

Department of Homeland Security

§ 274a.9

States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.2(b)(1)(viii).

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988; 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991]

§ 274a.8 Prohibition of indemnity bonds.

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of \$1,000 for each violation before September 29, 1999, and \$1,100 for each violation occurring on or after September 29, 1999, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

[52 FR 16221, May 1, 1987, as amended at 64 FR 47101, Aug. 30, 1999]

§ 274a.9 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their

names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I-763. Service of this Notice shall be accomplished pursuant to part 103 of this chapter. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.