

■ 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

U.S. / Labor Contractors & Worker Recruitment / Recruitment Standards

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.