



FOIA Disclosure Officer
Employment and Training Administration
Office of Foreign Labor Certification
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210-0002

Sent via E-mail to foiarequests@dol.gov

Dear FOIA Disclosure Officer,

The Legal Aid Justice Center in Virginia and the Farmworker Unit of Legal Aid of North Carolina write to request public records relating to how the National Processing Center (NPC) in Chicago determines whether an H-2A employer's request for a declaration of contract impossibility will be approved or denied. We make this request pursuant to 5 U.S.C. § 552 and 29 C.F.R. § 70 *et seq.*

H-2A regulations allow for employers to terminate the work contract if a Certifying Officer (CO) determines that "for reasons beyond the control of the employer due to fire, weather, or other Act of God . . . the fulfillment of the contract [is] impossible[.]" 20 C.F.R. § 655.122(o). We want to know how the CO determines whether an H-2A contract is impossible.

A non-exhaustive list of information that may relevant to this request includes the following:

- NPC, OFLC, or ETA policy manuals describing how determinations of contract impossibility should be made by Certifying Officers ("COs")
- Any evidence requirements the NPC imposes on H-2A employers before deciding whether to grant or deny a request for contract impossibility
- Any requirement NPC has for COs to consult with the State Workforce Agency (SWA) of the state(s) where the employer seeking contract impossibility employs H-2A workers regarding the request for a declaration of contract impossibility
- Any checklists, forms, evaluations, etc. COs must complete before determining whether a contract should be declared impossible
- Any factors, elements, considerations, COs are required or encouraged to contemplate before declaring a contract impossible
- Training materials that COs receive about contract impossibility determinations
- Policy guidance regarding declarations of contract impossibility issued to COs via memoranda, email, or other means
- Examples of cases where a CO should or should not issue a determination

- What means, if any, H-2A workers have to challenge a determination of contract impossibility
- What data, if any, NPC, OFLC, or ETA keeps about which employers request declarations of contract impossibility, how often such requests are made, and whether they are approved or denied

Please send any records available electronically to BenjaminW@legalaidnc.org and rmcfarland@justice4all.org. For records only available in paper form, please send by fax (919) 856-2187 or mail to:

Legal Aid of North Carolina
Farmworker Unit
C/o Benjamin Williams
P.O. Box 26626
Raleigh, NC 27611

If all or any part of this request is denied, please cite the specific exemptions that you think justifies your refusal to release the information. As our office is a non-profit organization dedicated to providing free legal assistance to low-income Virginians and North Carolinians, we ask that any charge for this request be waived. If waiver of any such charges is not possible, please provide us with an estimate of any charges that exceed \$25.00, please email or call in advance of processing to inform and ask if we wish to proceed. Finally, please do not hesitate to reach out with any questions or concerns.

Sincerely,



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Farmworker Unit
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