

Compliance with DOL and Immigration Laws and Regulations for Agricultural Businesses



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Relevant Acronyms

WHO:

- **H-2A:** A temporary work visa for foreign agricultural workers with a job offer for seasonal agricultural work
 - **Temporary Worker:** A worker filling a short-term or seasonal position
- **U.S. Worker:** Any worker authorized for employment other than H-2A worker

HOW:

- **SWA:** State Workforce Agency
- **DOL:** Department of Labor
 - **OFLC:** Office of Foreign Labor Certification
- **USCIS:** United States Citizenship and Immigration Services (Department of Homeland Security)
- **U.S. Consulate** – US office in foreign country where H-2A visas are issued.



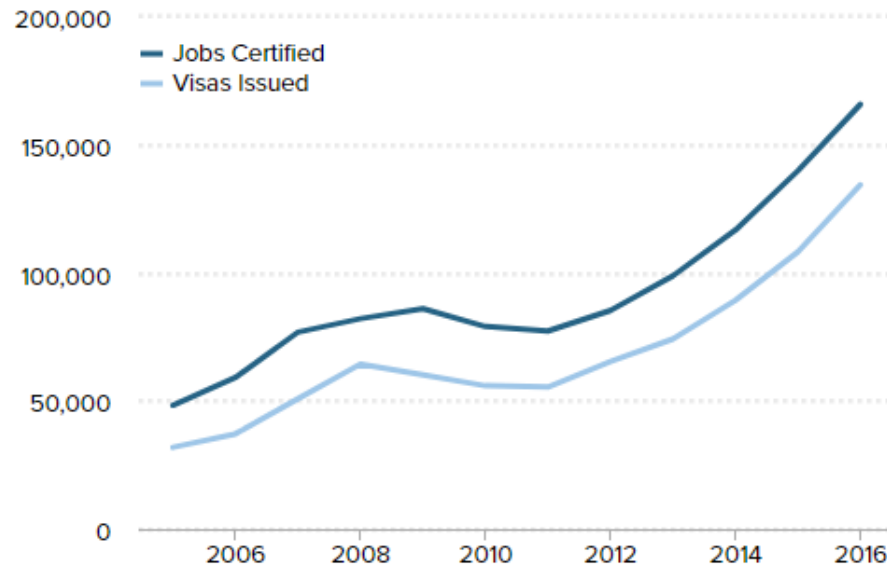
H-2A Temporary Labor Certification Program General Requirements for Employer Participation

- **Qualify as a U.S. employer** (e.g., farm/ranch), association of agricultural producers, or farm labor contractor
 - Associations of agricultural producers can participate as a sole employer, agent with one member, or joint employer with multiple members
- Work must consist of **agricultural labor or services** (such as planting, raising, cultivating, harvesting, or production of any agricultural or horticultural commodity)
- Work must be **full-time (35 hours or more/week)**
- Employer's need for workers must be **seasonal or temporary in nature**, such as a recurring growing cycle (generally lasting 10 months or less)



Current trends in H-2A visas

H-2A jobs certified and visas issued, 2005–2016



Summary of H-2A Specialty Occupations Program

VISA TYPE	ACTIONS	FY 2013	FY 2014	FY 2015	FY 2016	% CHANGE
H-2A	Determinations	8,388	9,405	10,339	8,684	-16.01%
	Labor Certification Applications Certified	8,118	9,152	9,962	8,297	-16.71%
	Positions Requested	105,735	123,528	145,874	172,654	18.36%
	Positions Certified	98,821	116,689	139,832	165,741	18.53%



Current H-2A – Protecting US Worker

Recruitment Requirements

- Job Order published by State Workforce Agency
- Conducting **Positive Recruitment for U.S. Workers:**
 - advertising in State of need (**2 print advertisements** in local area)
 - out-of-state recruitment (*not more than 3 states*) (**1 print advertisement** in each designated surrounding states)
- **Contact U.S. employees** from prior season/year
- **Important Reminder:** Employers must consider and hire U.S. workers until 50 percent of the certified period of work has elapsed



Current H-2A – Protecting Foreign Worker

Housing inspection

- Ready for occupancy 30 days prior to date of need
- Employer-provided housing – requires SWA housing inspection
- Rental or public accommodation – may require SWA inspection – check with your SWA



Transportation & Subsistence

From home country to farm (and return)

○ Inbound:

- After 50% of work contract period, Farmer must pay:
 - Job offer must state worker will receive the following for daily subsistence while traveling:
 - ✓ Minimum of \$12.07 per day (without receipts)
 - ✓ Maximum of \$51.00 per day (with receipts)

○ Outbound:

- At end of work contract period farmers must pay or provide for covered workers return transportation and daily subsistence



