



Strategic
Growth Initiative
Concerning
Michigan
Agricultural
Labor Shortage
Resources

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Executive Summary

Michigan continues to experience an increasing shortage in seasonal agricultural labor. Michigan agricultural employers have implemented a variety of recruitment techniques including increased wages, improved migrant housing, bonuses, incentives to returning workers, trips to recruit agricultural workers in areas with complementing work seasons, recruitment of workers from other industries and student worker recruitment. In these pursuits, farmers have also enlisted available assistance from Michigan's Workforce Development Agency, Migrant, Immigrant and Seasonal Worker Services Division. Despite these efforts to recruit domestic workers, the agricultural labor shortage remains, and employers have been compelled to consider the H-2A nonimmigrant work program to supplement the domestic agricultural workforce.

Since agriculture is a vital part of Michigan's overall economy, the Michigan Department of Agriculture and Rural Development directed this project to review current situation and potential options to address this labor shortage. Specifically, this project reviews resources available or to be developed to support agricultural employers, analyzes options to establish an "H-2A Service Entity" to effectively serve Michigan's agricultural employers, and provides a toolkit of template documents and process summaries for the H-2A Service Entity to use in operations.

Section I reviews the conflicting Federal law directives to Michigan's Workforce Development Agency, Migrant, Immigrant and Seasonal Worker Services Division's recruitment assistance, H-2A application processing and State Monitor Advocate functions and suggests a private recruitment system to assist in agricultural labor recruitment.

Section II outlines the potential for migrant housing assistance programs to improve housing availability and minimize potential liability by building and operating migrant housing directly or through private entities.

Section III reviews employment law compliance resources and suggests potential Employer Certification and Legal Assistance Program to assist in managing employer compliance and liability.

Section IV discusses development of an effective H-2A Service Entity because the continuing domestic labor shortage has created the need for employers to use the H-2A program but Michigan does not currently have an H-2A services entity with specific experience and relationships within the Michigan agricultural labor community. Initially, the advisability of a public-private entity for the H-2A Service Entity is considered. The potential advantages of Attorney General defense of claims, the credibility of compliance efforts to prevent and mediate claims, and the potential state funding are likely outweighed by disadvantages including the formation legislation timing and success uncertainty, lack of flexibility due to statutory authority, inability to directly employ H-2A workers, and lack of ownership control. Therefore, the public-private entity is likely not the best option available.

The analysis next outlines potential private entity options for the H-2A Service

Entity: (A) cooperative; (B) a nonprofit corporation; or (C) traditional private entities such as C-corporation, S-corporation, and limited liability company. With the public-private option excluded, the most efficient way to proceed is to identify funding sources and the individuals or entities that will spearhead the H-2A Service Entity. Once those individuals/entities and funding sources are identified, the analysis and the H-2A Entity Comparison Chart (which includes the public-private option) will facilitate discussions and a decision on the entity structure.

Section V outlines the potential for the H-2A Service Entity to directly or jointly employ workers. This is available only if the entity is a cooperative or nonprofit association. The direct/joint employment is likely a future step due to the added complications and staff required to operate and should be a separate entity from a services-only entity.

Section VI provides the H-2A Service Entity toolkit with the step-by-step process, templates, and resources needed to establish operations. While the preparation of the H-2A applications will require legal expertise and strategy, the H-2A Service Entity may opt to outsource that portion of services or may complete internally depending on budget and scope of operations.

Finally, the project concludes with recommendations for next steps to address the agricultural labor shortage in areas of recruitment, migrant housing assistance, compliance and legal assistance programs and an H-2A Service Entity.

I. Recruitment Assistance

A. Migrant, Immigrant and Seasonal Worker Services Division of the Workforce Development Agency (WDA Migrant)

WDA Migrant completes three distinct activities related to agricultural employment that have conflicting goals:

1. Domestic Recruitment Assistance Program

Currently, WDA Migrant “is dedicated to supplying the labor needs of jobseekers and employers.” As required by the Wagner-Peyser Act, Michigan must operate a public labor exchange service that coordinate’s with other state agencies across the US. 29 U.S.C. 49 et seq. WDA Migrant works with Michigan Works! partners at One-Stop Service Centers to provide employment services including: job search assistance and placement, registration assistance, testing, counseling, training opportunities, referrals to supportive services, job development and farmworker rights and labor law information. Agricultural employment specialists work with employers to develop and post opportunities and recruit workers to fill those positions. These efforts have not satisfied the labor needs and confirms the continuing labor shortage.

2. H-2A Application Processing Function

WDA Migrant also serves as the State Workforce Agency (SWA) for purposes of the H-2A program. The SWA is defined within H-2A regulations as the state government agency that receives funds pursuant to the Wagner-Peyser Act to administer the State’s public labor exchange activities. The SWA accepts H-2A applications and places job orders required to recruit domestic workers as part of the H-2A process. Similar to the domestic recruitment function, this WDA Migrant H-2A function confirms the shortage of seasonal agricultural workers and facilitates the H-2A petitions for nonimmigrant workers to fill the need.

3. State Monitor Advocate Function

In addition, WDA Migrant is designated to act as the State Monitor Advocate to ensure that the services provided to Migrant Seasonal Farmworkers (“MSFW”) are “qualitatively equivalent and quantitatively proportionate” to the services provided to other job seekers. In its interpretation of that requirement, one of WDA Migrant’s objectives in this role is to “encourage MSFWs’ transition to higher wage jobs & permanent year round employment in non-agricultural work.” WDA Migrant WebPage. Accordingly, the WDA Migrant State Monitor Advocate function directly conflicts with WDA Migrant’s recruitment assistance functions. In addition, WDA Migrant through the State Monitor Advocate function provides compliance resources/training and ensures “that all legal protections are afforded to farmworkers and that their complaints are promptly resolved.”

