EMPLOYEE RIGHTS
UNDER THE H-2B PROGRAM

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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.

The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in nonagricultural labor or services (H-2B WORKERS). Department of Homeland Security (DHS) regulations allow for the employment of **H-2B WORKERS** only if the wages and working conditions of U.S. workers would not be adversely affected.

Two types of workers have rights under this program:

- **H-2B WORKERS** and
- **OTHER WORKERS** performing substantially the same work included in the H-2B job order or substantially the same work as that performed by the H-2B workers, except for certain long-term existing employees and certain employees under a collective bargaining agreement or individual employment contract.

DISCLOSURE

- To receive accurate, **WRITTEN INFORMATION** about the wages, hours, working conditions, and benefits of the employment being offered
- To receive this information before getting a visa (in the case of H-2B workers outside the U.S.) but no later than the first day of work (for other workers)
- To receive this information in a language understood by the worker

WAGES

- To be **PAID** at least every two weeks at the rate indicated in the job order for all hours worked
- To be informed in writing of all **DEDUCTIONS** (not otherwise required by law) that will be made from the worker's paycheck
- To receive an itemized, written **STATEMENT OF EARNINGS** (pay stub) for each pay period
- To be guaranteed employment or payment for at least **THREE-FOURTHS** (75%) of the hours promised in the job order every 12-week period (or 6-week period for job orders under 120 days)

TRANSPORTATION AND VISA EXPENSES

- To be provided or, upon completion of 50 percent of the job order period, reimbursed for reasonable costs incurred for transportation and subsistence (including lodging incurred on the employer's behalf and meals) from the worker's home to the place of employment
- H-2B workers must be provided or reimbursed for all visa, border-crossing, and visa-related fees in the first workweek of employment
- Upon completion of the job order or if dismissed early for any reason, to be provided or paid for return transportation and subsistence
- All employer-provided transportation must meet applicable safety standards

ADDITIONAL PROVISIONS

- To be provided, at no cost, all **TOOLS**, **SUPPLIES**, and **EQUIPMENT** required to perform the assigned duties
- To be **FREE FROM DISCRIMINATION** or **DISCHARGE** for filing a complaint, testifying, or exercising your rights in any way or helping others to do so
- Employers and their agents MUST NOT request or receive payment from any worker for any costs related to obtaining the H-2B certification (such as application and recruitment fees)
- Employers MUST NOT have sought H-2B workers during a strike or lockout at any of the employer's worksites within the geographic area listed in the job order
- Employers MUST NOT place H-2B workers outside the geographic area(s) or the occupation listed in the job order
- Employers MUST display this poster where employees can readily see it
- Employer MUST NOT lay off or displace similarly employed U.S. workers within 120 days before the job order through the end of the job order
- Employers MUST hire any eligible U.S. worker who applies until 21 days before the start of the job order
- Employers MUST comply with all other applicable Federal, State, and local laws (including the prohibition against holding workers' passports or other immigration documents)

Workers who believe their rights under the program have been violated may file confidential complaints.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

www.dol.gov/whd

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