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LABOR DEPARTMENT REVERSES BUSH ADMINISTRATION CHANGES TO GUESTWORKER PROGRAM

New regulations undo wage cuts, restore labor protections for agricultural guestworkers

WASHINGTON, DC— The Labor Department announced today new regulations for the H-2A agricultural guestworker program that would largely undo changes to the program made by the outgoing Bush Administration over a year ago. The last-minute regulations changes by the previous administration slashed wage rates and worker protections that had been the standard for over 20 years. The new rules take effect on March 15.

“This is a victory for our nation’s farmworkers,” said Bruce Goldstein, Executive Director of Farmworker Justice, a national farmworker advocacy group based in Washington DC. “It’s a reversal of radical anti-worker policies imposed by the previous administration that irresponsibly stripped away basic procedures and worker protections set in place by a Republican administration in 1987.”

Farmworker advocates have long criticized the H-2A guestworker program for its lax labor protections for both U.S. and guestworkers. The Bush Administration changes lowered minimum required wage rates and reduced government oversight despite the program’s obligation to ensure that employers hire U.S. workers before receiving permission to hire foreign guestworkers.

“The Bush Administration’s changes gave agricultural employers access to cheap foreign labor with little government oversight,” Goldstein explained. “These new regulations restore the balance that the law requires. We commend Secretary Solis for spending her time and resources on helping the most vulnerable workers in the country,” added Goldstein. “We look forward to working with the Department of Labor for additional reforms and improved enforcement of the protections to end longstanding abuses under the H-2A program.”

Some of the key changes are the following:

- **Wage rate change:** The Bush Administration adopted a wage rate formula that lowered wage rates by an average of over \$1.00 per hour, and \$2.00 in some places, using statistics that did not accurately reflect market rates. The new regulations restore the former wage formula, which is based on USDA wage surveys of farmworkers and farms
- **Wage deductions:** The regulations will make clearer that employers cannot evade the H-2A program wage rate by taking deductions out of wages.
- **Transportation reimbursement.** The new rules restore the longstanding requirement of reimbursement of workers' long distance transportation costs. The Bush Administration changed the rule so that employers would only pay travel costs from the U.S. consulate in the foreign country, even though many workers travel long distances to get to the consulate from their homes before entering the U.S.
- The new regulations restore the requirement that there be a pre-occupancy housing inspection of the premises where H-2A workers will be living, to ensure safe and healthy quarters.
- Disclosure of job terms will now be required by the time the foreign worker applies for a visa, in a language the worker understands, so that the workers know what their job terms will be.

- A surety bond requirement will be required for farm labor contractors, who are notorious for violating wage requirements but not having the money to pay a court judgment (this was in the Bush regulations but is being strengthened)
- H-2A labor contractors will need to specify each specific location where work will be performed, as well as identify the grower and the period of work. This will especially help US workers understand what a job entails, and because only guestworkers will accept a job when they don't know where and when they will be working, this will reduce the degree to which US workers are discouraged from accepting these jobs.
- Transparency and public information: H-2A applications will be posted on an electronic job registry so that US workers can learn about jobs and their job terms, without the need for FOIA requests.
- Labor certification v. labor attestation: The H-2A law requires an employer to obtain a “labor certification” from the DOL stating that there is in fact a shortage of U.S. labor and that the job terms comply with the law and regulations. The Bush Administration changed this to a “labor attestation” process in which, the employer merely promises to comply with its obligations, without meaningful oversight during the application and recruitment process. This is in violation of the law and DOL is restoring important government oversight.