

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION H-2A
	CORRESPONDENCE SYMBOL OWS
	DATE April 24, 2002

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-01

TO: ALL STATE WORKFORCE LIAISONS
ALL STATE WORKFORCE AGENCIES
ALL STATE WORKER ADJUSTMENT LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS

/S/
FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Notification Regarding Worker Abandonment, Rejection or Termination from
H-2A Temporary Agricultural Employment

1. Purpose. To rescind General Administration Letter (GAL) No. 1-01 because it did not include all of the pertinent regulatory references and to provide additional regulation citations, policy clarification and procedural guidance for the notification process between employers and the State Workforce Agencies (SWAs) regarding worker abandonment, rejection or termination from H-2A temporary agricultural employment.

2. References. 20 C.F.R. Part 655, Subpart B; 20 C.F.R. ' 655.102(b)(11); and 20 C.F.R. ' 655.103 (c).

3. Background. The H-2A regulations at 20 C.F.R. 655.103(c) state: "No U.S. worker will be rejected for or terminated from employment for other than a lawful related reason, and notification of all rejections or terminations shall be made to the local office." Additionally, the regulations at 20 C.F.R. 655.102 (b)(11) state: "If the worker voluntarily abandons employment

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before the end of the contract period, or is terminated for cause, and the employer notifies the local office of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section, and that worker is not entitled to the ~~A~~three-fourths guarantee@ (see paragraph (b)(6) of this section).” Issues have arisen with regard to the timing and location of such notification.

4. Policy Clarification/Procedural Guidance. In the event an employer terminates a worker(s), the employer will notify the appropriate SWA offices listed in the attachment to this TEGL in writing within two (2) business days of the termination or, in the case of abandonment, within two (2) business days of discovering abandonment. DOL has determined that two (2) business days is appropriate and should not place an unnecessary burden on the employer, since the Immigration and Naturalization Service (INS) generally requires that the employer notify the INS within 24 hours of the foreign worker leaving employment.

5. Action Required. SWAs shall communicate to the employer community their responsibility for the timely notification to the local office of worker abandonment or termination from H-2A employment.

6. Inquiries. H-2A employer notification procedural questions should be directed to the appropriate ETA regional office.

7. Attachment. GAL 1-02 Designation of Centralized Location Within Each State for the Processing of H-2A Applications and H-2A State Workforce Agency Offices.