

## Part 2 Guest Worker Program

### **63G-12-201 Department to create program.**

- (1) The department shall administer a program known as the "Guest Worker Program" created by this part. Under this program, the department shall:
  - (a) seek one or more waivers, exemptions, or authorizations to implement the program as provided in Section 63G-12-202;
  - (b) issue a permit as provided in Section 63G-12-207;
  - (c) establish fees in accordance with Section 63J-1-504 for a filing or service required by this part;
  - (d) take action under Section 63G-12-211; and
  - (e) report annually to the governor and the Legislature.
- (2) The department may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to the extent expressly provided for in this part.
- (3) In implementing this part, the department shall cooperate with other state agencies to minimize any duplication in databases or services required under this part.

Enacted by Chapter 18, 2011 General Session

### **63G-12-202 Federal waivers, exemptions, or authorizations -- Implementation without waiver, exemption, or authorization.**

- (1) The department, under the direction of the governor, shall seek one or more federal waivers, exemptions, or authorizations to implement the program.
- (2) The governor shall actively participate in the effort to obtain one or more federal waivers, exemptions, or authorizations under this section.
- (3) The department shall implement the program the sooner of:
  - (a) 120 days after the day on which the governor finds that the state has the one or more federal waivers, exemptions, or authorizations needed to implement the program; or
  - (b) July 1, 2027.

Amended by Chapter 81, 2016 General Session

### **63G-12-203 Coordination with other federal or state laws or programs.**

- (1) To the extent feasible, the department shall coordinate the implementation of the program with other existing state and federal laws that relate to immigration and labor, including laws pertaining to obtaining the privilege to drive and to report citizenship status.
- (2)
  - (a) If a permit holder is not issued a Social Security number, the State Tax Commission shall, by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a means for a person who receives services from a permit holder to withhold from compensation paid to the permit holder an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income taxes that would be imposed by state law if the permit holder were an employee with a Social Security number.
  - (b) If a waiver, exemption, or authorization described in Section 63G-12-202 provides for the issuance of a Social Security number to a permit holder, a person who receives services from

a permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

- (c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.
- (d) To the extent feasible and consistent with a waiver, exemption, or authority entered into under Section 63G-12-202, the State Tax Commission shall work with the applicable federal government agencies to ensure that the withholding provided for under this Subsection (2) is compatible with a federal process by which employment taxes are collected that would be imposed under federal law if a permit holder were an employee with a Social Security number.
- (e)
  - (i) The State Tax Commission shall impose a fee on a person who hires a permit holder as an employee in accordance with this Subsection (2)(e):
    - (A) if as of the program start date the federal government does not collect or provide for the withholding of federal employment taxes;
    - (B) beginning the first day of the calendar quarter immediately following the program start date; and
    - (C) ending the last day of the calendar quarter in which the federal government begins to collect or provide for the withholding of federal employment taxes.
  - (ii) The State Tax Commission shall set the fee equal to the amount that, as closely as possible, equals the federal employment taxes that would be imposed by federal law if the permit holder were hired as an employee with a Social Security number.
  - (iii) The State Tax Commission shall collect the fee in the same manner that it collects state income taxes withheld in accordance with this Subsection (2).
  - (iv) The State Tax Commission may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to establish the procedures for the collection of the fee.
  - (v) The State Tax Commission shall deposit the fee into the restricted account.
  - (vi) The State Tax Commission may have access to a record of the department made under Section 63G-12-210 to the extent necessary to impose a fee under this Subsection (2)(e).
- (3) The department shall facilitate the use in this state of other employer based work programs that meet the needs of Utah employers by using workers who are not working in Utah and who are not United States citizens. Nothing in this part prevents a person from using an employer based work program described in this Subsection (3) that exists under the auspices of a foreign government in cooperation with the United States government.
- (4) A permit holder is not eligible for unemployment compensation.

Enacted by Chapter 18, 2011 General Session

**63G-12-204 Obtaining a permit -- Uses of permit.**

- (1) An undocumented individual shall obtain a permit:
  - (a) before providing services to a person in this state under a contract for hire; or
  - (b) in accordance with Subsection (2), by no later than 30 days from the day on which the undocumented individual enters into a contract for hire.
- (2)
  - (a) By rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall provide a procedure under which a person may hire an undocumented individual who does not hold a permit pending the undocumented individual obtaining a permit within 30 days of the day on which the undocumented individual is hired to provide services.

- (b) An undocumented individual may not provide services under a contract for hire to a person for more than 30 days during a two-year calendar period without obtaining a permit as provided under this part.
- (3) Subject to Subsection (4), a permit is considered an identification document for purposes of Section 63G-12-401, and may be used as identification or proof of the permit holder's age for any state or local government required purpose.
- (4) An undocumented individual may not use a permit:
  - (a) to establish entitlement to a federal, state, or local benefit as described in Section 63G-12-402; or
  - (b) to obtain work or provide services in a state other than Utah.

