



H-2A Compliance Review Checklist

This checklist is provided to assist you in making sure that you are in compliance with Department of Labor, H-2A regulations and that you have an understanding of what your obligations are as an H2A employer.

DID YOU KNOW.....

H-2A workers can work:

- Only for you and, if applicable, other growers named on your certified contract
- Only at the location(s) named in your contract
- Only at the approved rate(s) of pay in the contract
- Only during the approved time period of the contract
- That you must hire all U.S. Citizen job applicants during the first 50% of the contract period referred to you OR who apply directly at your farm who are ready willing and able to perform the job for the entire contract period?
- That all US workers doing the same jobs as H-2A workers (corresponding employment) are entitled to all the rights and protections of the contract?
- That once certified to employ H-2A workers you must provide all the benefits and guarantees in the contract to US workers in corresponding employment during the period of employment covered by the contract even if you never employ an H-2A worker at your farm?
- That if you terminate a worker for a lawful job related reason, or if a worker abandons employment, you must immediately notify your LOCAL Job Service, in writing, of the termination/abandonment? Always keep a copy of the notification as proof of compliance in the employee's personnel file.
- That workers who complete the season, or are terminated for anything other than a lawful job related reason, must be paid their transportation

reimbursement and full 3/4 guarantee? Always ask workers to sign a voluntary resignation, if applicable, prior to departing your farm.

Once employment of H-2A workers and/or US workers in corresponding employment begins, you must:

- Provide a work contract to each worker (H-2A or US worker in corresponding employment) in their native language by the first workday. In lieu of a separate contract, you can provide the workers with a copy of the Form ETA 790 and attachments
- Keep all required payroll records.
- Provide required wage statement to worker on, or before, each payday.
- Pay all wages due on the disclosed payday each week.
- You must pay the highest of the AEW, state or federal minimum wage, prevailing wage, or promised wage, including piece-rate in accordance with the approved contract.
- Guarantee payment for 3/4 of the work hours in the contract period.
- Make all legally required payroll deductions and do not make deductions prohibited by law or not approved and disclosed to the worker in the contract.
- Provide housing to all workers (US workers in corresponding employment and H-2A workers) who cannot reasonably return to their permanent home at the conclusion of the workday. Ensure the housing remains in compliance with applicable safety and health standards.
- Provide housing free of charge to all eligible workers
- Workers cannot be required to pay for ANY costs associated with the H-2A visa process, including recruiter, agent or legal fees expended to secure the visa
 - ✓ Reimburse the cost of transportation and subsistence to your farm, from where each US or H-2A worker was recruited no later than when the worker completes 50% of the contract. The current subsistence rate is \$12.09 per day or up to \$51/day with proper receipts for each worker
 - ✓ Reimburse workers for all visa-related fees incurred as part of the H-2A process, including the \$190 consular application fee
 - ✓ Maintain documentary evidence and signed declaration from workers demonstrating that you have reimbursed workers directly, or reimbursed the agent for fees incurred for the benefit of workers

- ✓ If you use an agent/recruiter, have a written/signed agreement declaring that no costs or fees will be charged back to H-2A workers for visa processing
- Provide daily transportation from the housing to the work sites at no cost.
- Ensure that vehicles used to transport US or H-2A workers meet federal, state and local safety requirements.
- Provide free centralized cooking facilities and utensils or three meals per day, at cost, to the workers to whom housing is provided.
- Provide work tools, supplies and equipment at no cost to the worker.
- Provide worker's compensation insurance (or its equivalent if workers are excluded from state worker's compensation) at no cost to the worker.
- In case of contract impossibility ("Act of God") that requires termination of employment prior to the end of the contract period, provide remaining contract benefits, including payment of 3/4 guarantee obligations (up to time of the event which terminated the employment) and return transportation/ subsistence?
- Avoid rejecting or terminating US workers other than for lawful job-related reasons
- Provide US workers employed in or applying for corresponding employment wages, benefits, and working conditions at least equal to those provided to H-2A workers.
- Avoid discriminating against workers who complain, testify or otherwise exercise their rights.
- Avoid causing workers to waive their rights.
- Cooperate with DOL investigations of your business
- Comply with all federal, state and local employment-related laws and regulations.
- Comply with the Fair Labor Standards Act (FLSA).
- If you employ US workers, comply with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).
- Thoroughly document, in writing, all conflicts and warnings with any employee and keep in employee file for at least three years.

This is a compliance assistance worksheet relating to the regulations of the H-2A program. It is intended as a general description only and does not carry the force or significance of legal opinion.

Employer Signature _____ Date _____