

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

The information in this fact sheet reflects provisions of the 2012 H-2B Final Rule which has been preliminarily enjoined (*Bayou Lawn & Landscape Servs. v. Solis*, No. 3:12-cv-00183-MCR-CJK (N.D. Fla. Apr. 26, 2012)) and not yet implemented. Until further notice, WHD will continue to enforce the provisions of the 2008 H-2B Final Rule (see WHD Fact Sheet #69).

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 nonimmigrant temporary visa program.

The Immigration and Nationality Act (INA) authorizes the lawful admission into the United States of temporary, non-immigrant alien workers (i.e., H-2B workers) to perform nonagricultural labor or services that are temporary or seasonal in nature. Employers of such workers and of U.S. workers in corresponding employment are obligated to comply with the terms and conditions specified in the Application and job order, and all applicable statutory and regulatory requirements, including the prohibition against retaliation.

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](#)

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.

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-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm 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 20 CFR Part 655 and 29 CFR Part 503.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)