

TOWN OF HERNDON

Enriching the Quality of Life and Promoting a Sense of Community



FAQs

DAY WORKERS IN THE TOWN OF HERNDON

Are day workers allowed to solicit for work in the Town of Herndon?

Yes. An August, 2007 ruling by Circuit Court Judge Leslie Alden maintained that the right of individual day workers to solicit for work on public streets is protected by the U.S. Constitution.

Are there restrictions regarding day workers' use of the public right-of-way?

Yes. The public right-of-way may not be "unreasonably or unnecessarily" obstructed. Individuals looking for day work may stand on sidewalks but must not obstruct the right-of-way and must move aside if requested to do so. Individuals looking to hire day workers must be parked legally and may not impede traffic and/or the right-of-way on public streets. The Herndon Police Department enforces all traffic laws in the Town of Herndon.

Are day workers allowed to solicit for work on private property (i.e., business parking lots)?

No. The Town of Herndon's zoning ordinance prohibits the conduct of day worker solicitation activity on land not zoned accordingly. Businesses that permit day worker activity on their properties are in violation of the town's zoning ordinance. The town's zoning enforcement team enforces all zoning ordinances in the Town of Herndon.

Do business owners/managers have any recourse if day workers continue to solicit for work on their properties despite requests to stop?

Yes. Business owners who have asked day workers to leave their properties can follow up by calling the Herndon Police Department. This may result in the identified day workers being "barred" from a business property; if this action is violated, police may issue a trespass summons or physically arrest violator(s).

Are there federal laws governing the hiring of day workers in the Town of Herndon?

Yes. **Federal law prohibits hiring workers without an employment check. This process includes completion of the federal I-9 form**, which verifies workers' authorization to work in the United States. I-9 forms are available at the Herndon Municipal Center (777 Lynn St., the Neighborhood Resource Center (1086 Elden St.) and at locations at the intersection of Elden and Alabama Streets. Forms are also available from the U.S. Department of Homeland Security, U.S. Citizen and Immigration Services, at <http://www.uscis.gov/files/form/I-9.pdf>.

Does the Herndon Police Department's participation in the federal 287(g) program impact the presence of day workers in the Town of Herndon?

No. The 287(g) program is not designed to impact issues such as solicitation of work by day workers. In outlining the program, ICE representatives have repeatedly emphasized that it is designed to identify individuals who pose a significant threat to public safety for potential deportation, to include individuals convicted of state or federal felony offenses, Group A offenses as defined by the Commonwealth of Virginia or the Group B offense of driving under the influence.

Does the July 1, 2008, modification to Virginia Code 46.2-930, which prohibits loitering in the public right-of-way, impact the presence of day workers in the Town of Herndon?

Yes. Though the vagueness of the word "loitering" does present legal challenges, and though the typical day worker may not be "loitering," the Herndon Town Council is interested in this legislation and will study for the 2010 Virginia General Assembly a possible bill that would amend the existing bill to render it useful and legally defensible in addressing the effects of day workers.

