WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #78G: Disclosure of the Job Order and Notice of Worker Rights under the H-2B Program

The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 ("2016 DOL Appropriations Act"), provides that the Department of Labor ("Department") may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. See Sec. 113. This appropriations rider has been included in the continuing resolutions that have passed throughout FY2017 and FY2018, and the Department remains prohibited from enforcing these provisions or any reference thereto. However, the 2016 DOL Appropriations Act and continuing resolutions did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any funds to enforce them until such time as the rider may be lifted

This fact sheet provides general information concerning the prohibition against retaliating against an individual for exercising his or her rights or participating in matters protected under the H-2B program for H-2B applications submitted on or after April 29, 2015. An employer seeking H-2B certification by submitting an Application for Temporary Employment Certification (Application) must agree as part of the Application to comply with the following requirements.

What notification must an H-2B employer provide to its current and former U.S. workers or their representative?

During the recruitment process and in order to ensure that U.S. workers learn of and apply for available jobs, the employer is required to:

- Contact all former workers (except those dismissed for cause or who abandoned the job) who were employed in the previous year in the occupation at the place of employment, disclose the job order to them, and solicit their return to the job.
- Contact the bargaining representative for any of the employer's workers in the same occupation and area of intended employment as the occupation and area of intended employment identified in the Application, and provide the representative with a copy of the Application and job order.
- Post the availability of the job opportunity in two conspicuous locations for at least 15 consecutive business days at the intended worksite(s) if there is no bargaining representative. Alternatively, the employer can use another method that provides reasonable notification to all current employees in the same job classification at the intended worksite(s) as the job classification and intended worksite(s) identified in the Application.

Finally, no later than the day that work begins, the employer must provide a copy of the job order to all workers in corresponding employment (generally those non-H-2B workers performing substantially the same work certified in the Application or doing substantially the same work performed by the H-2B workers, with some specific exceptions; see 29 CFR 503.4).

What notification must an H-2B employer provide to its H-2B workers?

H-2B employers are required to provide a copy of the job order to all H-2B workers in a language understood by the worker, as necessary or reasonable.

- If the worker is outside the United States, the employer must provide the copy no later than when the worker applies for the visa.
- If the worker is already in the United States and changing employment, the employer must provide the copy no later than the time the H-2B employer makes the job offer.

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What notice must an employer post at the job site?

The employer must post and maintain in a conspicuous place of employment a poster provided by the Department of Labor which sets out the rights and protections for H-2B and corresponding workers. The employer must post the poster in English. The employer must post additional posters in any other language common to a significant portion of the workers if they are not fluent in English, to the extent that posters translated into such languages are available from the Department of Labor.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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