



2018

H-2B Compliance Requirements

This checklist is provided to assist you in making sure that you are in compliance with Department of Labor, H-2B regulations and that you have an understanding of what your obligations are as an H-2B employer. The H-2B program authorized temporary/seasonal employment for no more than 10 months.

I. Wage Requirements

DOL regulations require that you employ workers on a full-time basis, which the Department of Labor defines as **at least 35 hours** per week. You are required to pay all workers the prevailing wage rate listed on the application for all hours up to 40 hours per week. Under the Fair Labor Standards Act, for any hours over and above 40 per week, you must pay workers the overtime rate.

Please note that DOL will expect you to pay ALL workers in the same occupational classification the same hourly rate of pay unless you can offer a legally valid reason for a difference in payrate for workers performing the same duties. This issue has come up in recent DOL H-2B Audits. You would need to be able to justify any differences in wage rates among similar employees.

You are required to offer to each worker employment for a total number of work hours equal to at least $\frac{3}{4}$ of the workdays of each 12-week period (6 week period of job order is less than 120 days), unless prevented by unforeseeable circumstances outside employer's control.

II. Payroll/Tax Withholding Issues

Deductions from wages **MUST** be made if they are required by law. All other deductions must be specifically disclosed in the job order and may only include the reasonable cost or fair value of board, lodging, and facilities furnished.

According to IRS regulations, you are required to pay all regular local, state and federal payroll taxes, including Social Security and unemployment (FICA, FUTA and SUTA). You are also responsible for assisting your workers in obtaining Social Security cards upon their arrival.

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- You must provide Workers Compensation Insurance for all workers.

III. Payroll Records

You are required to provide ALL workers, even if not on the H-2B visa program, with weekly pay statements/earnings records identifying all deductions and reimbursements clearly itemized, and hours worked AND hours offered. These pay statements should include the following information:

- Employer name, address, and phone number
- Employee name and foreign address
- Dates covered by payment
- Basis of payment (hourly, salary, etc)
- Rates paid (regular and overtime)
- Hours worked (regular and overtime)
- Allowances or credits (meals, uniforms, etc)
- Gross Wages
- Any deductions from wages
- Net wages

According to IRS regulations, you are required to pay all regular local, state and federal payroll taxes, including Social Security and unemployment (FICA, FUTA and SUTA). You are also responsible for assisting your workers in obtaining Social Security cards upon their arrival.

Please be sure to keep copies of all pay statements in the event of an Audit by DOL.

IV. Transportation/Subsistence Reimbursement

Payment or reimbursement of transportation and subsistence expenses for workers to the place of employment after the worker completes 50% of the period of employment in the job order. **The current subsistence rate for meals is \$12.09 per day without receipts or \$51/day with proper receipts.**

Payment of return transportation and subsistence required if the worker completes the job order period or is dismissed early.

Under the Fair Labor Standards Act, the U.S. Department of Labor has concluded that employers are required to pay transportation and visa expenses incurred by H-2B workers. If shifting these costs to the H-2B workers would depress their pay rate below the required prevailing wage, it is not permitted.

We recommend that you reimburse your workers for transportation costs and visa-related fees in the first work week to avoid violation the FLSA.

Visa Processing Costs: Payment or reimbursement of visa, border crossing and related government mandated fees in the first workweek. **Current Consular Processing Fee is \$190.** Agent fees are as follows: Mexico (\$75/worker); Guatemala (\$150/worker). We will bill you directly for any agent costs incurred.

DOL prohibits against passing on fees associated with the H-2B applications or employment, such as application/petition costs, attorney fees, recruitment fees or other related fees to the H-2B worker.

You should maintain documentation in your file confirming that you have either paid or reimbursed workers for H-2B related costs.

V. Tools, Supplied and Equipment

Employers are responsible for providing all tools, supplies and equipment required to perform the job, including uniforms, shoes, etc. You may not charge workers a fee for these expenses.

VI. Copies of Job Order/Employment Contract to Workers

Employers must provide workers with copies of the job order no later than the time at which the worker applies for the visa, if the worker is departing directly from his or her home country, and display a poster describing employee rights and protections in English and, if necessary and made available by the DOL, another language common to your workers.

VII. Termination/Early Departure of Workers

You must notify DOL and USCIS when a worker abandons the job or is terminated for cause (and USCIS/DHS if the person is an H-2B worker).

You must report the termination or departure of any H-2B workers for cause and abandonment to both the USCIS and USDOL in writing within 2 business days of the termination, or discovering abandonment. Emails are to be sent to the USDOL at tlc.chicago@dol.gov or, or by facsimile to (312) 886-1688, Attention H-2A Abandonment and Termination.

You may notify USCIS by email at VSC.H2BABS@dhs.gov. You should include the following information with your notification:

- ✓ Reason for notification (absconder, termination, early completion, etc)
- ✓ USCIS receipt/case number
- ✓ Petitioner name, address, phone number and FEIN
- ✓ H-2B worker name, date of birth, place of birth, last known address

VIII. Record Keeping

The employer must retain, for a period of three (3) years, the H-2B recruitment report, resumes (if any), advertising, and evidence of contact with applicants.

IX. Social Security Numbers

Your workers are eligible to apply for U.S. Social Security numbers with valid H-2B authorization. They may apply at your local SSA office with evidence of their employment authorization (I-94, Arrival-Departure Record and Passport).

X. I-9 Employment Eligibility Compliance

You should complete Form I-9 for each H-2B worker just as you would for a domestic worker. A list of acceptable documents to verify employment authorization is provided in the I-9 form instructions.

Please feel free to contact us with any questions.

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