



The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your recent letter to Mr. Brian Kennedy, Assistant Secretary for Congressional and Intergovernmental Affairs, requesting information on the process involved in granting H-2B temporary labor certifications and, in particular, information regarding the advertising requirements for forestry employers located in the state of Oregon. Your letter has been referred to my office. The Employment and Training Administration (ETA) is responsible for administering the Department's Foreign Labor Certification Program.

Applications for H-2B temporary labor certification in forestry occupations are reviewed and processed based on the regulations at 20 Code of Federal Regulations (CFR) 655, Subpart A, *Labor Certification Process and Enforcement of Attestation for Temporary Employment in Occupations Other than Agriculture or Registered Nursing in the United States (H-2B Workers)*, and Training and Employment Guidance Letter (TEGL) No. 27-06, *Special Guidelines for Processing H-2B Temporary Labor Certification in Tree Planting and Related Reforestation Occupations*. Both documents can be found on the Office of Foreign Labor Certification (OFLC) Web site at <http://www.foreignlaborcert.doleta.gov/h-2b.cfm>.

Prior to obtaining an H-2B labor certification, employers must determine that there are not sufficient U.S. workers who are capable of performing the work for which labor certification is sought. Specifically, the regulations require that the employer: (1) post a job order with the State Workforce Agency (SWA) serving the area of intended employment in order to obtain referrals of interested U.S. workers through the interstate job order clearance system; (2) publish two newspaper advertisements, one of which must be on a Sunday; (3) contact the applicable union for referral of U.S. workers if the employer is a party to a collective bargaining agreement that covers the job classification that is the subject of the H-2B labor certification; and (4) contact workers who were laid off in the occupation and in the area of intended employment, within 120 days of the first date on which an H-2B worker is needed, to inform them of the position(s). The regulations also outline specific information that must be included in all newspaper advertisements and job orders, such as: the name of the employer, the area of intended employment, the rate of pay, a description of the position, and whether tools or equipment is to be provided by the employer.

Additionally, the regulations require the employer to prepare, sign, and date a written recruitment report that summarizes the recruitment steps undertaken and the results of such recruitment, including the lawful job-related reason(s) for not hiring any U.S. workers who applied or were referred to the position.

Employers seeking H-2B certification must file an ETA Form 9142, Application for Temporary Employment Certification, along with a copy of the recruitment report. In Section F.c. of the completed form, employers are required to list the specific place(s) of employment. Based on a review of Fiscal Year 2010 records, OFLC estimates that seven H-2B applications were received involving forestry workers in Oregon. Of those seven applications, a total of three applications were certified. OFLC has recently re-reviewed all three certified applications and has confirmed that in every application the employer's pre-filing advertising complied with H-2B regulations and that the employer properly listed worksites in Oregon in Section F.c. of the ETA Form 9142.

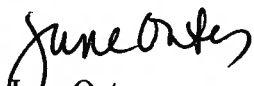
Your letter also enclosed and referenced a letter authored by Mr. Michael Wheelock, President of Grayback Forestry, Incorporated, listing five suggestions he believes will improve the U.S. Forest Service contract process and ensure the employment of U.S. workers in rural communities.

The issue he raised specific to the Department of Labor's responsibilities is his suggestion that the Department ensure enforcement of violations under the H-2B program and the Service Contract Act (SCA). The Wage and Hour Division (WHD) is responsible for the Department's investigative and enforcement functions under the H-2B program and the SCA. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances to seek remedies for violations, including recovery of unpaid wages and, under the H-2B program, reinstatement of improperly laid off or displaced U.S. workers. Entities that have knowledge of violations occurring under the H-2B program or the SCA are encouraged to immediately contact the WHD with pertinent information and supporting documents. OFLC may also require employers who violate terms and conditions of the H-2B program to undergo pre-filing supervised recruitment, or may debar from the H-2B program for up to three years an employer, attorney, or agent who has substantially violated a material term or condition of the labor certification. Please be assured that the Department takes the necessary measures to ensure that enforcement mechanisms are utilized where appropriate.

The Department is currently revising the regulations that govern this process for the H-2B program, and a proposed rule on the methodology for wage determinations was published in the Federal Register on Tuesday, October 5<sup>th</sup>. An additional NPRM, proposing broader reforms to the H-2B labor certification program and its enforcement, is currently under development and expected to be published this winter. As part of the rulemaking process, the Department is considering ways to provide U.S. workers with greater access to the jobs employers wish to fill with temporary H-2B workers and is reviewing current remedies and enforcement procedures to evaluate whether they are adequate to ensure compliance. I encourage you to review the NPRM and share your thoughts with the Department as part of the formal notice and comment process. DOL staff will be available to assist your staff in that process.

If you have any questions, please don't hesitate to call me at (202) 693-2700.

Sincerely,

  
Jane Oates  
Assistant Secretary