

## **DEPARTMENT OF LABOR ANNOUNCES NEW RULES**

**May 25, 2007**

The U.S. Department of Labor (DOL) recently issued guidelines on eliminating beneficiary substitution and other issues related to the Labor Certification Petition (LCP) process.

In a rule published in the Federal Register on May 17, 2007, the DOL amended its current regulations as follows:

- Eliminating the ability to substitute alien beneficiaries on any LCP after July 16, 2007;
- Prohibiting an employer from receiving payment of any kind for any activity related to obtaining permanent labor certification, including payment of attorney's fees, except from a third party to whose benefit work to be performed in connection with the job opportunity would accrue. Such payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor;
- Prohibiting the alien beneficiary to pay his or her own costs in connection with the labor certification where the same attorney represents both the alien beneficiary and the employer;
- Limiting the validity period of labor certifications to 180 days from the date of certification, i.e. the labor certification must be filed in support of a Form I-140 Petition within 180 calendar days from the date of certification or the labor certification will expire;
- Clarifying the rules on requests for reconsideration and prohibiting such requests where the deficiency that caused the denial was the result of disregarding a system prompt or other direct instruction;
- Clarifying the rules on labor certification appeals to the Board of Alien Labor Certification Appeals (BALCA); and
- Expanding the potential penalties for labor certifications denied as a result of fraud or willful misrepresentation.

The new rule announced by the DOL is due to take effect on July 16, 2006.

If you are interested in substituting an alien beneficiary into a labor certification or would like to obtain further information on how the above rules may or may not affect you or your business, please contact our offices at 1-800-437-7313.