B. Private Recruitment Options

Given the conflicting functions of WDAMigrant and the continuing labor shortage, agricultural employers will likely be better served by private recruitment assistance that does not have goals contrary to recruiting farm workers for farm work. The regulations provide that outreach programs may be conducted to supplement recruitment efforts. 20 C.F.R. 653.107. Accordingly, the State could support development of a recruitment service to design and implement an on-line employer/employee website that would facilitate recruitment. The recruitment service and the employers would need to comply with the Migrant and Seasonal and Agricultural Worker Protection Act and assure that the terms and conditions of employment are provided in writing to the prospective employees at the time of recruitment and the service would need to register as a farm labor contractor. The recruitment service could also design service options for in-person recruitment and transportation services to further facilitate workers for agricultural employers.

Some private recruitment services exist and have secured business from Michigan agricultural employers. However, Michigan employers' experiences with those services have been inconsistent. Some workers provided were not qualified and/or were unable to perform work assigned. Also, some of the workers secured through the recruitment service were recruited to other positions by WDAMigrant staff. These experiences further highlight the need to consider options beyond the domestic workforce and specifically the H-2A nonimmigrant program available for agricultural workers.

II. Migrant Housing Program

MDARD currently inspects and certifies migrant labor housing and receives and investigates complaints from domestic and H-2A workers related to migrant housing. As indicated above, WDAMigrant through the State Monitor Advocate also accepts and pursues housing complaints.

While housing is optional for employers with only domestic agricultural workers, employers using the H-2A program must provide housing and that housing could not have been built using low interest Section 514 loan money. Many Michigan agricultural employers participated in the Section 514 program to increase and improve migrant labor housing which now impedes their ability to use the housing for H-2A workers. Theoretically, the limitation was designed to preserve housing for domestic workers, but the reality is that the housing will be unoccupied due to the shortage of domestic workers. While interpretations of the Section 514 law allow for the limitations to be removed, Employers working with State officials were unable to secure Federal confirmation of the ability to use the Section 514 housing for H-2A workers.

Given these restrictions on existing housing for the H-2A program and the assessment that more migrant housing would also enhance the domestic agricultural labor recruitment success, a housing program could be developed to provide state funding for migrant labor or potentially create state owned

and operated housing. Laws permit employers to employers to rent housing for domestic and H-2A workers so that a separate entity may build and operate migrant labor housing as long as it complies with applicable standards and MSAWPA requirements. MDARD may also assist in planning housing structures to maximize efficiency and compliance under the standards.

III. Compliance and Legal Assistance Programs

Agricultural employers face detailed compliance requirements and potential substantial legal costs and liabilities for failures in their compliance efforts. In addition to connecting agricultural employers to existing resources, MDARD could develop or support a Grower Certification Process and Legal Assistance Program to manage those concerns.

A. Compliance Resources

In addition to WDAMigrant compliance resources and training that contain the potential for enforcement action against employers, private employer resources also exist to support employers and avoid the risk of liability. Michigan Farm Bureau and Varnum LLP have partnered to create the Agricultural Employment Compliance Guide, an online resource that contains comprehensive guidance about employment and labor laws affecting Michigan agricultural employers. Another resource is the Michigan Farm Bureau poster sets that provide Michigan agricultural employers with laminated combined posters meeting all requirements.

B. Grower Certification Process

A voluntary certification program for agricultural employers may also support agricultural employers in securing compliance with general employment laws and specific H-2A requirements for H-2A employers while also providing evidence of those compliance efforts to investigating government agencies and farm advocacy groups. MDARD may be in the best position to administer a Certification Program because of (1) its objectivity and therefore credibility as a non-employer government agency with enforcement responsibilities, (2) its presence at agricultural employers to inspect migrant housing, and (3) its interest in resolving the labor shortage through successful domestic and H-2A employment in Michigan. MDARD could efficiently audit additional elements of an Agricultural and H-2A Employer Certification Programs, including inspection of the agricultural employer's workplace, housing, and recordkeeping system to ensure the employer's knowledge of and compliance with H-2A regulations and requirements. The attached Agricultural and H-2A Employer Audit Checklists detail certification, inspection, and compliance items.

C. Legal Assistance Program

Potential claims and lawsuits have impacted Michigan agricultural employers and deterred them from using the H-2A program due to the additional compliance requirements and liability potentials. Accordingly one of the driving factors for considering a public-private partnership is potential access to the AG to defend these claims. The benefits of

AG involvement are (1) no cost to agricultural employers, and (2) legal advocacy groups that bring claims may be less likely to pursue if the agricultural employer has state-funded legal representation. Currently, due to the high costs and uncertainty of litigation, agricultural employers (those using only domestic and those using the H-2A program to supplement domestic workers) often make the economic decision to avoid litigation and settle worker claims when factual and legal defenses exist.

As discussed below, the public-private entity is likely not the preferred structure, and the AG likely would not be available to defend claims against individual agricultural employers. As an alternative to AG support, a Legal Assistance Program could be developed to assist with employer compliance and legal defense costs. This type of program is not a new concept. Oregon Farm Bureau has developed such a program--The Farm Employer Education & Legal Defense Service (FEELDS), which provides consulting to agricultural producers and a legal defense plan for certain lawsuits or demand letters relating to agricultural labor.

A Legal Assistance Program for Michigan agricultural employers could operate similarly and provide education and coverage for legal fees relating to housing, worker protection, civil rights, wage and hour, discrimination, and workplace claims. The plan could cover hourly rates of authorized attorneys. The plan would not cover any liability resulting from a claim and would not cover legal fees for knowing violations, claims brought by participants against another participant, claims against the program itself, or claims resulting from the employer engaging in criminal acts. Limits could be set as to the amount of legal fees covered. For example, FEELDS covers the first \$10,000 in legal fees completely and covers a prorated amount of legal fees up to \$25,000. The employer is responsible for all fees in excess of \$25,000.

Although the program does not eliminate liability to agricultural employers or assure unlimited free legal services, it will support agricultural employers in compliance to avoid claims and, if claims arise, defending claims the employer may otherwise settle without challenge due to the costs to defend.

IV. H-2A Service Entity

As outlined in Section I, domestic recruitment of agricultural workers has not meet the need of Michigan agricultural employers. Employers are increasingly utilizing the H-2A program to secure foreign nonimmigrant workers to resolve their shortages, but there is currently no H-2A services entities in Michigan or with specific experience and relationships within the Michigan agricultural labor community. Accordingly, MDARD could support the development and operation of an H-2A Service Entity to fill the void and address the agricultural labor shortage. The following outlines the options and issues for the development of an H-2A Service Entity.

