WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #77D: Retaliation Prohibited under the H-2A Temporary Visa Program

April 2012

On April 29, 2024, The U.S. Department of Labor published a final rule, "Improving Protections for Workers in Temporary Agricultural Employment in the United States" Further information on the final rule is found here.

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-2A nonimmigrant temporary visa program.

The Immigration and Nationality Act (INA) authorizes the admission into the United States of temporary, non-immigrant alien workers to perform agricultural labor or services that are temporary or seasonal in nature (H-2A workers). Employers of such workers and of U.S. workers in corresponding employment (workers who perform work included in the job order or agricultural work performed by the H-2A workers) are obligated to comply with the terms and conditions specified in the job order/contract, and all applicable statutory and regulatory requirements, including the prohibition against retaliation.

Prohibitions

29 CFR § 501.4 prohibits discrimination and states that a person may not **"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-2A 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 an attorney or legal assistance program;
- Exercised or asserted, on behalf of himself or others, any right or protection.

Coverage

"Persons" who are precluded from engaging in prohibited discrimination includes, but is not limited to, agricultural associations, agricultu employers, agents, recruiters, and H-2A labor contractors.

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

For additional general information on the obligations of H-2A program, please visit Fact Sheet #26 at http://www.dol.gov/agencies/whd/regs/compliance/whdfs26.

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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, injunctive relief, and/or any additional remedies necessary to make the employee whole as a result of the discrimination. 29 CFR § 501.16. Further, under section 218 of the INA, the Secretary is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section. 8 U.S.C. § 1188(g)(2). WHD may also initiate debarment proceedings and recommend revocation of labor certification to the Office of Foreign Labor Certification (OFLC).

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.

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