WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #26B: Disclosure of the Job Order and Notice of Worker Rights under the H-2A Visa Program

November 2022

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 concerning certain disclosure and notification requirements for employers 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.

As part of the recruitment process, the H-2A employer must submit information for the publication and circulation of a job order, which is the document containing the material conditions of employment. 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.

Disclosure Obligations

An H-2A employer employing H-2A workers and/or workers in corresponding employment under a certified Application for Temporary Employment Certification (Application) must agree as part of the Application to comply with the following requirements.

What notification must an H-2A employer provide to its current and former U.S. workers?

During the recruitment process and in order to ensure that U.S. workers learn of and apply for available jobs, the employer is required to:

- Contact all U.S. workers who were employed in the previous year in the occupation and at the place of employment listed on the application and invite them to return to their previous jobs. The employer is not required to contact former workers whose jobs were either terminated for cause or who abandoned their job.
- Record this contact with the former workers in the employer's recruitment report.

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- Save documentation that can prove this contact was made in the event of an investigation by the Wage and Hour Division (WHD) or an audit by the ETA. Please see Fact Sheet #26A for more information about H-2A employers' recruitment obligations.

No later than the day that work begins, the employer must provide a copy of the written work contract (often the certified job order) to all workers in corresponding employment.

What notification must an H-2A employer provide to H-2A workers?

H-2A employers are required to provide a copy of the written work contract (often the certified job order) to all H-2A workers in a language the worker understands, as necessary or reasonable.

- If the worker is outside the United States, the employer must provide this notice no later than when the worker applies for the visa.
- If the worker is already in the United States and is changing employment to another H-2A employer, or if the worker is not required to obtain a visa to enter the United States, then the subsequent H-2A employer must provide the notice no later than the time the subsequent employer makes the job offer.

What must be disclosed in the work contract?

The work contract must contain all the terms, benefits, and conditions of employment (at a minimum, all the provisions required under the H-2A statute and regulations), including but not limited to:

- Job qualifications and requirements
- Job duties
- Free and safe housing
- Workers' compensation insurance
- Free tools, supplies, and equipment
- Meals or kitchen facilities
- Inbound & outbound transportation
- Free and safe daily transportation
- Three-fourths guarantee
- Hours of work offered
- Hours and earnings statement
- Rate of pay
- Frequency of pay
- Deductions
- Abandonment or termination of employment
- Contract impossibility

The work contract may be in the form of a separate written document. In the absence of a separate written document, however, the terms of the job order and the requirements of the H-2A statute and regulations, at a minimum, will serve as the work contract.

All the terms and conditions included in the work contract must accurately identify what the employer will offer workers. The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer or will provide to H-2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not also be imposed on the H-2A workers.

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What notice must an employer post at the job site?

The employer must post and maintain a poster provided by the Department of Labor in a highly visible location at the place of employment which sets out the rights and protections for H-2A workers and workers in corresponding employment. The employer must post the poster in English and must post additional posters in any other language common to a significant portion of the workers if they are not fluent in English. Such posters are currently available in English, Spanish, and Haitian-Creole.

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).

The requirements listed above can be found in 20 CFR Part 655 subpart B, and 29 CFR Part 501.

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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