A. Public-Private Entity Analysis

1. Michigan Public-Private Models

One Michigan H-2A Service Entity option is a public-private partnership. A public-private partnership typically forms a public body corporate and politic, which we refer to as a public-private entity. The public-private entity model can take various forms, but basically it is an arrangement (approved and authorized by state legislature) between the public and private sector to share services, duties, and oversight of a program or organization. There are several public-private entities in Michigan, including the Farm Produce Insurance Authority, the Michigan State Housing Development Authority, and the Michigan Public Educational Facilities Authority.

The Farm Produce Insurance Authority (FPIA) was established by the Farm Produce Insurance Act, PA 198 of 2003, to protect producers of grain in the event a licensed grain dealer becomes insolvent or is otherwise unable to pay farmers. Like other public-private entities in Michigan, the FPIA was created as a “public body corporate and politic.” Under the statute, the FPIA is within, but not a part of, the Michigan Department of Agriculture and Rural Development (MDARD) and is designed to function independently of MDARD. The statute dictates that the budgeting, procurement, and related functions of the FPIA are performed under the direction and supervision of a board appointed by the Governor. This board consists of farmers (each representing a specific commodity), a member representing the interests of elevators, a member representing financial institutions, and members representing general farming interests.

MDARD administers the program through a Memorandum of Understanding between the FPIA and MDARD. MDARD efficiently administers the program because MDARD is already accessing dealer facilities and records for licensing and auditing purposes. Grain farmers fund the FPIA by contributing a percentage of their proceeds to FPIA. The fund covers administrative expenses and pays farmers for losses caused by a licensed grain dealer’s financial failure.

A public-private entity form of the H-2A Service Entity may be created by legislation similar to the FPIA. The H-2A Service Entity could be a public body corporate within, but not part of, MDARD. The Governor could appoint a board made up of agricultural employers and supplemented by other interested parties in the agricultural industry. H-2A service fees would primarily fund the H-2A Service Entity in exchange for application and processing services for H-2A workers. While service fees, competitors, crop decisions, harvest options, and potential immigration changes will impact the business plan, it is anticipated that the H-2A Service Entity could be financially self-sustaining.

The H-2A Service Entity board would have the authority to decide

how to administer the services. MDARD likely would be involved because MDARD is familiar with Michigan agriculture, the industry, and regulatory issues. Specifically, MDARD inspects and certifies migrant housing, which is one of the key components of the H-2A program. MDARD's involvement will add credibility to the H-2A services because of its mandate to objectively assure compliance with legal requirements.

2. Permissibility of a Public-Private Service Entity

There do not appear to be any restrictions for a public-private entity to operate a service entity. However, because H-2A services are generally provided by private entities, significant advocacy may be required to convince the legislature to enact a public-private service entity. The Detroit Regional Convention Facility Authority is a public-private entity that was formed to assume operational control of Cobo Center for the purposes of improving and expanding the facility. The H-2A Service Entity would provide direct services to individual farmers rather than operate a facility for the good of the community. The legislature may reject a public-private H-2A Service Entity because private sources exist for the services, and the benefit of the services more directly and substantially benefit agricultural employers than the public interest.

3. Support Required from Other State Agencies

Currently, migrant housing must be inspected and certified by MDARD, and MDARD provides H-2A housing inspection services. Additionally, a certification program for Michigan agricultural H-2A employers would ideally involve MDARD and assist in compliance and avoidance of lawsuit costs and liability. The potential certification program is discussed in Section III(B).

4. Attorney General Representation

A perceived benefit of the public component of the public-private entity is access to the Attorney General (AG) for defense of claims. While the AG may defend some claims against the public-private entity, it likely would not defend individual employers. Legal advocacy group activity is focused on employee representation against agricultural employers directly or in addition to the H-2A Service Entity. The AG does not typically defend claims against individuals unless it would advance a substantial public policy reason. While the success of an H-2A Service Entity serves the public interest of increasing agricultural workers, there is also a public interest in ensuring compliance under H-2A and employment laws. Accordingly, the AG likely would find representation of agricultural employers is not in the public interest, so the benefit is limited.

5. Check-Off Program Model

Another possible public-private entity is one formed and funded by or in conjunction with Michigan's Agriculture Commodities Marketing

Act of 1965 (ACM Act). The ACM Act provides for the establishment of marketing programs for individual agricultural commodities and "check-off" funding by authorizing assessments to be collected on the commodity.

The H-2A Service Entity likely would not fit within the ACM Act activities: marketing and research programs related to the processing, distributing, selling, and handling of agricultural commodities produced in Michigan. The ACM Act programs are generally advertising campaigns, market research, new product development, and consumer education. Not only do the H-2A services not fall within the ACM Act definition, but also the H-2A Service Entity activities benefit only the employers using the services rather than all commodity growers. Furthermore, check-off programs are commodity-specific and serve a commodity group established by legislation, while the H-2A Service Entity is intended to serve several commodity groups in Michigan.

Several agricultural commodity groups pooled funds in recent years to study the labor shortage issues and pursued education and lobbying to support immigration reform legislative options. However, those entities did not form a separate entity. Similarly, a check-off program may be used to research and disseminate information about using H-2A workers. However, since the goal of this project is to determine a path for providing services to potential employers of H-2A workers, the check-off program organizations do not provide a viable option.

6. Conclusion

The advantages of the public-private entity are outweighed by the disadvantages of that structure. The major potential advantages of the public-private structure include (i) AG involvement; (ii) compliance credibility when a State enforcement agency is involved; and (iii) funding and administrative support from State agencies.

Unfortunately, as discussed above, although the AG could (if it chooses) intervene to defend a public-private entity, the AG would not be required to defend claims against the employers using the services of the H-2A Service Entity. The employers are the primary target and face the most liability in employment claims resulting out of the H-2A program use. Therefore, even if the AG would defend the public-private entity, the substantial risk, costs to defend, and potential liability remain for the agricultural employers.

