

## Wage and Hour Division, Labor

## § 501.6

(a) Filed a complaint under or related to section 216 of the INA or these regulations;

(b) Instituted or caused to be instituted any proceedings related to section 216 of the INA or these regulations;

(c) Testified or is about to testify in any proceeding under or related to section 216 of the INA or these regulations;

(d) Exercised or asserted on behalf of himself or others any right or protection afforded by section 216 of the INA or these regulations.

(e) Consulted with an employee of a legal assistance program or an attorney on matters related to section 216 of the INA (8 U.S.C. 1186), or to this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA.

Allegations of discrimination in employment against any person will be investigated by Wage and Hour. Where Wage and Hour has determined through investigation that such allegations have been substantiated appropriate remedies may be sought. Wage and Hour may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, and may recommend to ETA that labor certification of any violator be denied in the future.

### § 501.4 Waiver of rights prohibited.

No person shall seek to have an H-2A worker, or other worker employed in corresponding employment by an H-2A employer, waive rights conferred under section 216 of the INA or under these regulations. Such waiver is against public policy. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

### § 501.5 Investigation authority of Secretary.

(a) *General.* The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places and vehicles (including housing) and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance with contractual obligations under section 216 of the INA or these regulations.

(b) *Failure to permit investigation.* Where any person using the services of an H-2A worker does not permit an investigation concerning the employment of his or her workers the Wage and Hour Division shall report such occurrence to ETA and may recommend denial of future labor certifications to such person. In addition, Wage and Hour may take such action as may be appropriate, including the seeking of an injunction or assessing civil money penalties, against any person who has failed to permit Wage and Hour to make an investigation.

(c) *Confidential investigation.* The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the work contract obligations of section 216 of the INA or these regulations to the Secretary by advising any local office of the Employment Service of the various States, any office of ETA, any office of the Wage and Hour Division, ESA, U.S. Department of Labor, or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, ESA, for the area in which the reported violation is alleged to have occurred.

### § 501.6 Prohibition on interference with Department of Labor officials.

No person shall interfere with any official of the Department of Labor assigned to perform an investigation, inspection or law enforcement function

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pursuant to the INA and these regulations during the performance of such duties. Wage and Hour will seek such action as it deems appropriate, including an injunction to bar any such interference with an investigation and/or assess a civil money penalty therefor. In addition Wage and Hour may refer a report of the matter to ETA with a recommendation that the person's labor certification be denied in the future. (Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.)

### § 501.7 Accuracy of information, statements, data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to title 18, section 1001, of the U.S. Code, which provides:

#### *Section 1001. Statements or entries generally.*

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

### § 501.10 Definitions.

The definitions in paragraphs (a) through (d) are set forth for purposes of this part. In addition, the definitions in paragraphs (e) through (v) are promulgated at 20 CFR 655.100(b), are utilized herein, and are incorporated and set forth for information purposes.

(a) *Act* and *INA* mean the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), with reference particularly to section 216.

(b) *Administrative Law Judge (ALJ)* means a person within the Department of Labor Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

(c) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and

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such authorized representatives as may be designated to perform any of the functions of the Administrator under this part.

(d) *Work contract* means all the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including those terms and conditions required by the applicable regulations in subpart B of 20 CFR part 655, *Labor Certification Process for Temporary Agricultural Employment in the United States*, and those contained in the Application for Alien Employment Certification and job offer under that subpart, which contract between the employer and the worker may be in the form of a separate written document. In the absence of a separate written work contract incorporating the required terms and conditions of employment, entered into between the employer and the worker, the work contract at a minimum shall be the terms of the job order included in the application for temporary labor certification, and shall be enforced in accordance with these regulations.

(e) *Adverse effect wage rate (AEWR)* means the wage rate which the Director has determined must be offered and paid, as a minimum, to every H-2A worker and every U.S. worker for a particular occupation and/or area in which an employer employs or seeks to employ an H-2A worker so that the wages of similarly employed U.S. workers will not be adversely affected.

(f) *Agricultural labor or services*. Pursuant to section 101(a)(15)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)), "agricultural labor or services" is defined for the purposes of this subpart as either "agricultural labor" as defined and applied in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or "agriculture" as defined and applied in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)). An occupation included in either statutory definition shall be "agricultural labor or services", notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are quoted below.

(1) *Agricultural labor*. Section 3121(g) of the Internal Revenue Code of 1954 (26