Transportation & Meals

Once worker is at the farm

- **Transportation:**
 - Farmers must provide daily transportation between housing and worksite
 - Vehicle must meet safety standards, be insured and operated by a licensed driver
- **Meals:**
 - Farmer provides either:
 - ✓ 3 meals per day; or
 - ✓ Free & convenient cooking and kitchen facilities



Housing

- Farmers must provide housing at no cost to workers who cannot reasonably return to their home in the same day
- Housing must meet housing safety standards
 - shelter; water supply; toilet facilities; lighting; sewage and refuse disposal; laundry, hand washing and bathing facilities; construction and operation of kitchens; dining halls and feeding facilities; insect and rodent control; first aid; fire; and reporting of communicable diseases



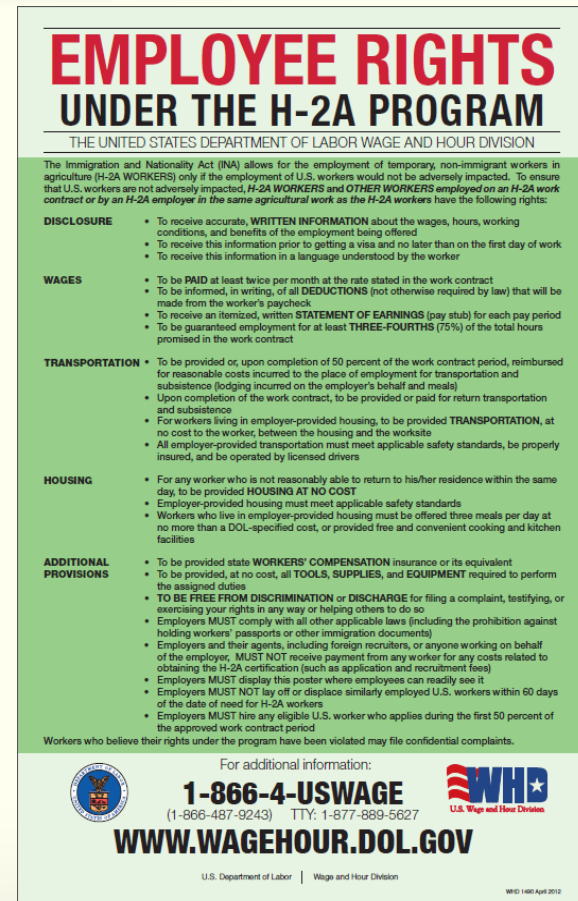
Tools & Supplies

- Farmers must furnish all tools and supplies necessary to perform the work
- Must be supplied at no cost to the worker
- H-2A workers cannot perform incidental work that is outside of the job description and area of intended employment contained in the job order



Agriculture & H-2A Specific Posters

- Farmers must display the following posters in a location where workers can readily see it:
 - Employee Rights Under H-2A Program poster
 - Migrant and Seasonal Worker Protection Act poster
 - Fair Labor Standards Act (Agriculture) poster
- If possible, it is best to have the poster in a language common to the workers



EMPLOYEE RIGHTS UNDER THE H-2A PROGRAM
THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in agriculture (H-2A WORKERS) only if the employment of U.S. workers would not be adversely impacted. To ensure that U.S. workers are not adversely impacted, H-2A WORKERS and OTHER WORKERS employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the H-2A workers have the following rights:

DISCLOSURE

- To receive accurate, **WRITTEN INFORMATION** about the wages, hours, working conditions, and benefits of the employment being offered
- To receive this information prior to getting a visa and no later than on the first day of work
- To receive this information in a language understood by the worker

WAGES

- To be **PAID** at least twice per month at the rate stated in the work contract
- To be informed, in writing, of all **DEDUCTIONS** (not otherwise required by law) that will be made from the worker's paycheck
- To receive an itemized, written **STATEMENT OF EARNINGS** (pay stub) for each pay period
- To be guaranteed employment for at least **THREE-FOURTHS (75%)** of the total hours promised in the work contract

TRANSPORTATION

- To be provided or, upon completion of 50 percent of the work contract period, reimbursed for reasonable costs incurred to the place of employment for transportation and subsistence (lodging incurred on the employer's behalf and meals)
- Upon completion of the work contract, to be provided or paid for return transportation and subsistence
- For workers living in employer-provided housing, to be provided **TRANSPORTATION**, at no cost to the worker, between the housing and the worksite
- All employer-provided transportation must meet applicable safety standards, be properly insured, and be operated by licensed drivers

HOUSING

- For any worker who is not reasonably able to return to his/her residence within the same day, to be provided **HOUSING AT NO COST**
- Employer-provided housing must meet applicable safety standards
- Workers who live in employer-provided housing must be offered three meals per day at no more than a DOL-specified cost, or provided free and convenient cooking and kitchen facilities

