

## § 501.17

performance of contractual obligations.

### § 501.17 Concurrent actions.

The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by the H-2A provisions of the Act and these regulations, or the regulations of 20 CFR part 655.

### § 501.18 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act.

(b) The Solicitor of Labor, through the authorized representatives shall represent the Administrator and the Secretary in all administrative hearings under the H-2A provisions of the Act and these regulations.

### § 501.19 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator for each violation of the work contract or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the work contract as provided in the H-2A provisions of the Act or these regulations the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the H-2A provisions of the Act and these regulations;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the H-2A provisions of the Act and these regulations;

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether

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the person has previously violated the H-2A provisions of the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for violation of the work contract will not exceed \$1,000 for each violation committed against each worker. A civil money penalty for discrimination or interference with Wage and Hour investigative authority will not exceed \$1,000 for each such act of discrimination or interference.

### § 501.20 Enforcement of Wage and Hour investigative authority.

Sections 501.5 through 501.7 of this part prescribe the investigation authority conferred upon the Wage and Hour Division for the purpose of enforcing the contractual obligations. These sections indicate the actions which may be taken upon failure to permit or interference with an investigation. No person shall interfere with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority. As stated in §§ 501.5, 501.6 and in 501.19 of this part, a civil money penalty may be assessed for each failure to permit an investigation or interference therewith, and other appropriate relief may be sought. In addition Wage and Hour shall report each such occurrence to ETA and may recommend to ETA denial of future labor certifications. The taking of any one action shall not bar the taking of any additional action.

### § 501.21 Referral of findings to ETA.

Where Wage-Hour finds violations Wage and Hour shall so notify the appropriate representative of ETA and shall forward appropriate information, including investigative information to such representative for review and consideration.

### § 501.22 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the

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U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

### Subpart C—Administrative Proceedings

#### § 501.30 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to impose an assessment of civil money penalties and which may be applied to the enforcement of contractual obligations, including the collection of unpaid wages due as a result of any violation of the H-2A provisions of the Act or of these regulations. Except with respect to the imposition of civil money penalties, the Secretary may, in his discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

#### PROCEDURES RELATING TO HEARING

#### § 501.31 Written notice of determination required.

Whenever the Administrator determines to assess a civil money penalty or to proceed administratively to enforce contractual obligations, including the recovery of unpaid wages, the person against whom such action is taken shall be notified in writing of such determination.

#### § 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the Administrator including the amount of any unpaid wages due or contractual obligations required and the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely re-

quest for a hearing, the determination of the Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

#### § 501.33 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 501.32 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Administrator at the above address, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail.

#### RULES OF PRACTICE

#### § 501.34 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.