

§ 502.2

and housing provided during the employment. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances impose penalties, recommend revocation of existing certification(s) or debarment from future certifications, and seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages (either directly from the employer or in the case of an H-2A Labor Contractors (H-2ALC), from the H-2ALC directly and/or from the insurer who issued the surety bond to the H-2ALC as required by 20 CFR part 655, subpart B and 29 CFR 501.8).

(d) *Effect of regulations.* The amendments to the INA made by Title III of the IRCA apply to petitions and applications filed on and after June 1, 1987. Accordingly, the enforcement functions carried out by the WHD under the INA and these regulations apply to the employment of any H-2A worker and any other U.S. workers hired by H-2A employers in corresponding employment as the result of any application filed with the Department on and after June 1, 1987.

§ 502.2 Coordination of intake between DOL agencies.

Complaints received by ETA or any State Workforce Agency (SWA) regarding contractual H-2A labor standards between the employer and the employee will be immediately forwarded to the appropriate WHD office for appropriate action under these regulations.

§ 502.3 Discrimination prohibited.

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

(1) Filed a complaint under or related to sec. 218 of the INA or these regulations;

(2) Instituted or caused to be instituted any proceedings related to sec. 218 of the INA or these regulations;

(3) Testified or is about to testify in any proceeding under or related to sec. 218 of the INA or these regulations;

(4) Exercised or asserted on behalf of himself or others any right or protec-

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tion afforded by sec. 218 of the INA or these regulations; or

(5) Consulted with an employee of a legal assistance program or an attorney on matters related to sec. 218 of the INA, or to this subpart or any other Department regulation promulgated pursuant to sec. 218 of the INA.

(b) Allegations of discrimination against any person under paragraph (a) of this section will be investigated by the WHD. Where the WHD has determined through investigation that such allegations have been substantiated, appropriate remedies may be sought. The WHD 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 debarment of any such violator from future labor certification. Complaints alleging discrimination against U.S. workers and immigrants based on citizenship or immigration status may also be forwarded by the WHD to the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.

§ 502.4 Waiver of rights prohibited.

No person shall seek to have an H-2A worker, or other U.S. worker hired in corresponding employment by an H-2A employer, waive any rights conferred under sec. 218 of the INA, the regulations at 20 CFR part 655, Subpart B, or under these regulations. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the INA 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 INA or these regulations. This does not prevent agreements to settle private litigation.

§ 502.5 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,