

## U.S.

### ■ IMMIGRATION AND NATIONALITY ACT (*TEMPORARY AGRICULTURAL WORKERS*)

**TERMS:** No sooner than 75 days and no later than 60 days before an agricultural job is expected to begin, a farmer or growers' association that anticipates a shortage of U.S. workers and wants to be able to use temporary foreign workers under the so-called "H-2A" program, must submit a job offer to the U.S. Department of Labor and the state employment service, and begin an active effort to locate U.S. workers for the jobs described in the offer. Up until the government certifies the need for foreign workers (if any), the active effort to recruit U.S. workers for the jobs involved must continue.

Once an H-2A application is approved, from the time the foreign workers leave for the U.S. until half the specified employment period has passed, the employer must hire any qualified U.S. worker who applies for any of the jobs for which the H-2A workers were approved. This rule does not, however, apply to any farm operator or other H-2A employer who did not use more than 500 worker-days of agricultural labor in any calendar quarter in the preceding year (for example, 50 workers employed for 10 days, 20 workers employed for 25 days, or any other such combination occurring from January through March, April through June, July through September, or October through December) and who is not associated with other employers applying for or utilizing H-2A workers.

An H-2A job offer must meet certain minimum standards and guarantees, some of which are summarized below. All of these provisions must be written into a formal work contract and given to each worker no later than the first day of employment. Both the job offer and the work contract must provide U.S. workers with the same benefits, wages and working conditions that are provided to the H-2A workers.

**Pay Rates** — For every hour on the job in any pay period, each worker is entitled to receive no less than (1) the federal minimum wage, (2) the state minimum wage, (3) the federally prescribed "adverse effect wage rate" for H-2A employment in the state, or (4) the prevailing wage rate, whichever of the four figures is highest.

**Guaranteed Paid Workdays** — In general, all U.S. and H-2A workers employed in comparable jobs by an H-2A employer are guaranteed employment for at least 3/4 of the workdays in all periods during which the work contract is in effect. If work is not available for the minimum number of guaranteed days, and for the full number of hours of daily work time defined in the contract, the employer must pay each worker the amount that would have been earned had the individual actually worked the guaranteed number of defined workdays.

**Wage Payments, Deductions, and Statements** — Employers who utilize temporary foreign agricultural workers must pay both their foreign and U.S. workers at least twice a month, or more often if it is common practice in the local area to do so. Employers are generally permitted to withhold from a worker's pay only those deductions that are required by law or are otherwise reasonable, but any non-required deductions must be specified in the contract. On or before each payday, the employer must provide each worker with a written statement showing (1) the worker's total earnings for the pay period, (2) the hourly wage or piece rate, (3) the hours of employment offered to the worker and the hours actually worked, (4) each deduction from the worker's pay and its purpose, and (5) the worker's daily piecework production if paid on a piecework basis.

**Workers' Compensation** — At no cost to the worker, each H-2A employer is obligated to obtain workers' compensation or equivalent insurance to cover medical expenses and related benefits in the event of a worker's injury on the job or occupational disease.

**Transportation** — Each foreign or U.S. worker who completes half of the work contract period is entitled to repayment for the worker's meal and transportation expenses between the place from which the worker has come to work for the employer and the place of employment. Transportation and meal costs must be advanced to the worker before the trip whenever it is common practice for non-users of foreign labor in the same occupation and the same area to do so. Likewise, if the worker completes the contract period, the employer is obligated to provide or pay for the worker's transportation and meals back to the place of origin or the next place of employment. During the course of the contract, the employer must furnish transportation between the worker's housing and the worksite, without cost, if the worker is unable to return to his or her own home within the same day.

**Housing** — To those workers who are not able to return to their home each day, the employer must provide housing without cost to the worker. Housing facilities owned or operated by the employer must meet federal farmworker housing standards, while rental units or public housing must generally comply with whatever local, state or federal standards apply. When it is common local practice to provide farmworkers with family-type housing, family housing must be provided to those U.S. workers employed under an H-2A work contract who request it for themselves and their families.

**Meals** — An H-2A employer must either serve the workers three meals a day or furnish free and convenient cooking facilities to enable the workers to prepare their own meals. The workers may be charged for the cost of meals provided by the employer, but meal charges generally may not exceed a prescribed limit (currently \$10.64 per day).

**Supplies and Equipment** — Unless it is common practice in the particular locality and crop operation for workers to provide their own, the employer must furnish all supplies, tools and other equipment required to perform the assigned tasks, without any charge or deposit.

