

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 01–2008]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

1. *Purpose.* To delegate authorities and assign responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); National Apprenticeship Act of 1937 (29 U.S.C. 50); 29 CFR part 30.

3. *References.* Secretary's Order 10–83; Secretary's Order 14–77; and Secretary's Order 9–75.

4. *Directives Affected.* Secretary's Order 4–2007 is hereby canceled (Employment Standards). Secretary's Order 9–75 is superseded to the extent that it is inconsistent with section 7a.(29) of this Order.

5. *Background.* This Order, which supersedes Secretary's Order 4–2007, constitutes the generic Secretary's Order for the Employment Standards Administration (ESA). Specifically, this Order delegates authorities and assigns responsibilities to the Assistant Secretary for Employment Standards and other officials in ESA.

This Order clarifies the leadership role of the Inspector General with respect to organized crime and labor racketeering investigations under the Labor-Management Reporting and Disclosure Act of 1959 for which both the Inspector General and the Assistant Secretary for Employment Standards have investigative authority.

6. *Delegation to the Assistant Secretary for Employment Standards.*

A. Paragraph 7.a. (29) of this Order contains the delegation of authority and the assignment of responsibility for section 211(a) of the LMRA, 29 U.S.C. 181(a) ("Compilation of Collective Bargaining Agreements, etc., Use Data").

B. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration in Secretary's Order 4–2001, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

7. *Delegation of Authority and Assignment of Responsibility.*

A. *The Assistant Secretary for Employment Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Assistant Secretary for Employment Standards includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Assistant Secretary for Employment Standards includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 276a *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in sections 5(i) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1801 *et seq.*, including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.*, including subpoena authority under 29 U.S.C. 2004(b).

(10) The Federal Employees' Compensation Act, as amended and extended, 5 U.S.C. 8101 *et seq.*, except 5 U.S.C. 8149, as it pertains to the Employees' Compensation Appeals Board.

(11) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 *et seq.*, except: 33 U.S.C. 919(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(12) The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.*

(13) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, except for monitoring of the Federal contractor job listing activities under 38 U.S.C. 4212(a) and the annual Federal contractor reporting obligations under 38 U.S.C. 4212(d), delegated to the Assistant Secretary for Veterans' Employment and Training.

(14) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and Executive Order 11758 ("Delegating Authority of the President Under the Rehabilitation Act of 1973") of January 15, 1974.

(15) Executive Order 11246 "Equal Employment Opportunity" (September 24, 1965), as amended by Executive Order 11375 of October 13, 1967; and Executive Order 12086 ("Consolidation of Contract Compliance Functions for Equal Employment Opportunity") of October 5, 1978.

(16) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H–

2A) program; and section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(17) Section 212(m)(2)(E)(ii) through (v) of the INA, 8 U.S.C. 1182(m)(2)(E)(ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (*i.e.*, H-1A Visas).

(18) The enforcement of the attestations required by employers under the INA pertaining to the employment of nonimmigrant longshore workers, section 258 of the INA, 8 U.S.C. 1288(c)(4)(B)–(F); and foreign students working off-campus, 8 U.S.C. 1184 note; and enforcement of labor condition applications for employment of nonimmigrant professionals, section 212(n)(2) of the INA, 8 U.S.C. 1182(n)(2).

(19) Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and the regulations at 41 CFR Part 60–742.

(20) The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.*, including subpoena authority under 29 U.S.C. 2616.

(21) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for Employment Standards under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other

agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(22) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.* If, in the course of investigations under the Labor-Management Reporting and Disclosure Act, there appear to be indications of organized crime and labor racketeering, the Assistant Secretary for Employment Standards shall promptly notify the Inspector General, who also has statutory authority to investigate such issues. The Inspector General shall have the power to assume the lead in further investigative activities arising from such case with respect to issues involving organized crime and labor racketeering.

(23) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 CFR Parts 457–459.

(24) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(25) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(26) The employee protection provisions certified under section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e).

(27) Executive Order 13201, (“the Notification of Employee Rights Concerning Payment of Union Dues or Fees”) of February 17, 2001.

(28) The Energy Employees Occupational Illness Compensation Program Act of 2000, Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), and Executive Order 13179 (“Providing Compensation to America’s Nuclear Weapons Workers”) of December 7, 2000.

(29) Section 211(a) of the Labor Management Relations Act, 1947, 29 U.S.C. 181(a) (“Compilation of Collective Bargaining Agreements, etc.; Use of Data”).

(30) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(29) of this paragraph, as directed by the Secretary.

B. *The Wage and Hour Administrator of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to:

(1) Issue administrative subpoenas under section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; section 4(a) of the McNamara-O’Hara Service Contract Act, 41 U.S.C. 353(a); section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. *The Wage and Hour Regional Administrators of the Employment Standards Administration* are hereby delegated authority and assigned responsibility to issue administrative subpoenas under section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; section 4(a) of the McNamara-O’Hara Service Contract Act, 41 U.S.C. 353(a); section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. *The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see section 7.a. (21) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

E. *The Assistant Secretary for Administration and Management* is delegated authority and assigned responsibility to assure that any transfer of resources affecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

F. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to

the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

8. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the

Administrative Review Board by Secretary's Order 2-96 (April 17, 1996).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4-2006 (Office of Inspector General).

9. *Redelegation of Authority.* The Assistant Secretary for Employment Standards, the Assistant Secretary for Administration and Management, and the Solicitor of Labor may re-delegate authority delegated in this Order.

10. *Effective Date.* This order is effective immediately.

Dated: May 30, 2008.

Elaine L. Chao,

Secretary of Labor.

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