WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #78H: Retaliation Prohibited under the H-2B Temporary Visa 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.

Prohibitions

29 CFR § 503.16(n) prohibits discrimination and states that an employer may not “intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has” engaged in any of the following actions in relation to protections under the H-2B program or the INA:

- Filed, instituted, or caused to be instituted any complaint or proceeding;
- Testified or is about to testify in any such proceedings;
- Consulted with a workers’ center, community organization, labor organization, attorney or legal assistance program;
- Exercised or asserted, on behalf of himself/herself or others, any right or protection.

Coverage

The prohibited actions may not be taken against “any person” which includes, but is not limited to, H-2B visa workers and workers in corresponding employment. An employment relationship is not required.

For additional general information on the obligations of H-2B program, please refer to Fact Sheet #78: General Requirements for Employers Participating in the H-2B Program.

Enforcement

If an individual believes that he or she has been discriminated against, the worker may file a complaint with any local Wage and Hour Division (WHD) office. All complaints are confidential and investigations are conducted in such a manner so as to protect confidentiality.

If, upon investigation, the WHD determines such violations occurred, appropriate remedies may be sought, including: civil money penalties and/or any additional remedies necessary to make the employee whole as a result of the discrimination. 29 CFR § 503.20. WHD may also initiate debarment proceedings, which may result in instructions to the Office of Foreign Labor Certification not to issue to an employer future H-2B labor certifications for between one and five years.

Submit Feedback

Allegations of discrimination related to immigration status or based on citizenship should be directed to the U.S. Department of Justice Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair

Employment Practices. For more information on how to file a charge, visit their website at http://www.justice.gov/crt/about/osc/htm/charge.php.

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.

Submit Feedback