MDARD's involvement will provide credibility that the processing is completed in accordance with regulations and that employers are advised of compliance requirements. However, MDARD involvement will likely not prevent continuing scrutiny on employer activities. Perhaps, MDARD may intervene when employers advise of claims and attempt to mediate or resolve disputes. Accordingly, the credibility factor may reduce claims related to the H-2A application processing and may provide some opportunity for MDARD support of employers

in claim situations, but employment claims against H-2A employers are likely to continue.

Concerning funding, the State may provide more funds and resources to a public-private entity. However, pursuing the legislative process and initial operations may require start-up funds from employers, especially to set up the entity in time for 2015 seasonal employment.

The public-private structure also has some significant disadvantages: (i) the timeline for start-up operations is unknown due to the uncertainty of the legislative process; (ii) the statutory nature of the H-2A Service Entity will make any changes to the goals or structure of the H-2A Service Entity difficult; (iii) the entity would not be permitted to act as a joint employer or directly employ H-2A workers (which may be available for some private entity choices); and (iv) the agricultural producers would not maintain control over the H-2A Service Entity operations, other than the limited board seats granted by statute.

Although the AG defense and potential funding benefits of a public-private H-2A Service Entity structure may initially seem important, the practical start-up and operations limitations of the public-private structure outweigh those potential benefits. The disadvantages are simply too significant, particularly when private entity options provide greater advantages related to the relative ease and timing to establish the H-2A Service Entity, flexibility in ownership and operations, and the ability to become a joint or direct employer.

B. Private Entity Options

1. Agricultural Cooperative Structure

One viable alternative to a public-private entity model is an agricultural cooperative. Agricultural cooperatives are a unique form of business entity because (a) they are owned and controlled by the farmer-members who use their services; (b) they are financed mostly by members; (c) net income is distributed to members in proportion to the members' use of the cooperative; and (d) member financial investments are limited.

There are three basic categories of farmer cooperatives: supply, marketing, and service. A cooperative can take on one, two, or three of these functions. A service cooperative may provide specialized services to members that are often not cost effective for one farmer member to obtain on its own, such as H-2A services. Michigan agricultural cooperatives are formed by incorporation under the Michigan General Corporation Act and, more specifically, MCL § 450.98, et seq.

Generally, each cooperative member has one vote. If the cooperative does not utilize the one member, one vote structure, the cooperative may not pay out dividends on the cooperative's stock at a rate greater than 8% per year. The cooperative may pay out dividends at a rate greater than 8% per year if those dividends are allocated based on

patronage with the cooperative (a member is compensated based on how much business that member has done with the cooperative).

The cooperative would need to adopt and ratify bylaws that establish the rights and obligations of the cooperative's members. Cooperatives are typically run by a board of directors elected by the cooperative's members, and the board of directors typically selects the manager or chief executive officer to run the day-to-day operations of the cooperative with limited member involvement.

Members typically provide the necessary capital to start the cooperative, but this is not a requirement. Investment and financing usually come in the form of direct investment by members (such as membership fees, sales of stock, and sales of preferred stock), patronage income (the cooperative doing business with its members), and nonpatronage income (transactions that are not done with or for members, but are ancillary to the cooperative's interactions with its members).

Cooperatives issue patronage refunds to members, which is the net income of a cooperative allocated to a member according to a prior existing agreement between the cooperative and the member in proportion to the member's patronage to the cooperative. Patronage refunds are distributed annually either in cash to the member or are used as an investment in the cooperative by the member.

One important benefit of operating as a nonprofit agricultural association or cooperative, is more flexibility under the H-2A regulations. An agricultural association of employer producers may file H-2A applications as a sole employer, a joint employer with its members, or as an agent of its members. Both farmer cooperatives and nonprofit producer associations (analyzed below) fall within the definition of an agricultural association. An entity that is not an agricultural association as defined in the regulations may only act as an agent.

2. Nonprofit Entity

Different types of nonprofit entities provide different tax exemptions for donors or members based on an exemption obtained with the IRS. In Michigan, nonprofit corporations are formed under the Nonprofit Corporation Act of 1982, MCL 450.2101, et. seq.

The most advantageous nonprofit form is a 501(c)(3). To be tax-exempt under Section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in Section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, the nonprofit may not be an action organization--attempt to influence legislation as a substantial part of its activities or participate in any campaign activity for or against political candidates. The permitted exempt purposes include charitable,

religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. Although some entities have attempted to qualify as a 501(c)(3) organization, the H-2A Service Entity likely would not meet the qualifications for a 501(c)(3).

However, the H-2A Service Entity may qualify for tax-exempt status under 501(c)(5) (agricultural association) or 501(c)(6) (business league), and each exemption offers similar tax treatment. The IRS also has been limiting exemption approvals in these categories, so there is no guarantee for exemption. Since 501(c)(5) and 501(c)(6) entities offer similar benefits, they are discussed together below simply as a "nonprofit," and the analysis disregards the unobtainable 501(c)(3) entity.

Most importantly, the nonprofit may not allow earnings to inure to a member or individual. Therefore, if the nonprofit is unable to obtain public financing, the members may fund the agency, but may not receive any tangible benefit if the H-2A Service Entity becomes profitable.

A nonprofit may be termed an "association" and is organized and operated primarily to provide services to its members. Members may be individuals, organizations, or a combination of both. A nonprofit could also be organized without any members and simply be organized to benefit certain organizations or causes within a specified goal stated in the nonprofits articles. In either situation, the basic characteristics of nonprofits (at least for our purposes) remain the same.

Nonprofit organizations are exempt from federal income tax and may be exempt from state and local income tax. Nonprofit organizations typically rely on membership dues or grants for revenue. Nonprofit organizations formed as a 501(c)(5) or (c)(6) are not eligible to receive deductible contributions like 501(c)(3)s. Thus, they are unlikely to receive grants from private foundations because of expenditure requirements for the foundations that require the foundations only to write grants or make donations to 501(c)(3)s. Nonprofits may engage in lobbying or political campaign activities, but those activities may impact membership dues deductibility.

As with the cooperative structure, a nonprofit association of producers may file H-2A petitions as a sole employer, a joint employer with its members, or as an agent of its members rather than merely an agent as permitted for other structures.

