

October 23, 2015

The Honorable Thomas Perez
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Perez,

We would like to express our continued frustration with the management of the H-2B visa certification process. Small businesses in our states rely on this program for seasonal workers, and we are concerned that the Department of Labor is creating unnecessary and burdensome delays that threaten their operations. The lack of certainty created by these delays is causing hardship for American small businesses, consumers, and communities that rely on the jobs and economic growth facilitated by the H-2B program.

Employers with H-2B workers are required to request a prevailing wage determination (PWD) from the Department to determine the wages to be paid to H-2B workers. In the past, this process had consistently taken only a few days. Now, the process routinely and inexplicably takes 60 days or more, and some employers who have used the H-2B program successfully for years are being rejected.

Even when employers receive their PWD from the Department, the compressed filing timetable makes it difficult to receive a temporary labor certification in time to complete the rest of the H-2B petition application process with the Departments of State and Homeland Security. One employer advised us that he received a Department of Labor certification 15 days before his application's start date-of-need, and another 23 days before own start date-of-need. A window of 15 days is wholly insufficient to complete the full application process, much less arrange travel, lodging and logistics for the new workers.

These delays add to the burden already faced by small businesses that use the H-2B program after the Department stopped accepting a number of sources of wage information pursuant to wage regulations issued in April. While we appreciate the Department's decision to continue allowing the use of employer-sponsored, third party wage surveys, we remain concerned that these will only be accepted under inappropriately narrow circumstances. We want to ensure that employers who rely on the H-2B program are not forced to pay artificially-inflated wages that drive up costs to the point of putting them out of business. We urge you and the Department to work with state universities and agencies to make use of state-sponsored wage surveys to address this problem.

In light of these concerns, we request that you answer the following questions:

- 1) How many applications for prevailing wage determinations and temporary labor certificates has the Department received since June 1, 2015?
 - a. How many prevailing wage determinations and temporary labor certifications have been approved?
 - b. How many applications have received “Notices of Deficiency” or other requests for additional information?
- 2) Between FY 2015 and FY 2016, the processing time for PWD went from less than a week to more than 60 days. What changed within the Department that created this significant delay in the processing of PWDs?
 - a. Were there administrative changes?
 - b. Were there changes to staffing levels?
 - c. Were there other changes within the Department that have been causing these delays?
- 3) By what date will the Department revert back to a 3-5 day turnaround for PWD?
- 4) What steps is the Department taking to improve the efficiency with which PWDs and temporary labor certifications are provided or denied to employers?
 - a. What is the average time period for the approval of these temporary labor certifications?
- 5) Is the Department advising employers who have previously participated in the H-2B program how to improve their application to meet the Department’s requirements? If so, please describe how. If not, why not?
- 6) Are there statutory changes that would help the Department improve its role in the administration of the H-2B program?
 - a. If so, by what date will you submit those recommendations to Congress?

We appreciate your response to these questions. Please provide written answers by close of business on November 13, 2015. Thank you for your attention to this urgent matter.

Sincerely,

Richard Burr
U.S. Senator

Barbara Mikulski
U.S. Senator