings to recruits from whom the recruiter solicits any purchase or investment, the recruiter shall disclose all of the following in connection with that statement:

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

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

(3) 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 shall be stated so that a recruit can readily understand, compare and evaluate the stated earnings.

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

(5) 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 subsection does not apply to a recruit's purchases of product inventory to fill cus-

tomers orders obtained by the recruit unless the recruit is required to purchase the product inventory in order to obtain a work offer.

History: Cr. Register, July, 1996, No.487, eff. 8-1-96.

ATCP 116.05 Prohibited practices. No recruiter who solicits a purchase or investment from any recruit may do any of the following:

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

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

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

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

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

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

(6) Misrepresent the recruiter's identity.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

ATCP 116.06 Misrepresenting employment service offer as work offer. No person may misrepresent an advertisement or offer of employment service as an advertisement or offer of work.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.