3. Private C-Corporation, S-Corporation, or Limited Liability Company

A limited liability company (LLC) would likely be the best choice if the H-2A Service Entity is organized as a for-profit, private entity. This is mainly due to the fact the LLCs are extremely flexible from a corporate structure and tax standpoint. An analysis of the traditional entity options is below.

C-Corporation

Both C-corporations and S-corporations are formed under the Michigan Business Corporation Act, MCL 450.1101, et. seq. The most attractive feature of the C-corporation form is limited liability, where the shareholders' financial risk is limited to the amount invested in the corporation and does not extend to the corporation's obligations. Another advantage of the corporate form is the free transferability of ownership interests. Shares show ownership interest in the corporation, and such interests are freely transferable. Unless a shareholder has contractually agreed to the contrary, there are generally no limits on the ability of a shareholder to transfer stock, and consent of other shareholders need not be obtained. In the corporate form, control is in the hands of management. Regardless of the type of stock held, shareholders have no right to participate in the daily operations of the business or bind the corporation to a contract.

Finally, use of the corporation form allows for issuance of different classes of stock (voting common stock, nonvoting common stock, or preferred stock), allowing for greater flexibility in structuring transactions. The C-corporation has some unappealing characteristics. The C-corporation is the traditional format that falls prey to "double taxation," in which the corporation is subject to entity-level federal and state income tax, while dividends distributed to shareholders are also taxed (although recent tax legislation has reduced the tax rates on dividends) at the individual level. Another tax disadvantage is that corporate losses remain in corporate solution and cannot be deducted from ordinary income by the shareholders as they may be for S-corporations and LLCs. Moreover, the Internal Revenue Code limits the availability of net operating loss (NOL) carryovers to a corporation. The entity may only claim NOL carryovers where there has been a greater than 50% change in ownership.

S-Corporation

An S-corporation is classified as a corporation and has the same advantages (limited liability, ease of stock transfer, the possibility of tax-deferred restructuring, and control of the business operations in the hands of a centralized management). However, the S-corporation avoids the "double taxation" of the C-corporation. Generally, income and losses of the S-corporation flow through and are taxed to, or deducted by, the shareholders, retaining the character they had to the S-corporation. In addition, distributions from the S-corporation to its shareholders are not considered taxable events to the shareholder, except to the extent that the money and fair market value of the property distributed exceeds the shareholder's stock basis. For example, only individuals and certain trusts and estates can be a shareholder of an S-corporation; not corporations.

The S-corporation has numerous disadvantages. The Internal Revenue

Code imposes prerequisites for S-corporation status. To be entitled to make the S-corporation election, the corporation must comply with certain shareholder, stock classification, and business purpose restrictions. The qualification requirements for S-corporations are quite stringent and may make this vehicle unavailable for our purposes.

One of the most significant disadvantages of the S-corporation form is the inability to create preferred equity interests or to specially allocate items of taxable income, gain, loss, deduction, and credit among the shareholders. Since the S-corporation can have only two classes of stock (voting and nonvoting), it is not otherwise possible to vary the economic and governance rights of the shareholders.

Limited Liability Company (LLC)

The LLC is an unincorporated business organization whose members do not have personal liability for the debts of the LLC. LLCs are formed as a business organization under the Michigan Limited Liability Company Act, MCL 450.4101, et seq. LLCs are often described as hybrid entities because of an LLC's combination of the most desired business attribute of a corporation (statutory insulation against liability for all investors) with the most desired business attribute of a partnership (elimination of the double tax on business earnings). Thus, for federal tax purposes, the properly structured LLC will be classified as a partnership, and all income and losses flow through, and are respectively taxed to or deducted by, the members.

The LLC is simple to form and easy to maintain. An LLC does not have to be simple; yet for smaller businesses, an LLC will be less complex to establish and administer than a corporation. In addition, the LLC provides for a flexible management and organization structure. The members of an LLC have wide discretion and flexibility in structuring the management of the LLC and the economic relationship between the members. If desired, all members of the LLC may actively participate in the management of the business because such participation does not result in the loss of limited liability protection for the members. On the other hand, an LLC also can be structured to provide for centralized management by a small number of members.

Another advantage of the LLC format is the lack of ownership restrictions. The LLC does not have statutory restrictions on ownership; thus, more than 100 persons may be members of an LLC. Similarly, there is no restriction on the type or character of members of an LLC; thus foreign investors, corporations, and other limited liability companies may own LLC interests. The fact that LLCs may have subsidiaries allows for tiered ownership structures. Compared with the S-corporation, the LLC has a more flexible capital structure as multiple classes of interest may be issued. The ability of an LLC to issue more than one class of stock permits considerable flexibility in planning distributions and special allocations of income and loss.

The LLC has some disadvantages. A potentially significant tax disadvantage for some LLCs is that their income may be subject to self-employment tax, which is an additional tax on the income of the self-employed. Shareholders in an S-corporation are not subject to this additional tax. However, like partners in a partnership, members in an LLC are generally subject to this tax. In a partnership (which is how an LLC is taxed unless another election is made), the general partners are subject to self-employment tax on their allocable share of company income. This is a fairly complex analysis, but is a consideration when deciding between an LLC and an S-corporation.

4. Conclusion

To decide among the private entity options, the organizations or individuals that will take responsibility for forming the private H-2A Service Entity should be determined. Unless the H-2A Service Entity is able to obtain grants or donations, it is likely that agricultural employers or other interested organizations will need to contribute resources toward the formation of the entity and initial operations. Once we determine the individuals or organizations that will proceed, the stakeholders could then decide between entities described above: (i) cooperative; (ii) nonprofit; or (iii) for-profit. Each of those options presents advantages and disadvantages depending on those taking responsibility for the H-2A Service Entity and their end goals for the entity. The following Corporate Entity Comparison Chart summarizes the critical factors and will facilitate discussion and selection of the proper entity choice for the H-2A Service Entity.

