

Farmworker Justice strongly opposes actions recently taken by employers of a variety of low-wage workers to prevent the U.S. Department of Labor from enforcing new rules governing the calculation of prevailing wage rates under the H-2B non-agricultural guestworker program. If successful, these actions would allow employers using the H-2B program to pay less than market wages to tens of thousands of workers -- both foreign guestworkers and U.S. workers -- employed in lawncare, seafood processing, forestry, hotel and hospitality, and many other industries.

At issue are the wage rates at which H-2B employers must pay not only guestworkers that they wish to hire, but as well to U.S. workers who seek the jobs. Under federal rules governing the H-2B program, employers must recruit and preferentially employ U.S. workers before being allowed to import guestworkers. To be eligible to hire H-2B guestworkers, an employer must obtain DOL certification that U.S. workers are not available for the jobs the employer needs filled, and that employing guestworkers will not adversely affect wages and working conditions of U.S. workers. The rules further require the DOL to set wage rates for H-2B jobs with reference to prevailing wage rates (the local wage rate for an occupation) in order to ensure that those wages will not depress wage levels for U.S. workers.

Until 2005, DOL set H-2B prevailing wage rates in accordance with occupation specific surveys conducted by the DOL's Bureau of Labor Standards and, where applicable, rates established under federal government contracting laws. In 2005, the DOL under the Bush administration arbitrarily and perniciously revised the H-2B prevailing wage rules in ways that produced unjustified across-the-board wage rate reductions and resulted in substantial pay cuts for guestworkers and U.S. workers alike.

In August 2010, as a result of litigation brought on behalf of workers, a federal court ruled that DOL's 2005 revisions were unlawfully issued, without requisite notice or public comment, and arbitrarily and capriciously in violation of the federal Administrative Procedures Act. In compliance with an order of the court, the DOL engaged in a several-month-long notice and comment rule-making process that resulted in a new set of rules for calculating prevailing wage rates. Scheduled to take effect at end of this month, the new rules would reverse the wage cuts caused by the Bush administration rules, and re-establish a prevailing wage determination process that more fairly and accurately tracks marketplace wage rates.

Sadly, but not surprisingly, H-2B employers will not easily relinquish the unfair wage rates that they were able to pay workers under the previous rules. Two weeks ago, a group of employers filed a lawsuit in Louisiana, seeking to have the court prevent the DOL from implementing the new rules. And most recently, H-2B employers have enlisted allies in congress to try to block or delay the new rules by inserting enforcement restrictions in DOL appropriations legislation.

Preventing the DOL's new prevailing wage rules from taking effect means worsening conditions that lead to exploitation of the H-2B workforce, all of which will in turn further degrade wages, employment opportunities, and working conditions for U.S. workers. In this time of severe national unemployment and economic turmoil, our country needs to work harder to develop more and better job opportunities for its workers, and we must resist measures that would simply encourage employers to hire exploitable guestworkers from abroad.

Farmworker Justice stands in support of the ongoing efforts of worker advocates to combat the attempts by H-2B employers to block the DOL's new prevailing wage rules.