

Wage and Hour Division, Labor

§ 501.5

§ 501.3 Discrimination prohibited.

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(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.