C. Corporate Entity Comparison Chart

MDARD H-2A Entity Comparison

	Limited Liability Company	Nonprofit (501(c)(5) or (c)(6))	Agricultural Cooperative	Public Private Entity
How quickly can the entity be established?	Entity could be established immediately.	Entity could be established quickly, but filing for exemption would take more time.	Entity could be established immediately.	Most difficult to establish. Many unknown factors such as government support and timeline for legislative process.
How difficult is it to establish the entity?	Extremely simple. No exemptions or approvals necessary. Would need to draft Operating Agreement and make various decisions on operation of the LLC.	Fairly straightforward, but will need to apply with the IRS. Minimum 4 to 6 months to obtain an exemption from the IRS.	Relatively simple. Would need to file application for Subchapter-T status. Would need to draft Bylaws and Articles to establish how decisions would be made. Other agreements could be entered into as necessary.	More difficult because it will require legislative approval. Entity would be subject to legislative guidelines and requirements.
Initial funding sources	Initial Members. Potentially some private grants.	Producers and grants (depending on availability of grants).	Cooperative members and possible grants	State budget appropriation. May require contributions from farmers for legislative process expenses.
Likelihood of grants from State agencies	Potentially available.	Potentially available – probably more likely than with cooperative or LLC.	Potentially available.	Would initially be funded by the state.
Public relations	No real advantage from a PR standpoint. Non PR advantages are discussed in other sections.	May look better for state agencies if the entity is designed as a non-profit. This could be played up for additional state grants if it is guaranteed that none of the proceeds will go back to a private entity.	See familiarity discussion above.	The entity will be backed by the state which would bring some legitimacy to the organization. However, the entity may face heightened scrutiny due to appropriations from the State being publicized.

MDARD H-2A Entity Comparison

	Limited Liability Company	Nonprofit (501(c)(5) or (c)(6))	Agricultural Cooperative	Public Private Entity
Potential disclosure of farmer documents in FOIA request	N/A.	N/A	N/A	Unknown depending on statute and potential protections. There would be some public access to operations and documents. Could increase access for worker advocacy groups.
Familiarity with structure for farmers or other agricultural producers.	An LLC could mimic all of the attributes of the cooperative without restrictions on ownership or scope of operations.	Farmers would likely not be familiar with the nonprofit structure. Farmers may be reluctant to form an LLC where they have direct ownership interest and may feel more comfortable with nonprofit model. This assumes startup funds could be obtained from grants, etc. and would not be required from farmers directly.	Farmers may be more familiar with a cooperative than they would be with an LLC or nonprofit.	Would not be familiar with this structure.
Ownership	Could be owned by any entity or individual. No mandatory restrictions on ownership. However, the entity could restrict potential owners to certain industry groups or base ownership on other classifications.	Probably would be organized on a directorship basis so no real equity owner.	Farmers would likely own the entire cooperative. Probably would just have farmers own, but could have non-producers own if not looking for Capper Volstead exemption. However, any non-producer members would not be able to vote.	Would not be owned by producers, but would likely simply be a public body similar to a state agency.
Tax deductions (with respect to contributions and amounts paid by producers and farmers)	Fees paid by farmers to LLC for H-2A application services would be deductible as a business expense. Startup contributions would likely not be deductible as a business expense, but instead would be an equity investment.	Membership fees would likely be deductible, with some possible restrictions. Fees paid to nonprofit for H-2A services would be deductible business expenses to farmer.	Fees paid by farmers to cooperative for H-2A application services would likely be deductible business expense. Startup contributions would be deemed an equity investment.	Fees paid by farmers to H-2A Service Entity would be deductible business expense. No initial capital contribution by farmers would be necessary.

MDARD H-2A Entity Comparison

	Limited Liability Company	Nonprofit (501(c)(5) or (c)(6))	Agricultural Cooperative	Public Private Entity
Attorney General involvement – obligation to defend entity?	Unlikely since AG does not usually intervene in private matters unless substantial public concern.	Unlikely since AG does not usually intervene in private matters unless substantial public concern.	Unlikely since AG does not usually intervene in private matters unless substantial public concern.	Potentially would be required to defend the entity depending on the wording of the statute and negotiations with the state.
Liability of members/owners for claims against the entity?	Members would not be liable for any amount other than the amounts contributed to the LLC.	Directors would not be personally liable for claims against the nonprofit unless they took actions in bad faith.	Members would not be liable for any amount other than the amounts contributed to the cooperative.	N/A.
Control of operations by producers	Could be members or a centralized board of managers. Very flexible on management depending on desired structure. Could have mandatory representatives from various industry groups.	Would be managed by a board of directors, not managed by the members.	Members would control operations through one-member/one-vote scheme. Typically board of directors is elected by members and board makes decisions about executive officers and day to day operations.	Producers would only have control to the extent that they were on the board of the public-private entity.
Flexibility for future direction of organization	Future decisions of the entity and any potential changes in the direction or mission would be made and controlled by the members (owners) and managers.	Future decisions of the entity and any potential changes in the direction or mission would be controlled by the Board of Directors.	Future decisions of the entity and any potential changes in the direction or mission would be controlled by the members of the cooperative.	These decisions would be limited based on the legislative approval.
Is one-member one-vote structure available?	Yes. Could be structured to have one-member/one-vote.	See governance structure below.	Yes. This is typically how a cooperative is structured.	No. This would likely be governed by a board of agricultural producers and various industry representatives.

MDARD H-2A Entity Comparison

	Limited Liability Company	Nonprofit (501(c)(5) or (c)(6))	Agricultural Cooperative	Public Private Entity
Distribution of profits from operations	Would likely be paid to members in accordance with membership interests. However there are many different ways to structure the profit payouts and those payments could be significantly restricted, if necessary.	None of the profits could be paid out to members. Any income of the entity would be invested in future beneficial programs or services.	Profits would be paid out in accordance with the number of shares of stock the farmer owns. Income of the cooperative would be disbursed to members on a patronage basis and would not be taxable at the cooperative level (assuming the income meets Subchapter T requirements). This means if a member does 15% of the business with the cooperative, that member gets 15% of profits.	This would operate similar to the non-profit structure. Profits would not be distributed to board members or to the state.
Ease of adding additional members/owners	Not difficult. Again, LLC is very flexible. Could draft the Operating Agreement to make this extremely easy. Some difficulties may arise if contributions are required by new members.	May or may not have members, but could easily add additional members if set up on a membership basis.	Easy. Would set up Coop so that Board of Directors could approve new members.	N/A.
Future contributions	Could have mandatory contributions at certain times in the future with a set schedule, but could also set up the LLC so that there were no mandatory contributions.	Would likely be required to pay membership fees going forward, but no further investments or capital calls other than membership fees.	Often, a certain level of equity is required and can be contributed over time pursuant to a specific schedule. There may be certain membership dues to be a member of the cooperative, but that is not required.	There would likely not be any future contributions.

