ETA New Releases

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U.S. Department of Labor proposes rules to modernize and increase protections under H-2B program

WASHINGTON – The U.S. Department of Labor today proposed rules to modernize the application process and enhance worker protections under the H-2B temporary labor certification program. The changes respond to the administration's Aug. 10, 2007, promise to review and update foreign worker program regulations.

"These proposed improvements will give the department additional tools to protect workers and remove duplicative bureaucracy," said Secretary of Labor Elaine L. Chao.

When a shortage of U.S. workers is demonstrated, the H-2B program makes it possible for employers to apply for temporary, non-agricultural foreign workers to fill their temporary or seasonal needs.

The proposed rule would reform the application process so that employers would attest, under threat of fines and other penalties, that they have complied with all the program's requirements. These proposals would alter the current certification process, following a model similar to that adopted in the successful re-engineering of the permanent labor certification program in 2005. The proposed rule also would eliminate duplication of effort by state workforce agencies (SWAs) and the Department of Labor's Employment and Training Administration (ETA). Instead of applying first with their SWAs, employers would file their H-2B applications directly with ETA under the proposed process. Furthermore, employers would obtain from the Labor Department instead of SWAs the applicable prevailing wage determinations for their specific job opportunities. In addition, the department seeks to enhance protections for U.S. and foreign workers. For instance, employers would be prohibited from passing along application and other costs to foreign workers participating in the H-2B program. The Department of Labor also proposes to debar for up to three years employers, attorneys and agents found to have committed fraud or willful misrepresentation concerning the H-2B employment-based immigration program, or failed to cooperate in Labor Department audits or investigations.

Finally, the proposal contains a new Department of Labor enforcement program for H-2B in the event the Department of Homeland Security delegates its statutory authority for enforcing the H-2B program to the Department of Labor. Congress vested the Department of Homeland Security with H-2B enforcement authority in 2005.

The proposed rule appears in today's edition of the *Federal Register* and can be found at http://edocket.access.gpo.gov/2008/pdf/E8-11214.pdf. The period for public comment will close July 7.

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