WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #26F: Wage Requirements under the H-2A Visa Program

On April 29, 2024, The U.S. Department of Labor published a final rule, "Improving Protections for Workers in Temporary Agricultural Employment in the United States" Further information on the final rule is found here.

This fact sheet provides general information on required wages for workers employed under the H-2A visa program.

Introduction

The Immigration and Nationality Act (INA) authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) into the U.S. to perform agricultural labor or services of a temporary or seasonal nature when the employer demonstrates that there are not sufficient workers who are able, willing, qualified, and available, and that the employment of the H-2A workers will not adversely affect the wages and working conditions of workers similarly employed in the U.S. The Department of Labor's (DOL) regulations governing the H-2A visa program also apply to the employment of other workers by the H-2A employer to perform any work included in the job order that was approved by DOL's Employment and Training Administration (ETA) or any agricultural work that is also performed by the H-2A workers during the period of employment stated on the job order. These other workers are engaged in corresponding employment.

Information about H-2A requirements can be found in Fact Sheets #26, #26A, #26B, #26C, #26D, #26E, #26F and #26G.

What wage rate must an employer advertise in required recruitment activities?

In all recruitment activities (such as in the Form ETA-790 / ETA-790A job order, which is the document containing the material terms and conditions of employment, and in any job offers to former or prospective U.S. workers), the employer must offer at least the highest of the adverse effect wage rate (AEWR), the prevailing hourly rate or piece rate, the agreed-upon collective bargaining wage, or the applicable Federal, State, or local minimum wage (except where a special procedure is approved).

The employer must offer former or prospective U.S. workers at least the wage that it intends to pay its H-2A workers. For instance, if the employer plans on paying by the piece, providing any wage supplements, paying a premium for experience, etc., then the employer must accurately disclose those plans when it recruits U.S. workers so that they can make informed decisions about their interest in the job opportunity.

What wage rate must an H-2A employer pay?

The H-2A employer must pay its H-2A workers and workers in corresponding employment at least the wage rate specified in the job order for all hours worked. That wage rate must be at least the highest applicable wage rate in effect at the time the work is performed.

The wage rate must be paid "free and clear" without unauthorized deductions or kickbacks to the employer.

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Can an H-2A employer pay its employees using methods other than an hourly rate?

Yes, an employer may pay workers a piece rate instead of an hourly rate when properly disclosed in the contract. The average hourly piece rate earnings must result in an amount at least equal to the required hourly wage rate. If, at the end of the workweek, the piece rate earnings are less than the required hourly wage rate, then the employer must supplement the worker's weekly earnings to meet the requirement.

Additionally, employers who are certified to employ workers in herding and range livestock occupations must pay the highest of an alternative monthly adverse effect wage rate, any applicable collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, as outlined in 20 CFR 655.210(g). Such employers should be mindful of state laws that may impose additional wage requirements on herding and range livestock occupations.

May an employer require productivity standards?

Yes, but if the employer requires one or more minimum productivity standards of workers in order to keep their jobs, the standards must be identified in the job order. It must also be normal and usual for non-H-2A employers to use this standard for the same occupation in the area of intended employment. Workers may not be paid less than the offered wage, even if the productivity standard is not met. In addition, productivity standards must be applied equally to all workers, including workers in corresponding employment.

How frequently must H-2A workers and workers in corresponding employment be paid?

Employers who use the H-2A visa program must pay their workers at least twice a month or according to the common practice in the area of intended employment, whichever is more frequent. The employer must state in the job order how frequently the worker will be paid. Employers must pay all wages when due.

Are H-2A workers and workers in corresponding employment covered by any other wage requirements?

Yes. Other Federal wage statutes, such as the Fair Labor Standards Act, apply to these workers in the same manner as any other worker. Additionally, many states have enacted laws that require overtime pay for agricultural workers. H-2A employers must comply with all such applicable laws.

Are any deductions permitted to be made from a worker's pay?

The employer must make all deductions from the worker's paycheck that are required by law, The job order must specify all deductions that are not required by law which the employer will make from the worker's pay. All deductions must be reasonable. Deductions that are not disclosed in the contract are prohibited. Certain other deductions, such as for housing or for tools, supplies, and equipment required to perform the assigned duties, are also prohibited. The employer must reimburse in the first paycheck any recruitment or visa-related fees that a worker has paid.

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Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd 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.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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