WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #78D: Deductions and prohibited fees 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 permissible deductions from the wages of workers employed under the H-2B program for H-2B applications submitted on or after April 29, 2015, as well as fees that employers are prohibited from charging. An employer employing H-2B workers and/or workers in corresponding employment under a certified Application for Temporary Employment Certification (Application) must agree as part of the Application to comply with the following requirements.

What deductions are permitted?

The employer must make all deductions from the worker's paycheck required by law. The job order must specify all deductions not required by law which the employer will make from the worker's pay. Deductions not disclosed are prohibited.

Authorized deductions are limited to:

1. deductions which the employer is required to withhold by law or court order;
2. deductions for the reasonable cost of board, lodging, and facilities furnished to the employee; and
3. deductions where the employee previously and voluntarily authorized payment to a third party, which may include union dues paid in accordance with a collective bargaining agreement. Such deductions may not be made if the employer, agent, or recruiter (or any affiliated person) derives any payment, rebate, commission, profit, or benefit, either directly or indirectly.

The principles applied in determining whether deductions are reasonable and the permissibility of deductions for payments to third persons are explained in more detail in 29 CFR Part 531.

What deductions are prohibited?

The job order must specify all deductions not required by law which the employer will make from the worker's pay. Deductions not disclose are prohibited, and other deductions such as those described below and in Fact sheet #78F: Travel and Visa expenses, are prohibited regardless of whether they are disclosed.

An employer will not meet the wage payment requirements when unauthorized deductions, rebates, or refunds reduce the wage payment made to the worker below the required amount or where the worker fails to receive such amount free and clear because the worker "kicks back" directly or indirectly to the employer (or to another person for the employer's benefit) all or part of the wages. The principles applied in determining whether payments are received free and clear are explained in more detail in 29 CFR Part 531.

Submit Feedback

May an employer require H-2B or corresponding workers to pay for job-related tools and equipment?

The employer must provide to the worker, without charge or deposit, all tools, supplies, and equipment required to perform the assigned duties.

May an employer recoup from the worker any expenses related to obtaining the employment certification?

The employer and its agents, attorneys, and employees are prohibited from seeking or receiving payment from the workers for any of the expenses related to obtaining the employment certification. These expenses include, but are not limited to: the employer's agent or attorney fees; application and petition fees; and recruitment costs. These prohibited payments may not be sought or received through any method, such as monetary payments, wage concessions, kickbacks, deductions, free labor, etc.

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