

New Orleans Workers' Center for Racial Justice

217 N. Prieur St., (504) 309-5165
New Orleans, Louisiana 70112

ALLIANCE OF GUESTWORKERS FOR DIGNITY

July 9, 2010

VIA EMAIL AND REGULAR MAIL

Nancy Leppink
Acting Wage and Hour Administrator
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave.
NW, Washington, DC 20210
Facsimile: (202) 693-6111

RE: Protecting Guestworkers Facing Loss of Income in Relation to the Deepwater Horizon Incident

Dear Administrator Leppink:

I write on behalf of the Alliance of Guestworkers for Dignity and its members. The Alliance of Guestworkers for Dignity, a grassroots project of the New Orleans Workers' Center for Racial Justice, is a national membership organization working across sector to protect the rights of all workers- both guestworkers and U.S. workers- employed in industries using the H-2B program and to promote just and dignified migration and work.

Our outreach and reports from our membership show that increasing numbers of guestworkers employed in the Deepwater Horizon Incident zone in various sectors are facing termination or reduced hours in violation of their contracts. See e.g. Mark Schleifstein, "Gulf Oil Spill Only the Latest Environmental Battle Waged in Lake Pontchartrain", The Times Picayune (discussing the impending lay-off of 70 guestworkers from Mexico currently employed in crabmeat picking in Slidell).

Furthermore, guestworkers are being terminated or employed for reduced hours without appropriate compensation.

As the Department is aware, guestworkers are among the most vulnerable low-wage workers. Our members have reported that termination mid-contract and/or reduced hours has resulted in their inability to pay debts related to obtaining the guestworker jobs and inability to provide basic food, housing, and medical bills for their families.

Insofar as the compensation should come from BP, guestworkers must rely on their employers to inform them of and facilitate this process. Many employers are instead terminating guestworkers

mid-contract and directing them to return to their home countries without any compensation from the employer or information or records necessary to seek compensation from BP.

At this time, guestworkers must use a complex claims process which is contributing to their exclusion from the wages they are owed under their contracts. Our work to assist our members with this process demonstrates that many guestworkers will be excluded from compensation if forced to self- navigate the current BP claims process. *See Attached, Example of Alliance Correspondence with BP on behalf of its members seeking loss of income through the BP claims process.*

Because many guestworkers are isolated in labor camps or other housing run by their employers, are employed on visas tied to their employer, reasonably fear retaliation if they seek to enforce their rights, speak a language different than the community where they reside, and may return to their home countries before the claims process is completed, it is important that the U.S. Department of Labor, employers of guestworkers, and BP adopt policies to ensure that guestworkers receive the compensation they are due through the BP claims process.

Pursuant to its responsibility to ensure that employers comply with their contractual obligations to guestworkers, the Alliance requests the Department of Labor immediately take the following steps:

- Issue written policy guidance directing guestworker employers in the affected zone who are terminating guestworkers or reducing their hours to immediately and fully pay out all wages due under the contract as well as the guestworkers' return transportation home;
- Issue written policy guidance communicating to guestworker employers that it is the employer's responsibility to seek reimbursement through the BP claims process;
- Issue written policy guidance that guestworker employers who fail to comply will be in violation of the contract and subject to appropriate penalties including fines and disbarment;
- Distribute the written policy guidance to all guestworker employers in the affected zone; and
- Conduct directed outreach with guestworker employers to enforce compliance. Outreach should include conversations with guestworkers and should further scan for violations.

Failure of employers to reimburse return transportation home may also constitute a violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

The Alliance requests a meeting with DOL staff to further discuss this request and ensure appropriate action is taken immediately to protect guestworkers' rights under their contracts. Action must be immediate to be relevant.

To schedule a meeting with the Alliance, please contact each guestworker through Daniel Castellanos or Jacob Horwitz, (504) 452-9159, organizers with the Alliance of Guestworkers for Dignity, a grassroots project of the New Orleans Workers' Center for Racial Justice.

Sincerely,

Saket Soni
Executive Director
New Orleans Workers' Center for Racial Justice

Daniel Castellanos
Organizer
Alliance of Guestworkers for Dignity