**ENFORCEMENT:** *Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072).* This agency is responsible for enforcing the required work contracts between certified H-2A employers and their foreign and U.S. workers performing services under those agreements. When investigation discloses evidence of a violation, the agency may impose penalties and order the person or company to meet its obligations under the contract.

Local offices of the Wage and Hour Division may be located on the agency's website, at [www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm).

**SPECIAL NOTE:** A person may not fire, discipline or discriminate in any way against a worker because the worker has consulted with an attorney or legal services program, filed a complaint, participated in an investigation or other enforcement action, or made use of any other right under this law. Reports of unlawful retaliation should be filed with the Wage and Hour Division.

## Colorado

### ■ STATE LABOR RELATIONS LAWS

TERMS: It is illegal for anyone to bring workers into Colorado for the purpose of employment, or to persuade workers to change from one place of employment to another within the state, by means of false or deceptive information, false advertising or false promises concerning the kind of work to be done, the amount or nature of compensation to be paid, the sanitary or other conditions of employment, or the existence or non-existence of a strike or other labor dispute.

ENFORCEMENT: Through a private attorney or public legal services program, a worker who has suffered damages as a result of a violation of these provisions may file suit in civil court against the party responsible.

## Illinois

### ■ PUBLIC EMPLOYMENT OFFICE ACT

TERMS: No employer in Illinois may utilize the state employment service to recruit migrant farmworkers unless the employer files a statement with the state agency revealing the terms and conditions of the job and the existence of any strike or other labor action by the employer's workers at the proposed job site. Prior to recruitment, the employer must give each farmworker a copy of the statement, in English and any other language easily understood by the worker, and must post the statement in plain sight at the job site or the worker's place of residence.

Each migrant farmworker recruited for employment must be given a written summary of all state laws related to the worker's employment, including, among others, the provisions regarding wage payments, wage assignments, and migrant labor camps. The summary must be in English and any other language easily understood by the worker.

ENFORCEMENT: *Illinois Department of Employment Security, Springfield, Illinois 62702 (773-412-8427).*

## Michigan

### ■ **STATE LABOR LAWS (*WORK AWAY FROM HOME LOCALITY*)**

**TERMS:** Any person or firm that recruits a worker for employment away from the worker's home location, by promising wages or other compensation, must provide the worker with a written statement specifying the terms and conditions of the job, the wage rates to be paid, and how, when and where such wages will be paid.

**ENFORCEMENT:** These provisions are enforced by public prosecuting attorneys in criminal court. At the same time, a worker who has suffered damages as a result of a violation of these provisions may take legal action against the violator in civil court, using a private attorney or a public legal services program.

## Minnesota

### ■ STATE LABOR LAWS (*MIGRANT LABOR RECRUITMENT*)

**TERMS:** Every processor of fruits and vegetables in Minnesota that employs, either directly or indirectly through a recruiter, more than 30 migrant workers per day, for more than 7 days in a calendar year, must comply with the disclosure provisions summarized in the next paragraph.

A migrant worker is defined as an individual at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota.

**Employment Statements** — At the time of recruitment, the employer is required to provide each such worker with a written employment statement plainly specifying, in English and Spanish, all of the following:

- (1) The date on which and the place at which the statement was provided to the worker.
- (2) The names and permanent addresses of the worker, employer and recruiter.
- (3) The expected date of the worker's arrival at the job site, the anticipated date the job will begin, the approximate hours of employment, and the minimum period of employment.
- (4) The crops and crop operations in which the worker will be employed.
- (5) The wage rates to be paid.
- (6) The terms of payment.
- (7) Any wage deductions to be made.
- (8) Whether or not housing will be provided.

The required employment statement is deemed an enforceable contract between the worker and the employer.

**ENFORCEMENT:** Using a private attorney or a public legal services program, a migrant farmworker affected by a violation of these provisions may file a lawsuit against the processor involved for damages and other corrective action.

### ■ STATE LABOR LAWS (*FALSE STATEMENTS IN RECRUITMENT*)

**TERMS:** It is illegal for a person or firm doing business in Minnesota to recruit or persuade a worker to relocate from some other place in order to work in Minnesota, either by providing false or misleading information concerning the type of work, wages, or sanitary conditions, or by failing to advise the worker of a strike or similar labor dispute at the place of proposed employment.

**ENFORCEMENT:** Using a private attorney or public legal services program, a worker who is recruited or persuaded to change his or her place of employment, as described above, has a right to sue for damages suffered as a consequence of any false or misleading information.