MDARD H-2A Entity Comparison

	Limited Liability Company	Nonprofit (501(c)(5) or (c)(6))	Agricultural Cooperative	Public Private Entity
Would entity be permitted to employ the workers and lease them to the farmers?	Would be permitted. Could potentially set up an affiliate entity to further limit liability for the processing entity.	Probably would NOT be permitted because would be just providing services and would therefore blow the nonprofit exemption	This would be permitted so long as the cooperative does not violate the other restrictions on voting, etc. Could also look at forming an affiliate entity to perform the desired leasing services.	Would likely not be permitted by the statute.
May the entity file as a sole or joint employer for its members under H-2A regulations?	No	Yes	Yes	N/A

V. H-2A Service Entity as Employer

A cooperative or nonprofit grower association H-2A Service Entity may directly petition for workers under the H-2A program and directly employ workers.

This employment service may limit the liability of farmer-employers and may allow coordination of workers for various agricultural employers in various commodities.

H-2A Service Entities are not typically the employer. Rather, services are typically limited to assisting employers with the application process, recruitment, visa procurement, and providing materials regarding compliance with the H-2A program. The benefit for the H-2A Service Entity in not employing the workers is to avoid responsibility and liability. The workers are employed by individual employers who are responsible for complying with laws and regulations. H-2A workers may perform work for multiple employers during their authorized stay in the United States, and a service entity may help facilitate the petition process of moving workers between employers. However, those moves involve costs and processing time so that multiple or intermittent movement is impractical.

Even if workers are employed by an H-2A Service Entity, the agricultural employers using the workers may remain liable for claims by federal agencies and/or farmworker advocacy groups. The agricultural employers using H-2A workers would be liable under a "joint employer" legal concept. Joint employment exists where two or more businesses exercise some control over the work or working conditions of the employee. Accordingly, while the legal liability may continue to exist, an H-2A Service Entity likely would be more familiar with complex and detailed H-2A requirements so that its employment of the workers may create fewer compliance issues and claims.

The employer model H-2A Service Entity also reduces the costs of sharing workers over the agent only services model. In the agent scenario, regulations dictate that the farmer-employer must complete the application and may not delegate its responsibility to a representative (agent granted a specific power of attorney from the employer). In contrast, an agricultural association may file as the sole employer or a joint employer with its employer-members to facilitate use of workers across the employers as included within the application.

Therefore, an association of employers with similar needs (apple growers) may alone or with association members file a petition and are permitted to transfer the H-2A workers among any of its member employers that have stipulated to the conditions of H-2A eligibility.

An association may file a master application on behalf of its employer-members covering multiple areas of intended employment only where the association is filing as a joint employer and the application (a) covers the same occupation or comparable work for all employer-members, (b) reflects the same start date of need for all employer-members, and (c) covers no more than 2 contiguous states. The association must identify on the application or in an attachment by name, address, total number of workers needed, the crops and agricultural work to be performed, and each employer that will employ H-2A

workers. If an entity is intended to be the sole/joint employer, a separate entity from a services entity should be established to isolate potential liability.

VI. H-2A Service Entity Toolkit

A. Start-Up Costs and Structure

Start-up investment is necessary to form the H-2A Service Entity and establish processes relating to technology, marketing, and accounting administration. Depending on the individuals/organizations involved, resources may be available to share or at discounted rates to limit the start-up costs. At the outset, one staff person may be sufficient to recruit agricultural employers and facilitate outside legal services. Utilizing outside legal service to process applications will allow the H-2A Service Entity to keep direct staffing to a minimum while the entity is ramping up operations. As demand for services increases, the H-2A Service Entity may decide to expand staffing and increase the services performed in-house.

B. Template Overview and Services Agreement

The H-2A Service Entity will use the [H-2A Worker Program Overview](#) as a promotional and informational document for potential employer customers. With the employer decision to retain the H-2A Service Entity, the [Services Agreement](#) should be executed to establish the contractual arrangement. While the Services Agreement is generally drafted to benefit the H-2A Service Entity, the indemnity provisions were limited to further the interest in supporting agricultural employers. Specifically, an indemnity provision could require the employer to indemnify the service provider for all liability arising out of the employer's use of the service.

Since the intention in this context is to provide the H-2A expertise needed by agricultural employers, the indemnity provision was limited to require indemnification only for liability resulting from the employer's negligence, recklessness, or intentional misconduct.

C. Process Documents and Templates

Attached are the following process documents and templates to guide the H-2A Service Entity through operations. An application is not included because the information for the H-2A application should be reviewed and developed through meetings with the employer and development of the MSAWPA disclosure/H-2A work agreement.

1. H-2A Procedures

The [H-2A Procedures](#) provide step-by-step instructions for the H-2A Service Entity to assist the client through the H-2A petition and employment process.

2. Templates

- [MSAWPA Disclosure/H-2A Work Agreement](#)
- [H-2A Recruitment Report](#)
- [Former Employee Contact Letter](#)
- [Interview Form](#)

- [Recruitment Log](#)
- [Referral Applicant Log](#)
- [Worker Agent Letter](#)
- [Former Employee Log](#)
- [Letter to DOL Notifying of H-2A/Corresponding Worker Termination](#)
- [Letter to USCIS Notifying H-2A Worker Termination](#)

3. Resources

[Links to government forms](#), handbooks and other aids for agricultural employers.

