

## **Fact Sheet #26: Section H-2A of the Immigration Reform and Control Act**

This fact sheet provides general information concerning the application of the H-2A requirements to the agricultural industry.

### **Coverage**

The Immigration Reform and Control Act authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature.

### **Requirements**

Any employer who has been certified for a specific number of H-2A jobs must have initially attempted to find U.S. workers to fill these slots. Even after H-2A workers are recruited employers must continue to engage in "positive recruitment" of U.S. workers. The employer must agree to accept U.S. workers until 50% of the certified contract period has been completed.

**Rates of Pay:** In every H-2A employment situation the employer must agree to pay to all workers working in certified jobs a wage rate of the higher of either: (a) the Adverse Effect Wage Rate [AEWR] or (b) the Prevailing Rate for a given crop/area. Neither of these rates may be less than the Federal [Minimum Wage](#). Wages may be calculated on the basis of hourly or "piece" rates of pay. However computed, they must not be less than the rate specified in the job offer/worker contracts.

**Job Clearance Order/Worker Contracts:** Every worker must be provided a copy of the worker contract or, as a substitute for the worker contract, a copy of the job clearance order. If worker contracts are provided they must specify at least those benefits required by the Order/DOL Regulations. The job clearance order is the "official" document since it is the one submitted by the employer and approved by DOL. The job clearance order/contracts must state:

- the beginning and ending dates of the contract period
- any and all significant conditions of employment -- such as payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays)
- the hours per day and the days per week each worker will be expected to work during the contract period
- the crop(s) to be worked -- rate(s) for each crop/job
- the rate(s) of pay for each job to be performed
- any tools required and that the employer pays for same
- that workers' compensation insurance will be provided per State law of the State where work is performed

**Guarantees to All Workers:** Employers certified for H-2A must agree to provide each worker employed an offer of at least 75% of the hours in the contract period--called the "three-fourths guarantee." For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6-days a week, 8-hours per day, the worker would have to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480-hours x 75% = 360).

Wages for the guaranteed 75% period would be calculated at not less than the AEW for the State in which the work was being done. This rate will be stated in the Job Offer/Worker Contracts.

**Transportation Costs/Reimbursement:** Every non-local worker employed on an H-2A contract is entitled to be paid for all transportation costs related to travel from the place where the worker was recruited to the site of the job, and then back to the worker's area of residence. This includes both foreign and U.S. workers. Workers are "non-local" if they cannot reasonably return to their permanent residence every night. Expenses must be reimbursed according to the following schedule:

- For transportation to the place of employment the employer must repay the worker when 50% of the contract period has been completed.
- For transportation "home" the worker must complete the agreed upon contract period. Otherwise, the employer has no obligation to pay return expenses, unless some special provision in the Worker's Contract so provides.

**Records Required:** Employers certified under H-2A must keep records of the hours each worker actually works. In addition the employer must retain a record of time "offered" to the worker but which the worker "refused" to work. Each worker must be provided a wage statement showing hours of work, hours refused, pay for each type of crop, the basis of pay (i.e., whether the worker is being paid by the hour, per piece, "task" pay, etc.). The wage statement must indicate total earnings for the pay period and all deductions from wages (along with an explanation as to why deductions were made).

**Termination of Workers:** Employers must maintain records concerning any worker who was terminated and the reason for such termination. The employer, in order to negate a continuing liability for wages and benefits to workers, must notify the local Job Service Office by providing a report on any termination(s), the date of the termination, giving the reason for each. The employer should also indicate if replacement(s) will be sought for such worker(s).

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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