



Information for U.S. Workers Regarding Employers' Use of the H-2A Program

It is illegal for employers to use the H-2A Program or H-2A visa holders ("contratados") to displace its U.S. workers. Employers throughout the U.S. are increasingly using the H-2A Program to bring foreign nationals to the U.S. to do agricultural work. It is important that U.S. workers know how to access those jobs. **If you are a U.S. worker, here is what you need to know about the H-2A Program.**

The H-2A Program:

An agricultural employer can seek permission from the U.S. government to bring in foreign nationals for labor, only if an employer is unable to find enough U.S. workers to fulfill its agricultural labor needs. Those foreign nationals are often called "contratados" or H-2A workers. The H-2A Program has specific requirements that an employer must follow, which are meant to protect U.S. workers from being displaced by H-2A visa holders. For example, an employer must hire qualified U.S. workers who apply for the job before the job is half over. Also, the H-2A program requires the employer to:

- **Post the available jobs on the Agricultural Recruitment System** so that U.S. workers are aware of the available jobs.
- Include **certain terms** in the job contract. (See next section for examples).
- **Hire U.S. workers** who are able, willing, qualified, and available to perform the work and apply any time before the 50% date of the contract period. (For example, if the job starts February 1, 2021 and ends June 10, 2021, the employer must hire any qualified U.S. workers who apply by April 6, 2021).
- **Provide the same terms** of employment to all workers who are hired to do the H-2A program jobs.

Examples of contract terms required by the H-2A Program include:

Employers using the H-2A Program must provide the following terms to ALL workers who are hired under the H-2A Program. That includes workers who were hired based on an H-2A contract (regardless of immigration status), workers who have an H-2A visa, or workers who do not have an H-2A visa but are doing the same type of work the H-2A workers do.

- In 2021, Michigan employers using the H-2A program must pay **at least \$14.72 an hour**. If you are working on a piece rate, your earnings could be higher, but they should equal at least \$14.72 for each hour you worked in a week in Michigan during 2021.
- The worker's **cost of travel from the place of recruitment to the job site** must be paid for by the employer as long as the worker completes 50% of the contract. The worker should receive payment during the first payperiod.
- **Free and licensed housing** must be provided by the employer if the worker does not live within commuting distance
- **Workers compensation insurance** (or an equivalent program) must be provided by the employer
- Workers must be given a **record of the amount of work** performed and amount paid, including any deductions.
- The **cost of travel back home**, after completing the contract period, must be paid for by the employer.
- If the worker was not offered all the hours in the contract, the employer must still **pay the worker for at least 3/4 of the promised hours**.

How can U.S. Workers access H-2A Program jobs?

Search for employment and file your application through your Employment Services office. It is free and will help you connect with the jobs that you want.

- The best way to apply for agricultural jobs is to use the **Employment Services Office** in your state:
 - Michigan: MichiganWorks! (1-855-633-2373)
 - Texas: Texas Workforce Commission (512-475-1179)
 - Florida: CareerSource (Florida's Farmworker Helpline 1-800-633-3572)
 - Other U.S. states: call 1-855-633-2373 to find the office closest to you.

By using the Employment Services Office, there will be a record of your application. If you are unlawfully denied or discouraged from accepting your employment, you will have proof of your application. Also, by applying for the job from your home state, you will be eligible for reimbursement of your travel expenses if you accept a job in another state.

You must be able, willing, qualified, and available for the employment.

- That does **NOT** mean that you are bound to remain at the employment for the entire contract period. If you decide that you want to quit before the season ends you can do so, but you may lose the right to certain benefits available through the H-2A program (like travel reimbursement and the 3/4 guarantee).
- You should **NOT** be required to meet qualification requirements that are not expected of H-2A workers.
- You should **NOT** be required to provide specific documents to prove your work authorization. Most H-2A employers use the same I-9 process to verify work authorization as other non-H2A employers. You will have to show an H-2A employer the same types of documents that you would have to show any employer in order to prove your work authorization. If your H-2A employer is requiring additional or specific documentation, your employer may be engaging in unlawful discrimination.

Do not rely on finding jobs by just showing up or waiting for a former recruiter to call you.

The agricultural recruitment system has changed throughout the U.S. and may require you to take different steps to find agricultural work than you have in the past.

- Most employers using the H-2A Program are hiring new recruiters to do their hiring for them. That means if you just show up for work as you have done in the past, you may find out that your employer is not hiring. It also means the recruiter that has called you every year to help you connect with an employer may not call you this year.
- If your employer is using a recruiter to hire workers, you will have to apply for the job through that recruiter—not your current/former employer—and the new recruiter may not reach out to you.
- If your current employer is going to use the H-2A Program directly (which is not common):
 - Your employer must send you a letter offering you the H-2A Job.
 - You may be able to apply directly for the H-2A job with your employer.
- Contact your Employment Services Office to find out what jobs are available and will work best for you.

Do not be discouraged from applying for H-2A jobs.

- If you are told “we are hiring H2A workers next year” or that “there won’t be housing for you because the housing is for H-2A workers,” know that you, as a U.S. worker, have the **FIRST** right to those jobs and that housing. Such statements, if they are meant to discourage you from applying, are unlawful.
- Immediately report such statements to employment services by calling 1-855-633-2373 or call the Farmworker Law Hotline (1-800-968-4046) to talk to an attorney about your rights.

Questions? Call the Farmworker Hotline at 1-800-968-4046