

May 2, 2007

FIELD ASSISTANCE BULLETIN NO. 2007-1

MEMORANDUM FOR REGIONAL ADMINISTRATORS  
DISTRICT DIRECTORS

FROM: PAUL DECAMP  
Administrator

SUBJECT: Enforcement Provisions Applicable to H-2B Workers

The H-2B visa program of the Immigration and Nationality Act (INA) allows employers to hire foreign workers to meet a temporary need for nonprofessional, nonagricultural skills. The Employment Training Administration issues H-2B labor certifications for use in securing H-2B visas. See [www.foreignlaborcert.doleta.gov/h-2b.cfm](http://www.foreignlaborcert.doleta.gov/h-2b.cfm).

The INA and its implementing regulations provide WHD **no** direct authority to enforce the conditions of H-2B visa petitions, including the prevailing wage. The INA does not, however, preclude application of WHD-enforced statutes to H-2B workers. Consequently, WHD enforces all applicable provisions of such laws (*e.g.*, the FLSA, SCA, DBRA, MSPA, and OSHA Act FS/TLC) with respect to H-2B workers. Where it is the highest applicable minimum wage, the WHD will use the applicable H-2B prevailing wage (1) as the regular rate for FLSA OT [see FOH § 32j01 (Multiple minima) and FOH § 32j08(b) (Deductions in overtime weeks)], and (2) as the wages owed for work subject to MSPA.

The INA [8 U.S.C. § 1184(c)(14)] authorizes the Department of Homeland Security (DHS) to impose administrative remedies on, and deny future visa petitions filed by, employers who violate certain H-2B visa conditions. Questions concerning this authority should be directed to DHS.

Evidence concerning substandard housing conditions provided to H-2B nonimmigrant workers should be referred to the appropriate state or local housing authorities under the procedures set forth in FOH § 52a11. Evidence of such conditions must be considered in enforcing the FLSA if the employer is taking a wage credit for the housing under section 3(m). An employer cannot take a section 3(m) wage credit for the reasonable cost of providing housing for an employee if the housing is furnished in violation of any Federal, State, or local ordinance or prohibition. Normal procedures will be followed for all MSPA-covered employment including housing and transportation.

Workers' rights cards for H-2B workers are available, in English and Spanish, for distribution to H-2B workers and other interested parties.