Enacted by Chapter 18, 2011 General Session

**63G-12-205 Eligibility criteria to obtain and maintain a guest worker permit.**

- (1) To be eligible to obtain or maintain a guest worker permit, an undocumented individual shall:
  - (a)
    - (i) be 18 years of age or older; or
    - (ii) if younger than 18 years of age, have the permission of a parent or guardian;
  - (b) live in Utah;
  - (c) have worked or lived in Utah before May 10, 2011;
  - (d) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act;
  - (e) provide documentation of a contract for hire under which the undocumented individual begins to provide services within at least 30 days of the day on which the undocumented individual obtains the permit;
  - (f)
    - (i) agree to a criminal background check described in Subsection (3); and
    - (ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a serious felony;
  - (g) provide evidence satisfactory to the department that the person would not be inadmissible for public health grounds under 8 U.S.C. Sec. 1182;
  - (h)
    - (i) be covered by a basic health insurance plan; or
    - (ii) provide evidence satisfactory to the department that the undocumented individual has no medical debt that is past due and agrees to have no medical debt that is past due during the term of the permit; and
  - (i)
    - (i) hold a driving privilege card issued in accordance with Section 53-3-207; or
    - (ii) provide evidence satisfactory to the department that the undocumented individual will not drive a motor vehicle in the state.
- (2) The department may by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide for the documentation required to establish eligibility under Subsection (1). When making a rule under this section, the department shall use federal standards as a guideline to avoid unnecessary duplication and additional costs.
- (3)

- (a) The department shall require an undocumented individual applying for a guest worker permit, or renewing a guest worker permit, to submit to a criminal background check as a condition of receiving or renewing the guest worker permit.
- (b) An undocumented individual required to submit to a criminal background check under Subsection (3)(a), shall:
  - (i) submit a fingerprint card in a form acceptable to the department; and
  - (ii) consent to a fingerprint background check by:
    - (A) the Utah Bureau of Criminal Identification; and
    - (B) the Federal Bureau of Investigation, including the secure communities program when possible.
- (c) For an undocumented individual who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:
  - (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
  - (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system and secure communities program.
- (d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department to determine eligibility to obtain a permit.
- (e) The department shall:
  - (i) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under this Subsection (3); and
  - (ii) in accordance with Section 63J-1-504, charge the undocumented individual applying for the permit a fee equal to the aggregate of the costs incurred by the department under this Subsection (3) and the amount paid under Subsection (3)(e)(i).

Enacted by Chapter 18, 2011 General Session

**63G-12-206 Eligibility to obtain and maintain an immediate family permit.**

To be eligible to obtain or maintain an immediate family permit, an undocumented individual shall:

- (1) live in Utah;
- (2) be a member of a guest worker's immediate family; and
- (3) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 18, 2011 General Session

**63G-12-207 Application and renewal process.**

- (1) The department may not issue a permit under this part until the program is implemented under Section 63G-12-202.
- (2) The department shall:
  - (a) create a permit that:
    - (i) is of impervious material that is resistant to wear or damage; and
    - (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
  - (b) ensure that a permit:

- (i) includes a photograph of the undocumented individual to whom the permit is issued;
  - (ii) prominently states the day on which the permit expires; and
  - (iii) prominently states the type of permit.
- (3) A permit expires two years from the day on which the department issues the permit.
- (4)
  - (a) Before an undocumented individual may apply for an initial permit under this part the undocumented individual shall commit to pay a fine equal to:
    - (i) \$1,000, if the undocumented individual enters into the United States legally, but at the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or
    - (ii) \$2,500, if the undocumented individual enters into the United States illegally.
  - (b) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall make rules that provide for:
    - (i) how an undocumented individual demonstrates a commitment to pay the fine required under Subsection (4)(a);
    - (ii) one or more payment plans that an undocumented individual may use to pay a fine required under Subsection (4)(a); and
    - (iii) the consequences for failure to pay the entire amount of a fine required under Subsection (4)(a).
- (5) After committing to pay the fine in accordance with Subsection (4), to apply for or renew a permit, an undocumented individual shall submit to the department, in a form acceptable under this part:
  - (a) an application;
  - (b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;
  - (c) for a renewal, documentation of efforts to comply with Section 63G-12-209;
  - (d) a signed statement verifying the information in the application and documentation; and
  - (e) a fee established by the department in accordance with Section 63J-1-504.
- (6) If an undocumented individual submits a complete application under Subsection (5) and the department determines that the undocumented individual meets the criteria of Section 63G-12-205 or 63G-12-206, the department shall issue or renew:
  - (a) a guest worker permit, if the undocumented individual qualifies under Section 63G-12-205; and
  - (b) an immediate family permit, if the undocumented individual qualifies under Section 63G-12-206.
- (7) An undocumented individual may appeal a denial of a permit under this section in accordance with Chapter 4, Administrative Procedures Act.
- (8)
  - (a) If a waiver, exemption, or authorization provides for the following, in addition to the requirements of Subsection (5), for an application to be considered complete for purposes of Subsection (6) an undocumented individual applying for a guest worker permit shall:
    - (i) post a bond with the department in the amount of \$10,000 against which the department may bring an action for a violation of this part; or
    - (ii) provide written certification by the undocumented individual's country of origin in accordance with Subsection (8)(b) of a guarantee of compliance with this part.
  - (b)
    - (i) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for what the department would consider being a "guarantee of compliance" by a country of origin for purposes of Subsection (8)(a).

