



H-2A Program



H-2A Basic Premises

Immigration & Nationality Act:

1. Whether there are sufficient able, willing, qualified United States (U.S.) workers to perform the seasonal job for which the employer desires to import foreign (H-2A)workers;

2. Whether the employment of H-2A workers will adversely impact the wages and working conditions of workers in the U.S. similarly employed

Federal and State Government Agencies Involved in H-2A Processing

- State Workforce Agency (California: EDD)
- Department of Labor (Office of Foreign Labor Certification, ETA-Washington, D.C. and Chicago)
- United States Citizenship & Immigration Services
- Department of State
- Customs & Border Protection
- Social Security Administration
- Department of Labor (Wage & Hour Division)

Processing Timelines

- EDD: Job Order is filed no earlier than 75 days before Date of Need and no later than 60 days before date of need
- DOL: File with Chicago National Processing Center (CNPC) no later than 45 days before the date of need
- Exceptions: Emergency Procedures

Notice of Deficiencies

EDD and DOL have authority to issue deficiencies and specific timelines to issue a request for corrections

DOL must certify complete applications no later than 30 days before the date of need

EDD Conducts Housing Inspection

- Housing inspection conducted after submission and acceptance of Job Order
- Housing must be available and uninhabited—usually 35-60 days before the date of need
- Current efforts to minimize front end costs of inspections

Positive Recruitment

- DOL Accepts H-2A application as complete and orders recruitment
 - Job Order published on DOL website
 - Newspaper advertisements in up to 4 states
 - Contact former U.S. employees employed by the employer at the place of employment the previous year
 - Positive recruitment ends 3 calendar days before the date of need or the date the H-2A workers depart for U.S., **whichever occurs first**

Important H-2A Concepts, Terms, and Assurances

- H-2A Worker means a foreign worker
- ***Corresponding U.S. worker means a U.S. workers who performs any of the job duties listed in the H-2A application or who performs any of the work performed by an H-2A worker***
- Corresponding workers are to be given the same wages and conditions of employment as H-2A workers

Important H-2A Concepts, Terms, and Assurances

- **Required Wage:** Employer must pay the *highest* of the Adverse Effect Wage Rates (AEWR), prevailing piece rate or hourly rate, state or federal minimum wage, or agreed upon collective bargaining wage
- This wage must be paid to all H-2A workers **AND corresponding U.S. workers**
- \$12.57/hr. in California

State Prevailing Wages

- **Established by Surveys conducted by State Workforce Agency: EDD**
- **Published on Department of Labor Agricultural Online Wage Library**

Prevailing Wage Rates: South Coast

- Agricultural Online Wage Library
 - Strawberries “No Finding”
 - Avocado, Harvest \$75.00 Per Bin
 - Lemon, Harvest \$30.00 Per Bin 09/19/2014

Other Important Terms and Assurances

- Work must be full-time: 35 hours per week minimum
- $\frac{3}{4}$ hours guaranteed except Act of God
- Cannot displace U.S. workers with foreign workers
- Cannot give preferential treatment to either group: everyone in corresponding employment is treated the same

Housing, Meals, and Transportation

- Housing must be offered to workers (foreign and corresponding U.S. workers) who are unable to commute on a daily basis
- Meals must be provided but can deduct \$12.09/day from each worker's pay. Alternatively, can provide kitchens with access to groceries.

Transportation

- Inbound and outbound transportation to all workers who are unable to commute on a daily basis
- Must provide transportation from employer-provided housing to worksite and back

H-2A Assurances

- 50% hiring rule: must recruit and continue to hire able, willing, and qualified U.S. workers for 50% of the H-2A contact period
- Must assure that the employer will comply with all laws
- Must not permit workers to pay recruitment fees
- Must notify DOL/USCIS if a worker is terminated, quits, or abandons the job

Options to Filing H-2A Applications

- **Individual Growers as Sole Employer**
- **Use of Farm Labor Contractors**
- **Associations as Agents or Joint Employers**

Foreign Recruitment

- Recruitment in Mexico
- California “Good Recruiter” Pilot Program
- Experience requirements in H-2A application and foreign recruitment
- Visa Processing and prior criminal and/or immigration violations

Post Certification Compliance

- Wage & Hour Division (DOL)
 - Fines
 - Revocation
 - Debarment



Questions