## Montana

### ■ **STATE LABOR LAWS (*DECEPTION IN RECRUITMENT*)**

**TERMS:** It is illegal for anyone doing business in Montana to persuade workers to change from one place of employment to another within the state through deception, misinformation or false advertising concerning the kind of work available, the sanitary conditions on the job, other terms of employment, or the existence of a strike or similar labor dispute at the job site.

**ENFORCEMENT:** Using a private attorney or a public legal services program, a worker who has relocated within the state on the basis of false or deceptive job recruitment practices in violation of this provision may sue the employer or labor recruiter involved for damages suffered as a consequence of the violation.

## Nevada

### ■ MISCELLANEOUS EMPLOYMENT LAWS (*MISREPRESENTATION IN RECRUITMENT*)

TERMS: It is illegal for anyone doing business in Nevada to persuade workers to move from one place of employment to another, or to bring workers into the state for employment of any kind, by means of false advertising or false information concerning the type of work to be done, the wages or benefits to be provided, the job conditions, or the existence or non-existence of a strike or other labor problems at the job site.

ENFORCEMENT: These provisions are enforced by public prosecuting attorneys in criminal court. A worker who has suffered damages from a violation may wish to consult a private attorney or public legal services program about possible legal action in civil court against the person responsible.

## Oklahoma

### ■ MISCELLANEOUS LABOR LAWS (*MISREPRESENTATION IN RECRUITMENT*)

TERMS: It is illegal for an employer to bring workers of any sort into Oklahoma for employment, or to persuade workers to move from one place to another within the state, through false promises, false advertising, or deception regarding the nature of the work to be performed, the amount of compensation to be paid, the sanitary conditions on the job, the existence or non-existence of a strike or other labor dispute at the job site, or other conditions of employment.

ENFORCEMENT: *Wage and Hour Unit, Oklahoma Department of Labor, Oklahoma City, Oklahoma 73105 (405-521-6598)*. The Department is authorized to refer violations of this provision to local district attorneys for criminal prosecution.

A worker who is persuaded to relocate through misrepresentation concerning employment has the option of suing the person responsible for any resulting damages, using a private attorney or a public legal services program.



## Oregon

### ■ MISCELLANEOUS LABOR LAWS (*MISREPRESENTATION IN RECRUITMENT*)

TERMS: No one who employs labor may bring workers into Oregon for employment, or persuade workers to change from one place of employment to another within the state, through deception or false information concerning the amount of pay or the existence or non-existence of a strike, lockout or other existing labor dispute. Neglecting to state in an advertisement or proposal for employment that there is a strike, lockout or unsettled labor problem at the proposed workplace, when such a condition actually exists, is illegal.

ENFORCEMENT: The protections provided under this law may be enforced only by legal action in civil court, through a private attorney or a public legal services program.

## Puerto Rico

### ■ PUBLIC LAW 87

TERMS: Every person, organization or agent intending to recruit workers in Puerto Rico, for employment under contract outside Puerto Rico, must notify the labor secretary in advance concerning the recruitment effort. Among other details, the notification must specify the number of workers to be hired, the type of transportation to be used to get the workers to the job site, the name and address of the employer, the kind of work to be performed, the wages and other compensation to be paid, and the minimum guaranteed working hours. Recruitment is not permitted without the authorization of the secretary.

Anyone who recruits workers as described above is required to enter into a written contract with each such worker. The contract must contain certain minimum guarantees prescribed by the enforcement agency, and once the contract is approved, the agency is obligated to protect the worker's rights as spelled out in that document.

ENFORCEMENT: *Employment Service Division, Bureau of Employment Security, Puerto Rico Department of Labor and Human Resources, Hato Rey, Puerto Rico 00918 (787-756-1180).*

## Tennessee

### ■ **GENERAL LABOR LAWS (*HIRING PRACTICES*)**

**TERMS:** It is illegal for anyone to bring workers of any kind into Tennessee for any sort of employment, or to persuade a worker to move from one place to another within the state, by means of misrepresentation, false promises, or false advertising concerning the nature of the work to be done, the amount of pay, the sanitary conditions on the job, the existence or non-existence of a strike at the worksite, or other conditions of employment.

**ENFORCEMENT:** This provision is enforced in the criminal courts by public prosecuting attorneys.

Apart from any criminal enforcement action, a worker who is persuaded through false promises or fraud to relocate for employment reasons has a right to sue the employer or recruiter involved for all damages that the worker suffers as a result, using a private attorney or a public legal services program.

## Washington

### ■ SEASONAL LABOR LAW

TERMS: Whenever anyone recruits workers in Washington for seasonal employment outside the state — when the job will last more than one month and where wages will not be paid until the job is completed and the workers return to Washington — there must be an individual signed contract between the employer and each worker.

