

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

TERMS:

Hourly Workers — Every employer who uses temporary foreign agricultural workers under the so-called "H-2A" program must pay each H-2A worker paid by the hour, and any hourly-paid U.S. worker performing substantially similar work, no less than (1) the federal minimum wage, (2) the state minimum wage, (3) the prevailing hourly wage rate, or (4) the federally prescribed "adverse effect wage rate" for H-2A employment in the state, whichever of the four figures is highest.

The adverse effect wage rate is a special minimum wage updated each year by the U.S. Department of Labor and intended to assure that the use of temporary foreign workers does not lower wages for U.S. farmworkers. As computed for all states except Alaska, the following are the AEWRS established for calendar year 2017:

Alabama—\$10.62, Arizona—\$10.95, Arkansas—\$10.38, California—\$12.57, Colorado—\$11.00, Connecticut—\$12.38, Delaware—\$ 12.19, Florida—\$11.12, Georgia—\$10.62, Hawaii—\$13.14, Idaho—\$11.66, Illinois—\$13.01, Indiana—\$13.01, Iowa—\$13.12, Kansas—\$13.79, Kentucky—\$10.92, Louisiana—\$10.38, Maine—\$12.38, Maryland—\$12.19, Massachusetts—\$12.38, Michigan—\$12.75, Minnesota—\$12.75, Mississippi—\$10.38, Missouri—\$13.12, Montana—\$11.66, Nebraska—\$13.79, Nevada—\$11.00, New Hampshire—\$12.38, New Jersey—\$12.19, New Mexico—\$10.95, New York—\$12.38, North Carolina—\$11.27, North Dakota—\$13.79, Ohio—\$13.01, Oklahoma—\$11.59, Oregon—\$13.38, Pennsylvania—\$12.19, Rhode Island—\$12.38, South Carolina—\$10.62, South Dakota—\$13.79, Tennessee—\$10.92, Texas—\$11.59, Utah—\$11.00, Vermont—\$12.38, Virginia—\$11.27, Washington—\$13.38, West Virginia—\$10.92, Wisconsin—\$12.75, Wyoming—\$11.66.

Piece-Rate Workers — Workers who are paid on a piece-rate basis and whose earnings at the end of the pay period are below what they would have been had the workers been paid at the required hourly rate must be given supplemental pay at that time to make up the difference. In no case may an H-2A employer pay a piece rate for a given crop operation that is less than the prevailing piece rate in the local area for the same operation.

Guaranteed Paid Workdays — Except for workers who quit the job before the end of the contract period or are fired for good reason, each U.S. and foreign worker hired under an H-2A work contract is guaranteed employment for at least 3/4 of the workdays in all periods during which the 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 the worker the amount that would have been earned had the individual actually worked the guaranteed number of defined workdays. In calculating the amount due under the guarantee for a worker paid by the hour, the employer must use the worker's regular hourly pay rate; in the case of a pieceworker, the guarantee is figured using the worker's average hourly piece-rate earnings or the adverse effect wage rate, whichever is higher.

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

SPECIAL NOTE: An employer 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.