

Secretary of Labor Hilda L. Solis

## US DEPARTMENT of LABOR: FALL REGULATORY AGENDA 2009

### Employment and Training Administration (ETA)

#### Topic: Labor Certification for Temporary Non-Agricultural Employment of H-2B Workers

**Key Action:** Review of the H-2B regulations will assist in supporting the Secretary's goal to increase workers' incomes and narrow wage and income inequalities by protecting the wages and working conditions of both American workers and foreign nationals working temporarily in the United States, supporting the Secretary's *"good jobs for everyone"* policy.

#### Key Issues

The Department has tentatively identified areas for regulatory review that would enhance current wage and working condition protections for both American workers and foreign nationals working temporarily in the United States, such as:

- **Employer Temporary Need:** The Department will be reviewing the current definition of temporary need to ensure that H-2B workers are only used to fill positions that truly reflect temporary employment.
- **Enforcement:** The Department intends to review its existing enforcement authority and consider strengthening worker protections to ensure effectiveness.
- **Recruitment:** The Department will consider refining the recruitment process to further ensure U.S. worker access to these job opportunities, as the statute requires.
- **Role of Labor Contractors:** The Department intends to review the role of labor contractors to further protect job opportunities for U.S. workers by looking at ways to reduce the speculative nature of some labor contracts.
- **Role of the State Workforce Agency:** The Department intends to review the role of the State Workforce Agency to examine ways in which it can be strengthened to provide U.S. workers greater access to these jobs.
- **Prevailing Wages:** The Department intends to review the current use of Davis Bacon Act and Service Contract wage rates and of a tiered wage system to further ensure that wages are not being artificially lowered, especially in specific covered occupations.

#### Background

The H-2B temporary worker program provides employers in seasonal and certain other industries access to temporary foreign workers who are capable of performing the services or labor when there is a shortage of U.S. workers to fill temporary, non-agricultural jobs. As part of its responsibility as an advisor to the Department of Homeland Security (DHS), as delegated under DHS' regulations, the Department of Labor certifies that qualified workers in the United States are not available and that there are no adverse effects on the wages and working conditions of US workers by the employment of H-2B workers.

Foreign workers hired through the H-2B temporary worker program tend to be low-skilled workers, often the most vulnerable to exploitation. Top occupations for which ETA issues labor certifications include landscapers, laborers, hotel cleaners and housekeepers, cooks, and construction workers.