ADDITIONAL PROVISIONS

- To be provided state **WORKERS' COMPENSATION** insurance or its equivalent
- To be provided, at no cost, all **TOOLS, SUPPLIES, and EQUIPMENT** required to perform the assigned duties
- **TO BE FREE FROM DISCRIMINATION or DISCHARGE** for filing a complaint, testifying, or exercising your rights in any way or helping others to do so
- Employers **MUST** comply with all other applicable laws (including the prohibition against holding workers' passports or other immigration documents)
- Employers and their agents, including foreign recruiters, or anyone working on behalf of the employer, **MUST NOT** receive payment from any worker for any costs related to obtaining the H-2A certification (such as application and recruitment fees)
- Employers **MUST** display this poster where employees can readily see it
- Employers **MUST NOT** lay off or displace similarly employed U.S. workers within 60 days of the date of need for H-2A workers
- Employers **MUST** hire any eligible U.S. worker who applies during the first 50 percent of the approved work contract period

Workers who believe their rights under the program have been violated may file confidential complaints.

For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5827
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division
WHD U.S. Wage and Hour Division
WHD 1401 April 2012



Protecting Foreign Workers

- Farmers may be subject to:
 - Title VII of the Civil Rights Act
 - Pregnancy Discrimination Act
 - Equal Pay Act
 - Age Discrimination in Employment Act
 - Americans with Disabilities Act
 - Fair Labor Standards Act
 - Arkansas Civil Rights Act
- Farmers cannot take away passports and immigration documents
- Farmers cannot receive payment from the workers for anything related to H-2A labor certification



Wages

Farmers must pay their workers at least the highest of:

- Adverse Effect Wage Rate (set by the DOL),
- Applicable prevailing wage,
- Agreed-upon collective bargaining rate (i.e. union),
- Prevailing piece rate, or
- Federal or State minimum wage



Wages

All H-2A employees are entitled to “**3/4ths Guarantee**”

This is how you calculate:

Formula

Hours per week

x Contract Period

Total

x 75%

3/4^{ths} guarantee

Example

48 hours/week

x 10 weeks

480 hours

x 75%

360 hours (3/4^{ths} guarantee)



Equal Treatment

Farmers cannot treat U.S. Workers different (better or worse) than H-2A workers (in the same occupation)

- workers are entitled to the same: wages, benefits, working conditions, and housing
- cannot impose on U.S. workers any restrictions or obligations that will not be imposed on H-2A workers
- job qualifications and requirements (e.g., experience) must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupations and crops



Recordkeeping & Reporting



Retention of Records

- Payroll records → Keep for 3 years (including *time cards*)
- I-9 Forms → Keep for 3 years OR 1 year after the end of employment (whichever is later)
- Records Related to H-2A Process → Keep for 3 years
 - Proof of recruitment
 - Job order placement, advertising, and contact with former U.S. worker employees
 - Final recruitment report
 - Proof of worker's compensation coverage
 - The job order or Application for Temporary Employment Certification
- ***Farmers must also keep records concerning any worker who was terminated and reason for termination***



Receipt of Job Order & I-9 Form

First Day:

1. Farmers must give each worker a copy of the **Job Order**
 - ✓ Have your worker sign and date acknowledgement of receipt
2. Each worker must fill out Section 1 of the I-9 Form

Third Day:

1. By 3rd day, each worker must provide proof of work authorization
2. Farmer must complete Section 2 of I-9 Form (Employment Verification)



Calculation of Wages

- Farmers must have a credible and accurate system for recording hours worked
- Must have timekeeping policies that are followed
- Must capture **all** hours worked
- Workers must understand and follow timekeeping policies
 - Clock in & clock out **daily**
 - Including meals
 - Note: auto deduction policies are risky
- **Employers may round time:**
 - Less rounding, less risky
 - Round to the nearest 5 minutes but no more than 15 minutes of rounding in one day
 - Must round **both** ways



Payroll Records

- The itemized statement must include:

Employer's Name		Pay Group:	Business Unit:					
Address		Pay Begin Date:	Advice #:					
Phone Number		Pay End Date:	Advice Date:					
			TAX DATA: Federal State					
Employee Name	Employee ID:							
Address	Department:							
	Location:							
	Job Title:							
	Pay Rate:							
HOURS AND EARNINGS								
<u>Description</u>	<u>Rate</u>	<u>Current Hours</u>	<u>Earnings</u>	<u>Hours</u>	<u>YTD Earnings</u>	<u>Description</u>	<u>Current</u>	<u>YTD</u>
Hours Worked			0.00	0.00	0.00			
Hours Offered			0.00	0.00	0.00			
Total Earnings:						TOTAL:		



Abandonment or Termination of H-2A Worker

- Farmer must notify DOL and USCIS within **2** working days of the termination or abandonment of H-2A workers
- Abandonment means: worker failed to report to previously scheduled work for **5** consecutive days



Questions?



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