



## TIPS FOR GETTING THE H-2A PROCESS STARTED RIGHT

APPLIES TO GROWERS USING OR CONSIDERING USE OF H-2A WORKERS

### REQUESTING H-2A WORKERS:

Agricultural employers, including fixed-site farming operations and registered farm labor contractors (FLCs), who are unable to fill their labor needs with U.S. workers can request foreign labor through the H-2A Program. All H-2A worker requests must be seasonal or temporary need, and normally may last no longer than 10 months. Regardless of how the agriculture employer completes the H-2A process (even if using an agent or attorney) they are still responsible for knowing what is in their ETA-790A contract and are in compliance.

### The process of requesting H-2A workers should be completed in this order:

1. **Job Order (ETA-790A):** Complete the ETA-790A form, in the online Foreign Labor Certification Gateway ([FLAG](#)), this will be reviewed by the State Workforce Agency (SWA) and the Employment Training Administration Office of Foreign Labor Certification in the U.S. Department of Labor. This is completed and can be completed by the individual employer, attorney, agent, joint employers, or an association. This order identifies all terms and conditions of the work contract to fulfill the needs of the applicant/employer and identifies all worksites and employers.

**When:** The ETA-790A should be filed 60-75 days prior to the requested start date of need.

Note: In certain limited emergency circumstances the ETA-790A may be filled 45 days prior to the requested start date of need.

2. **Application (9142A):** Complete the 9142A form for the Chicago National Processing Center (CNPC). The 9142A is also completed in the online Foreign Labor Certification Gateway (FLAG) and can be completed by the employer, attorney, agent, joint employers, or an association.

**When:** No less than 45 calendar days before the requested start date of need.

3. **Recruitment of US Workers:** H-2A worker requests require employers to recruit U.S. workers that are willing, able, and qualified to perform duties in the contract. The recruitment process will be outlined for the employer and includes how to prepare and submit your initial recruitment report.

**When:** The recruitment begins on the date SWA accepts the job order (ETA-790A) and must continue until 50 percent of the period of the work contract has elapsed.

4. **Submit Needed Information:** After the CNPC accepts an application 9142A from an employer or their representative, CNPC will notify them with the next steps in the process. CNPC will request any additional documents and timely housing certification to receive a final determination. Housing must be inspected and certified no later than 30 days prior to the requested start date of need to prevent potential worker delays.

**When:** The final determination by the CNPC will be given no less than 30 calendar days before the start date of work.

### KNOW WHAT IS IN YOUR WORK CONTRACT (ETA-790A):

Throughout this process it is the responsibility of the agricultural employers to attest that the terms and conditions included in their H-2A requests are accurate and comply with all applicable local, state, and federal laws. Because of this, the agricultural employer must obtain and review a copy of the contract prior to submission into the online FLAG system. Reviewing the contract "Terms and Conditions" helps make sure all information listed is accurate (including the names of all employers and locations of employment) and no relevant information to the farming operation is unknowingly omitted.

**H-2A regulations found at: [20 CFR 655 Subpart B](#)**

## Terms and Conditions employers need to verify are accurate:

- **Workers Needed:** Number of workers requested reflects employer needs as listed on the ETA-790A work contract.
- **Anticipated Hours Work Per Week:** Estimated workweek hours reflective of operational need
- **Job Duties:** Describes every crop and activity in which H-2A workers will engage
- **Qualifications/Requirements:** Meets the employers' needs and are uniform for all foreign and U.S. workers recruited for the job opportunity. All qualifications and requirements must be disclosed.
- **Wages:** Awareness of hourly wage rate and all piece rates, if applicable, and are listed properly. Employers must pay the highest of the adverse effect wage rate (AEWR), the applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage. Employers should be aware that these rates can change during the contract period and that it is their responsibility to make required changes when they occur.
- **Frequency of Pay:** Accurately reflects frequency of payroll operations
- **Place of Employment:** All worksites are properly listed

- **Deductions:** All deductions are disclosed
- **Housing:** All sites are listed that will be used in relation to the petition
- **Transportation and Daily Subsistence:** Employer is aware of reimbursement obligation rates
- **Referral and Hiring Instructions:** Understand how U.S. applicants are instructed to apply for positions (Ex. phone, email, in person, etc.). All employers must hire any US worker that is willing, able, and qualified to perform duties as listed in the ETA-790A work contract.
- **Operation Specific Rules:** Housing or transportation rules, disciplinary procedures, etc. so long as the rule does not infringe on applicable local, state and/or federal laws.

