



DOL Issues Final Rule on Attestations For Hiring Foreign Nurses in H-1C Program

The Labor Department's Employment and Training Administration and Wage and Hour Division issues a final rule covering the employment of H-1C foreign registered nurses in areas with a shortage of health care professionals, according to a notice published in the March 5 *Federal Register* (75 Fed. Reg. 10395).

The rule, which will take effect 30 days after publication, will implement the Nursing Relief for Disadvantaged Areas Reauthorization Act, which was enacted in 2006. That statute allows health care facilities located in areas with a shortage of health professionals to hire foreign registered nurses for up to three years.

To participate, eligible hospitals file attestations with DOL's Office of Foreign Labor Certification to support nonimmigrant worker petitions filed with the Homeland Security Department's Citizenship and Immigration Services. The attestations state that the facility is trying to recruit sufficient registered nurses in the United States and that the employment of the foreign nurses will not adversely affect the wages and working conditions of other nurses working at the facility.

DOL published the interim final rule Aug. 22, 2000. The department discontinued the rulemaking in April 2006 because the authority to issue new H-1C visas under the Nursing Relief for Disadvantaged Areas Act had expired. Following the enactment in December 2006 of the reauthorization act, however, DOL determined that it is appropriate to finalize the rule.

The application period for H-1C visa petitions has expired, but H-1C visa holders will be allowed to work in the United States until their authorized stay expires, which could be as long as three years after the petition was authorized, DOL said. The department said it is promulgating the final rule to ensure that worker protections apply to nurses currently employed in H-1C status.

Only 14 Hospitals Remain Eligible

Only the 14 hospitals listed in the preamble to the interim final rule remain eligible to participate in the H-1C program, DOL said. The definition of facility is not flexible, DOL said, because Congress enacted the statute in response to a very specific need for nurses in understaffed facilities serving mostly poor patients in specified inner cities and rural areas.

In a discussion based on the four comments it received in response to the interim

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final rule, DOL noted that it did not change the interim rule's definition of "nurse." To qualify as an H-1C nurse, the foreign worker must have received nursing education in the United States or have a nursing license in the country where the foreign worker trained and must have passed the test given by the Commission on Graduates of Foreign Nursing Schools or have obtained a nursing license in the state of intended employment.

The statute requires an employer to pay each nurse the wages stipulated by a collective bargaining agreement, if one applies, or the prevailing wage for nurses in the geographic area. The Office of Foreign Labor Certification's National Processing Center provides the prevailing wages for H-1C nurses. DOL disagreed with commenters who said that obtaining a prevailing wage determination will delay the hiring process, saying that "the NPC processes prevailing wage determination requests in an expeditious manner."

To a commenter who contended that the requirement that an employer's chief executive officer sign the H-1C's attestation form was too burdensome, DOL said the H-1C signatory requirements need not "mirror other program requirements for foreign labor certification programs" that allow an agent of a chief executive officer to sign labor condition applications for H-1B visas. The department pointed out that H-1C attestations "cover the eligibility of the institution itself to participate in the H-1C program" while H-1B attestations relate to the job opportunity. The H-1C attestation "represents a much broader attestation relating to the entity as a whole and thus is more appropriately signed by an employee of the employer with the authority to bind that entity," DOL explained.