WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #26C: Records Retention Requirements 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 the recordkeeping requirements for employers under the H-2A program.

All employers filing an H-2A Application for Temporary Employment Certification (Application) or those jointly employing workers with another employer that is filing an application must retain the following documents and records and provide them in the event of an audit or investigation. These requirements are in addition to any records employers must maintain to comply with other laws, such as the Fair Labor Standards Act or the Internal Revenue Code.

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

What records must be kept and made available to the Wage and Hour Division upon request?

1. The H-2A job order, the approved Application, the H-2A Petition (DHS Form I-129) and supporting documents and records.
2. Documents and records not previously submitted during the application process that provide evidence of the employer's temporary need for H-2A workers.
3. Proof of recruitment efforts, as applicable, including:
    a. Evidence that a job order was posted;
    b. Evidence of required contact with the employer's former U.S. worker(s) in the same occupation and place of employment listed in the application, including documents demonstrating that the U.S. worker(s) had been offered the job opportunity and either refused it or was/were rejected for lawful, job-related reasons, as specified in 20 CFR § 655.153;
    c. Additional recruitment efforts conducted by the employer as directed by DOL's H-2A certifying officers.

Submit Feedback

4. Records to substantiate or support the information submitted in the recruitment report, such as evidence of why the employer is not required to contact certain former employees.
5. The final recruitment report and any supporting resumes and contact information.
6. Records of each worker's total earnings, hours offered and worked, location(s) of work performed, and other information.
7. If appropriate, records of when and how much the employer reimbursed workers for transportation and subsistence costs.
8. Evidence of contact with U.S. workers who applied for the job opportunity, including documents demonstrating that any rejections of U.S. workers were for lawful, job-related reasons.
9. The written contracts with agents, demonstrating the agent's authority to represent the employer, as well as the agent's certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), if required under that law.
10. If using a third party to recruit H-2A workers, a contract with the third party prohibiting the collection of prohibited fees.
11. Written notice provided to ETA's Office of Foreign Labor Certification (OFLC) that informs OFLC that an H-2A worker or worker in corresponding employment has separated from employment before the end date of employment certified in the Application. For H-2A workers, such notice must also be provided to the Department of Homeland Security.
12. Proof of worker's compensation insurance or State law coverage.

How long must an employer retain records?

The employer must retain records and documents for a period of 3 years from the date of the certification of the Application or from the date of determination if the Application is denied or withdrawn.

Must an employer provide its employees with a pay stub?

The employer must provide each worker a written statement (pay stub) containing the following information on or before each payday:

1. The worker's total earnings for the pay period;
2. The worker's hourly rate and/or piece rate;
3. If piece rates are used, the daily units produced by the worker;
4. Itemized deductions made from the worker's wages;
5. Hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee);
6. Hours actually worked by the worker;
7. Beginning and ending dates of the pay period; and
8. Employer's name, address, and Federal Employer Identification Number (FEIN).

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.

Submit Feedback

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.