- (ii) A rule made under this Subsection (8)(b) shall provide that the department may not accept a guarantee of compliance from a specific foreign country if the department determines a significant percentage of the guest workers who submit a guarantee of compliance from that foreign country cannot be located after or during the term of a guest worker permit.

Enacted by Chapter 18, 2011 General Session

**63G-12-208 Conditions during permit term.**

- (1) A permit holder shall continue to meet the eligibility criteria under Section 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.
- (2) A permit is automatically revoked if after issuance of the permit:
  - (a) the permit holder to whom it is issued is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or has resolved by diversion or its equivalent a serious felony;
  - (b) for a guest worker permit, the permit holder to whom it is issued does not provide services under a contract for hire for more than one year; or
  - (c) for an immediate family permit, the guest worker permit under which the immediate family member's permit is issued is revoked or expires under this part.

Enacted by Chapter 18, 2011 General Session

**63G-12-209 Proficiency standards for English.**

- (1) A permit holder shall in good faith use best efforts to become proficient in the English language at or above the equivalent to an intermediate level on a language proficiency assessment test used by the State Board of Education for purposes of secondary school students.
- (2) An undocumented individual shall pay the costs of complying with this section.

Amended by Chapter 144, 2016 General Session

**63G-12-210 Verification of valid permit -- Protected status of information.**

- (1)
  - (a) The department shall develop a verification procedure by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, for a person who hires a permit holder to verify with the department that the permit is valid as required by Section 63G-12-301.
  - (b) The verification procedure adopted under this Subsection (1) shall:
    - (i) be substantially similar to the employer requirements to verify federal employment status under the e-verify program; and
    - (ii) provide that an undocumented individual may appeal a determination that a permit is invalid in accordance with Chapter 4, Administrative Procedures Act.
- (2) Subject to Section 63G-12-212, a record under this part is a protected record under Chapter 2, Government Records Access and Management Act, except that a record may not be shared under Section 63G-2-206, unless:
  - (a) requested by the Office of Legislative Auditor General in accordance with Section 36-12-15;
  - (b) disclosed to the State Tax Commission as provided in Subsection 63G-12-203(2)(e)(vi); or
  - (c) disclosed to a federal government entity in accordance with this part or a waiver, exemption, or authorization described in Section 63G-12-202.
- (3) The state is not liable to any person for:
  - (a) the design, implementation, or operation of a verification procedure under this part;

- (b) the collection and disclosure of information as part of a verification procedure under this part;  
or
- (c) the determination that a permit is invalid.

Enacted by Chapter 18, 2011 General Session

**63G-12-211 Prohibited conduct -- Administrative penalties -- Criminal penalties.**

- (1) A permit holder may not file for or receive unemployment benefits.
- (2) A person may not:
  - (a) furnish false or forged information or documentation in support of an application;
  - (b) alter the information on a permit;
  - (c) if the person is a guest worker, be reported absent from work for 10 consecutive days without the approval of the person who hires the guest worker;
  - (d) allow an individual to use a permit if the individual is not entitled to use the permit;
  - (e) display or represent that a permit is issued to an individual, if the permit is not issued to the individual;
  - (f) display a revoked permit as a valid permit;
  - (g) knowingly or with reckless disregard acquire, use, display, or transfer an item that purports to be a valid permit, but that is not a valid permit; or
  - (h) otherwise violate this part.
- (3) For a violation described in Subsections (1) and (2), the department may:
  - (a) suspend, limit, or revoke and repossess a permit;
  - (b) impose a civil penalty not to exceed \$750 for each violation; or
  - (c) take a combination of actions under this section.
- (4) A person is guilty of a class B misdemeanor if the person:
  - (a) furnishes false or forged information or documentation in support of an application; or
  - (b) alters the information on a permit.

Enacted by Chapter 18, 2011 General Session

**63G-12-212 Sharing of information related to enforcement.**

- (1) The department shall provide the notice described in Subsection (2), if the department determines that an undocumented individual:
  - (a) has the undocumented individual's permit revoked; or
  - (b) permits the undocumented individual's permit to expire and the department has reason to believe that the undocumented individual continues to reside in the state.
- (2)
  - (a) The department shall provide the notice required by Subsection (1) to:
    - (i) Utah's attorney general; and
    - (ii) United States Immigration and Customs Enforcement.
  - (b) The notice described in Subsection (2)(a) shall:
    - (i) include:
      - (A) the last known address of the undocumented individual; and
      - (B) the basis of the notice described in Subsection (1); and
    - (ii) be sent promptly after the day on which the time to appeal, if any, the action that is the basis for the notification under Subsection (1) ends.

Enacted by Chapter 18, 2011 General Session

