

WHAT IS H-2A?

This brochure is for agricultural workers who work for farmers using the H-2A program.

The H-2A program permits agricultural employers from the United States to employ foreign workers. The workers do field labor on a temporary basis when there are insufficient U.S. workers available.

The H-2A workers have the obligation to return to their home country at the end of their employment in the U.S., which will not exceed one year.

ABLE & LAWO

ABLE and LAWO provide free, high-quality legal assistance in civil matters, in order to assist low-income agricultural workers and immigrants.

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H-2A

YOUR LABOR RIGHTS

[2018]

FREE LEGAL SERVICES

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CONTRACT GUARANTEES

U.S. law allows agricultural employers to hire foreign workers on temporary H-2A visas if the employer can prove there is a shortage of U.S. workers. The employment protections available to these foreign H-2A workers also apply to U.S. workers who are employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the foreign H-2A workers. All these workers have the following rights:

WAGES

- In Ohio for 2018, to be paid an hourly wage of \$12.93 for:
 - Every hour you work
 - The time you wait in the field when you are ready to work
 - The time it takes to be transported between fields (but not the time to transport you between the housing and worksite)
 - Any lunch breaks taken during the working day that are less than 30 minutes long
- To be PAID at least twice per month at the rate stated in the work contract
- To be informed, in writing, of all DEDUCTIONS (not otherwise required by law) that will be made from the worker's paycheck

- To receive an itemized, written STATEMENT OF EARNINGS (pay stub) for each pay period
- To be guaranteed employment for at least THREE-FOURTHS (75%) of the total hours promised in the work contract

DISCLOSURES

- To receive accurate, WRITTEN INFORMATION about the wages, hours, working conditions, and benefits of the employment being offered
- To receive this information prior to getting a visa and no later than on the first day of work
- To receive this information in a language understood by the worker

TRANSPORTATION

- To be reimbursed, upon completion of 50% of the work contract period, for transportation costs and meals from the place of recruitment to the place of work
- To be reimbursed, upon completion of 100% of the H-2A contract period, for transportation and meals back to the place of recruitment
- Both of these transportation costs can be either reimbursed or paid up front by the employer

- For workers living in employer-provided housing, the workers must be provided free transportation between the housing and worksite
- All employer-provided transportation must meet applicable safety standards, be properly insured, and be operated by licensed drivers

HOUSING

- Free housing (except for U.S. workers whose residence is close to the worksite)
- Employer-provided housing must meet applicable safety standards
- Workers who live in employer-provided housing must be offered three meals per day at no more than a specified cost, or provided free and convenient cooking and kitchen facilities

ADDITIONAL PROVISIONS

- Workers are eligible for state WORKERS' COMPENSATION insurance or its equivalent (compensation and medical benefits for injuries on the job)
- TOOLS, supplies, and equipment required to perform the assigned duties should be provided without cost to the worker

- TO BE FREE FROM DISCRIMINATION or discharge for filing a complaint, testifying, or exercising your rights in any way or helping others to do so
- Employers MUST comply with all other applicable laws (including the prohibition against holding workers' passports or other immigration documents, and the laws regarding proper pesticide use and field sanitation)
- Employers and their agents, including foreign recruiters, or anyone working on behalf of the employer, MUST NOT receive payment from any worker for any costs related to obtaining the H-2A certification (such as application and recruitment fees)
- Employers MUST display a poster about these rights where employees can readily see it
- Employers MUST NOT lay off or displace similarly employed U.S. workers within 60 days of the date of need for H-2A workers
- Employers MUST hire any eligible U.S. worker who applies during the first 50% of the approved work contract period
- Workers who believe their rights under the program have been violated may file confidential complaints with the Department of Labor Wage and Hour Division or contact ABLE or LAWO

IMPORTANT TAX INFORMATION FOR H-2A WORKERS

Foreign agricultural workers temporarily admitted into the United States on H-2A visas are exempt from U.S. Social Security and Medicare taxes on compensation paid to them for services performed in connection with the H-2A visa. This is true whether they are a resident alien or nonresident alien.

H-2A workers who don't have a Social Security Number should go to their local Social Security Administration and complete the Form SS-5 and submit the necessary documents to the SSA office. Form SS-5 can be downloaded at www.ssa.gov/forms/ss-5.pdf, SSA offices, or by calling 1-800-772-1213 or 1-800-325-0778 (TTY).

The employer is not required to withhold federal income tax from compensation paid to an H-2A worker, but may withhold

if the worker asks for withholding and the employer agrees. In that case, the worker must give the employer a completed Form W-4. Federal income tax withheld should be reported in Form W-2.

Here are some examples of how these guidelines apply:

Example of a non-resident alien:

If a worker works 40 hours a week at \$12.93 per hour for 10 weeks, the amount earned equals \$5,172. Although the above worker only lived 10 weeks in the U.S., he or she is required to file income taxes.

Most H-2A workers who must file as non-resident aliens will owe taxes, if you have not obtained a Social Security Number and had taxes withheld by your employer. Beginning in 2018,

there will be no dependency exemptions deduction for tax filers. This means that any worker with the status of non-resident alien who has not had taxes withheld from their earnings will owe the full tax obligation when they file their tax return.

Example: Jose files as a non-resident. He is married and has one child. He provides more than one-half of the support for his wife and child and they live in the home where he lives when they are in Mexico. He earned \$10,400 while in the United States. Filing "married filing separately" is the only married category available to non-residents. Since you can no longer claim dependent exemptions on your return, the full amount of your earnings will be taxed when the return is filed. If the tax is not paid with the return, you will be subjected to penalties and interest that would significantly increase the amount owed.

NOTE: Due to passage of the Tax Cuts and Jobs Act of 2017 which changed many parts of the U.S. tax laws, there may be changes that are important to H-2A workers beginning with the filing of the 2018 income tax returns. The IRS has not provided documents that address these changes yet, however, we will do everything possible to get information to the H-2A community as soon as it is available to us. These are complicated tax issues. If you are an H-2A worker with questions about taxes or residency status (for tax purposes), we urge you to call LAWO for a FREE tax consultation.