

Employment and Training Administration, Labor

§ 658.502

this final determination has been provided to the JS by that enforcement agency;

(5) Are found to have violated JS regulations pursuant to § 658.416(d)(4);

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (6) of this section.

(b) The State agency may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart at §§ 658.501 through 658.502 would cause substantial harm to a significant number of workers. In such instances, procedures at § 658.503 (b) *et seq.* shall be followed.

(c) For employers who are alleged to have not complied with the terms of the temporary labor certification, State agencies shall notify the Regional Administrator of the alleged non-compliance for investigation and pursuant to § 655.210 consideration of ineligibility for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The State agency shall notify the employer in writing that it intends to discontinue the provision of JS services pursuant to 20 CFR part 653 and the reason therefore:

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the State agency shall specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The employer shall be notified in writing that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws, or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws, or

(iii) If the job is no longer available makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or

(iv) Requests a hearing from the State agency pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the State agency shall specify the date the order was submitted, the job order involved and the assurances involved. The employer shall be notified that all JS services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances,

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws, or

(iii) Requests a hearing from the State agency pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the State agency shall specify the basis for that determination. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented, or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders, or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the JS, and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances, or

(v) Requests a hearing from the State agency pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency that the employer-related laws,

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the State agency shall specify the determination. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws, or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made, and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of JS regulations under § 658.416(d)(4), the State agency shall specify the finding. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate JS regulations, or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken, and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future, or

(iv) Requests a hearing from the State agency pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the State agency shall specify the workers referred and not accepted. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted, or

(ii) Provides adequate evidence that the workers were not available to accept the job, or

(iii) Provides adequate evidence that the workers were not qualified, and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the State agency pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the State agency shall specify the lack of cooperation, the employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he did cooperate, or

(ii) Cooperates immediately in the conduct of field checks, and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity, or

(iv) Requests a hearing from the State agency pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the State agency does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer shall be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the State agency shall follow procedures set forth at § 658.417 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.501(a)(5).

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the State agency shall immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the State agency shall notify the ETA regional office immediately.