A contract for seasonal labor may provide for payment of cash advances or the furnishing of supplies to the worker before wages are earned, and for the payment of money or furnishing of supplies during the season.

ENFORCEMENT: *Employment Standards, Apprenticeship and Crime Victims Division, Washington State Department of Labor and Industries, Olympia, Washington 98504 (toll-free 866-219-7321)*. At the request of a worker, the Department is authorized to investigate any dispute concerning wages earned in seasonal labor. The Department may allow or reject deductions made from the worker's earnings, for money advanced or supplies furnished before or during the season, or for money paid to third parties when authorized by the worker.

## Wisconsin

### ■ MIGRANT LABOR LAW (*MIGRANT WORK AGREEMENTS*)

**TERMS:** Wisconsin's migrant labor law requires agricultural employers, labor contractors, and others who hire or recruit migrant farmworkers for employment in the state, to provide the workers with certain pre-employment information and with a written work agreement at the time of hiring.

**Pre-Employment Disclosure** — At the time of recruitment of any out-of-state migrant worker for temporary seasonal agricultural employment in Wisconsin, the employer or contractor involved must provide the worker with a written disclosure of the terms and conditions of employment, identical in content to the required work agreement described below. The disclosure must be in English, and in the worker's usual language if other than English.

**Written Work Agreement** — At the time of hiring, the employer or contractor must provide each migrant worker recruited or hired with a written work agreement, signed by the employer and by the worker (or the head of the family, if a family is employed). The work agreement, which must be in English and in the worker's usual language if other than English, must include the following:

**Employment Conditions** — The work agreement must specify the place of employment, the kind of work to be done, the wage rates to be paid, the length of the pay period, the approximate hours of employment and any overtime to be paid, the approximate starting and ending dates of the job, the housing to be provided and its cost to the worker, the cost of any employer-provided meals, the arrangements for transportation, the names of all family members to be employed (if any), and the charges or pay deductions to be made other than those required by law.

**Guaranteed Hours** — The work agreement must contain a guarantee of (1) at least 45 hours of work in each 2-week period for workers employed in agricultural field work only, or (2) at least 20 hours of work in each one-week period, or 64 hours in a 2-week period, if the worker is employed in both field and processing operations. The guarantee covers the entire period from the date the worker is notified to report to work (or the date the worker actually reports for work, if later) to the date of termination of employment.

**Exceptions to Guarantee** — The hours guarantee generally applies only to workers 18 years of age and older. If a worker is not available for work on a particular day during the guarantee period, the employer may reduce the minimum guarantee by an amount equal to the wages the worker would have earned had the worker been available. Furthermore, the employer is not obligated to pay the minimum guarantee if the worker reports for work as notified but is never employed due to a weather disaster or similar circumstances beyond the employer's control. Within 24 hours after reporting for work in any such case, the worker is entitled to receive pay at the agreed-upon rate for the elapsed time between the worker's departure from the point of origin and return to the point of origin, but in no event less than 3 nor more than 6 days' pay at 8 hours per day.

**ENFORCEMENT:** *Migrant Law Enforcement Section, Employment and Training Division, Wisconsin Department of Workforce Development, Madison, Wisconsin 53707 (608-266-0002).* A migrant worker who has not received a recruiting disclosure statement, a written work agreement, or pay in accordance with guarantees shown in the work agreement, should contact the Department.

Without regard to action by the Department, a migrant worker affected by a violation of the migrant labor law by an employer or migrant labor contractor has a right to file suit against the violator in civil court, using a private attorney or public legal service provider.

**SPECIAL NOTE:** An employer or labor contractor may not fire, discipline or discriminate in any way against a migrant worker because the worker has filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions. A worker who has been subjected to unlawful retaliation may file suit against the employer or contractor involved, using a private attorney or public legal service provider.

### ■ GENERAL LABOR LAWS (*FRAUDULENT ADVERTISING FOR LABOR*)

**TERMS:** It is unlawful to recruit or persuade workers to change from one place of employment to another in Wisconsin, or to bring workers of any sort into the state, by means of false advertising or false claims concerning the nature of the work to be done, the wages to be paid, or the conditions of the job.

Failing to tell the workers that a strike or lockout exists at the place of proposed employment, when such a labor dispute actually exists there, is also illegal.

**ENFORCEMENT:** *Labor Standards Bureau, Equal Rights Division, Wisconsin Department of Workforce Development, Madison, Wisconsin 53703 (608-266-6860).*

As an alternative to filing a complaint with the Department, a worker who has been misled into relocating for purposes of employment has the right to sue for damages directly, using a private attorney or a public legal services program.