WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #26E: Job Hours and the Three-Fourths Guarantee under the H-2A 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 offered hours under the H-2A program. An 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.

Introduction

The Immigration and Nationality Act (INA) authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) 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's) 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, which includes the material terms and conditions of the job and is 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 regardless of whether the work was appropriately disclosed on the job order. These other workers are engaged in corresponding employment.

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

What hours of work must an H-2A employer offer to workers?

The job opportunity must be a full-time temporary position, requiring at least 35 hours of work per workweek throughout the length of the time period specified on the Application and job order. Additionally, the job order must accurately reflect the actual hours that the employer intends to offer workers. For example, if the employer advertises in the job order that it will offer eight hours of work five days a week, and instead actually offers 12 hours of work six days a week, this would constitute a violation of the employer's obligation to accurately state th terms and conditions of the job in the job order.

What if the H-2A employer does not have enough work to offer 35 hours a week to an H-2A worker or a worker in corresponding employment?

All H-2A employers must fulfill the three-quarters guarantee. This means that the employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total contract period. A workday means the number of hours in a workday as stated in the job order and excludes the worker's day of religious observance and Federal holidays.

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This obligation begins with the first workday after the arrival of the worker at the place of employment or the advertised first date of need, whichever is later, and ends on the expiration date specified in the work contract or in its extensions, if any.

All hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's day of religious observance or Federal holidays) may be counted toward the three-fourths guarantee by the employer.

How much must a worker be paid under the three-quarters guarantee if the worker is paid by piece rate?

If the worker is paid on a piece rate basis, the employer must use the worker's average hourly piece rate earnings or the required hourly wage rate, whichever is higher, to calculate the amount due under the guarantee.

May a worker be offered more than the specified hours of work on a single workday?

Yes. However, the worker may not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's day of religious observance or Federal holidays so that the employer can meet the requirements of the three-fourths guarantee. The employer, however, may count all hours actually worked in calculating whether the guarantee has been met.

What if an employer offers less employment than the required three-fourths guarantee?

If during the total work contract period the employer offers the H-2A worker or worker in corresponding employment fewer hours of employment than that required under the three-fourths guarantee, then, the employer must pay that worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer has not met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order.

For example, if a work 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 (10 weeks × 48 hours/week = 480 hours × 75 percent = 360). If a Federal holiday occurred during the 10-week span, the 8 hours would be deducted from the total hours for the work contract, before the guarantee is calculated. Continuing with the above example, the worker would have to be guaranteed employment for 354 hours (10 weeks × 48 hours/week = 480 hours − 8 hours (Federal holiday) × 75 percent = 354 hours).

What if it becomes impossible to fulfill the job order for reasons beyond the control of the employer?

If the services of the worker are no longer required before the end of the contract (the date specified in the job order) for reasons beyond the control of the employer and the fulfillment of the job order is impossible, the employer may terminate the job order with the approval of ETA's Certifying Officer. An example of a reason beyond the control of the employer is an unforeseeable, catastrophic event (fire, weather, or another natural disaster or man-made event).

If the job order is terminated, the employer must pay the three-fourths guarantee for the period of time between the start date listed in the job order or the first workday after the arrival of the worker at the place of employment, whichever is later, and the date of the termination the job order.

The employer must make efforts to transfer the H-2A worker or worker in corresponding employment to other comparable employment acceptable to the worker and consistent with the Immigration and Nationality Act. If a transfer is not completed, the employer must reimburse the worker the full amount of any deductions made from the worker's pay for transportation and subsistence expenses and pay the worker for all costs incurred by the worker to travel to the place of employment. The employer must return the worker, at the employer's expense, to the place the worker came from prior to working for the employer (disregarding intervening employment), or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers.

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Are there any other exceptions to the three-fourths guarantee calculation?

Yes. If the worker fails to work any hours that the employer offers (up to a maximum of the number of hours listed in the job order for a workday), then the employer may still count the hours offered toward the three-fourths guarantee.

For instance, if the job order states that the worker is expected to work five eight-hour days each week and the employer offers that much work, but the worker fails to work two days, then the employer can count those two days as hours offered in calculating whether each period of guaranteed employment has been met.

On the other hand, if the same employer offered ten hours on single day instead of eight and the worker did not work the extra two hours, those extra two hours cannot be counted toward the three-fourths guarantee. H-2A employers are required to keep a record of hours offered, in addition to hours actually worked, and must maintain such records for a period of three years.

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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