



HR & BENEFITS UPDATE

Labor Department Final H-2A Certification Procedures Tighten Requirements For US Employers To Employ Temporary Agricultural Workers

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By Cynthia Marcotte Stamer

The Labor Department is tightening requirements for the employment of temporary agricultural workers under the H-2A temporary agricultural worker program. Final Labor Department Regulations governing the labor certification process and enforcement mechanisms for the H-2A temporary agricultural worker program will be published in tomorrow's federal register. The rule will be effective March 15, 2010.

Among other things, the final rule includes stronger mechanisms for enforcement of the worker protection provisions required by the H-2A program by the Labor Department. It also contains provisions designed to ensure U.S. workers in the same occupation working for the same employer, regardless of date of hire, receive no less than the same wage as foreign workers. It creates a national electronic job registry where job orders will be posted through 50 percent of the contract period. It also prohibits cost-shifting from the employer to the worker for recruitment fees, visa fees, border crossing fees and other U.S. government mandated fees.

The H-2A nonimmigrant visa classification applies to foreign workers coming to or already in the U.S. to perform agricultural work of a temporary or seasonal nature. The U.S. Department of Homeland Security may not approve an H-2A visa petition unless the Department of Labor, through its Employment and Training Administration, certifies that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers.

During fiscal year 2009, employers filed 8,150 labor certification applications requesting 103,955 H-2A workers for temporary agricultural work. The Department of Labor certified 94 percent of the applications submitted for a total of 86,014 workers.

To review the final regulations, see [here](#).

If you would like to request a copy of the regulation or have questions about or need assistance evaluating, commenting on or responding to I-9 or other employment related immigration, employment, employee benefit, workplace health and safety, corporate ethics and compliance practices, concerns or claims, please contact the author of this article, Curran Tomko Tarski LLP Labor & Employment Practice Group Chair Cynthia Marcotte Stamer. Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, Chair of the American Bar Association RPTA Employee Benefits & Other Compensation Group, and a Council Member on the ABA Joint Committee on Employee Benefits, Ms. Stamer has more than 22 years experience advising and assisting employers, employee benefit plans and their fiduciaries, and others about these and other workforce management and compliance matters. Her work includes extensive experience advising and defending employers and others in relation to I-9, employment discrimination and other workforce hiring and management concerns domestically and internationally. She also advises, assists, trains, audits and defends employers and others regarding the federal and state Sentencing Guideline and other compliance, equal employment opportunity, privacy, leave, compensation, workplace safety, wage and hour, workforce reengineering, and other labor and employment and defends related audits, investigations and litigation, charges, audits, claims and investigations by the ICE, IRS, Department of Labor and other federal and state regulators. Ms. Stamer also speaks, writes and conducts training extensively on these and other related matters. For additional

information about Ms. Stamer and her experience, see [here](#) or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarksi LLP team, see [here](#).

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