## FARM LABOR CONTRACTORS USING THE H-2A PROGRAM (H-2A LCS)

Fixed-Site employers who hire H-2ALCs to supply their labor needs with H-2A workers should request a copy of the ETA-790A from the H-2ALC so they can confirm that their operational needs such as worksites, crops, and workers are accurately reflected in the contract. The grower should also request a copy of the contract between the grower and H-2ALC that was provided when H-2ALC was requesting labor, proof of surety bond and any other required insurances such as workers comp or vehicle insurance.

## ADDITIONAL RESOURCES

- GAP Connections Tip Sheet for preparing for workers: <https://www.gapconnections.com/resources/recordkeeping>
- Farm Labor Practices Group (FLPG) website: <https://farmlaborpracticesgroup.org/resources/>
- U.S. Department of Labor website: <https://www.dol.gov/agencies/whd/agriculture>

**1 Before Arrival**

- ❑ Draft or Review
  - Anti-discrimination policy
  - Emergency plan
  - Labor Dispute Resolution Plan
  - List of Inspected Workers
  - Employment Terms & Conditions and address/assessments
  - Training Needs (i.e. new equipment, new growers, etc.)
- ❑ Put up required Postings
  - Migrant and Season Agricultural Worker Information
  - Laborers' Right Under the Fair Labor Standards Act
  - OSHA 300 Safety and Health
  - Temporary Worker Under H-2A Program
  - Worker Rights and Responsibilities
  - Worker Compensation
  - Terms and Conditions of Employment
- ❑ Inspect Housing & make needed repairs
  - Review Housing rules & expectations
- ❑ Prepare Field Sanitation
- ❑ Purchase applicable Personal Protective Equipment (PPE)
- ❑ Inspect vehicles used to transport workers

**2 Arrival**

- ❑ Complete with Worker(s)
  - Form I-9 (properly return personal documents when completed)
  - Required information & parental consent for minors
  - Emergency contacts
  - Farm Notice
- ❑ Review with Workers & Provide Copies
  - Terms and Conditions of Employment
  - Worker Contract, Dispute and Labor Dispute Resolution
  - Anti-discrimination Policy
  - Farm Emergency Plan
- ❑ Obtain and Keep for all H-2A labor:
  - Copy of ETA 790A(s) & ETA 790A(s)
  - Copy of the ETA 9242
- ❑ Obtain and Keep for all FLCs or H-2ALCs:
  - Copy of FLC or H-2ALC License
  - Proof of Workers Compensation
  - Proof of Surety Bond
  - If H-2ALC, copy of contract between grower and H-2ALC
  - If H-2ALC, proof of Surety Bond
- ❑ Train Workers
  - Review the location & use of employer provided personal protective equipment (PPE)
  - Review COVID-19 protocols and prevention tips
  - Complete Worker Training on required Farm Safety and Crop Integrity Topics & have workers sign acknowledgement
- ❑ Transportation Orientation
  - Review any transportation rules or expectations
  - Obtain and keep all necessary transportation documentation from anyone transporting workers:
    - Driver Certificate
    - Driver's License
    - Insurance
- ❑ Housing Orientation
  - Review any housing rules or expectations
  - Review the location & use of cleaning supplies

**3 Working on Farm**

- ❑ Maintain Records
  - Time records
  - Wage Statements
  - OSHA 300 Accident Forms
  - Vehicle Inspection logs
  - Disciplinary records
  - H-2A Records of work hours offered (for payment of 8 guarantee)
- ❑ Maintain Housing
  - Inspect housing for repairs and cleanliness

**4 Departure or Termination**

- ❑ Complete Requirements for H-2A labor:
  - Check that 8 guarantee was met
  - Provide payment for authorized transportation
- ❑ Maintain Records
  - Worker Termination Records

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