Recommendations

1. **Recruitment Services.** Support development of recruitment entity for domestic agricultural workers. Website recruitment would involve web development, farm labor contractor registration and IT services support and compliance/customer service support.
2. Explore Migrant Housing Program to build and operate migrant housing to use as recruitment tool for agricultural workforce and to minimize agricultural employer liability for housing compliance.
3. **Compliance and Legal Assistance Programs.** MDARD may connect employers to existing resources without cost. A voluntary employer certification program could be implemented with incremental certification inspector costs. Fees could be charged to off-set inspector costs. The Legal Assistance Program business plan could be developed through initial risk assessment (could use Certification Program to assess) and then premiums adjusted through individual and collective employer claims experience.
4. **Fund development of H-2A Services Entity.** This projects provides the analysis of available private options and tool-kit to implement operations. Interested private parties could be encouraged to start-up entity with investment costs covered or subsidized by MDARD. Start-up costs will vary depending on the potential investors, entity choice and the scope of the entity.

H-2A Worker Program Overview

The H-2A temporary agricultural worker program allows U.S. agricultural employers facing labor shortages to petition for nonimmigrant foreign workers to perform agricultural labor or services of a temporary or seasonal nature. In Michigan, the H-2A program may be the best fit for labor intensive fruit and vegetable operations, but the program may be utilized by other farmers and growers with seasonal labor needs.

The H-2A process requires several steps with multiple federal and state agencies. Due to the intricate application process, prospective employers often choose to work with a third-party organization.

Who Can Participate

- Any U.S. agricultural employer or association of agricultural producers with temporary or seasonal full-time work (at least 35 hours per week).
- Agricultural employer must contact H-2A Services Entity at least 3 months prior to need.

Application Process

Step 1: H-2A Service Entity contacts agricultural employer to obtain basic business and labor need information. H-2A Service Entity reviews application and housing inspection timelines with agricultural employer

Step 2: 60-75 days before workers needed, H-2A Service Entity prepares and submits [ETA Form 790](#) ("job order") to State Workforce Agency (SWA). SWA processes job order and either accepts or sends notice of deficiencies.

Step 3: No less than 45 calendar days before work start date, H-2A Service Entity prepares and submits Application for Temporary Certification ([ETA Form 9142](#)) with the U.S. Department of Labor (DOL), Office of Foreign Labor Certification's (OFLC) Chicago National Processing Center (NPC). Chicago NPC reviews application and either accepts or sends notice of deficiencies.

Step 4: Chicago NPC sends instructions for recruiting U.S. workers (including advertising in local and intrastate newspapers, contacting former employees) and instructions for completing recruitment report.

Step 5: H-2A Service Entity submits [Form 129](#) (Petition for Nonimmigrant Worker) to U.S. Citizenship and Immigration Services (USCIS). USCIS reviews petition and either approves or requests additional information.

Step 6: H-2A Service Entity forwards approved petition to foreign recruiter. H-2A Service Entity works with agricultural employer to list prospective H-2A workers. Recruiter schedules visa appointments with applicable U.S. State Department Consulate and prepares applications. H-2A Service Entity assists with travel arrangements

Employer Responsibilities After Workers Arrive

- Agricultural employer must comply with all applicable laws related to employing and housing H-2A workers
- Farmer continues to work with H-2A Service Entity regarding continual recruitment of domestic workers (until 50% of the contract period has ended) and other work situations such as worker failure to report for work or worker departing to ensure compliance with ongoing reporting requirements
- Agricultural employer must maintain an audit file for 3 years

Highlights of H-2A Employer Responsibilities to H-2A and Domestic Workers

- Employer must extend same benefits to domestic workers, including wages, housing, and other benefits
- Wages to H-2A and domestic workers must be paid at highest of: minimum wage, state prevailing hourly wage or piece rate, collective bargaining wage or Adverse Effect Wage Rate (AEWR). For 2014, the Michigan required rate is \$11.49
- H-2A and domestic workers must be guaranteed the opportunity to work 3/4 contract total hours. Employer must track any hours offered and not accepted and pay for any additional hours to meet 3/4
- Workers compensation must be provided that covers all workers (H-2A and domestic)
- Housing must be provided to H-2A workers and non-local domestic workers and families
- Employer pays inbound and outbound transportation for H-2A workers and corresponding workers who cannot reasonably travel from workplace to residence each day
- Employer provides daily transportation from employer-housing to worksite for H-2A workers and non-local domestic workers
- Employer must furnish all tools and supplies to workers

Services Agreement

THIS SERVICES AGREEMENT (the "Agreement") is entered into as of _____, 201__ (the "Effective Date"), by and between _____, a _____ (the "Agency") and _____, a _____ ("Client").

Recitals

- A. Agency provides professional services intended to assist employers in obtaining capable, reliable, legal seasonal or temporary labor.
- B. Client has a need for the Services (as defined below) in order to obtain capable, reliable, and legal seasonal or temporary labor.
- C. Client has agreed to engage the Agency to provide Services to the Client and the Agency has agreed to provide Services pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein made and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Appointment of Agent for Limited Purpose.** Client hereby engages Agency to, and Client hereby agrees to, provide the desired services described on Exhibit A (the "Services") for the prices associated with such Services described on Exhibit A. Client hereby irrevocably makes, constitutes and appoints Agency as its lawful agent to perform, carry out or confirm on Client's behalf all such acts, deeds, and services as may be necessary to accomplish the foregoing. As required by 20 C.F.R. 655.135(k), Client hereby forbids Agency and any of its agents to seek or receive payments or other compensation from prospective H-2A employees. The Agency shall be directly compensated by the Client for the Services.
2. **Indemnification.** Client hereby agrees to indemnify, defend and hold harmless Agency and all of its officers, directors, employees, agents and other representatives from and against any and all Liabilities related to the Services to the extent that such Liabilities are a result of the Client's negligence. The term "Liabilities" means all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees), claims, causes of action, suits, proceedings, hearings, investigations, charges, complaints, demands, injunctions, judgments, orders, decrees, rulings, penalties, fines, obligations, taxes, sanctions, deficiencies, assessments, interests, and fees.
3. **Indemnification Process.** The parties agree that they will work together to enable Client to respond efficiently to Liabilities including:
 - (a) Agency will notify Client in writing or electronically of any claim that is related to the Services.
 - (b) Upon its receipt of notice of a claim related to the Service, Client will work with the Agency to retain counsel (at the Client's expense) that is approved by Agency, in its reasonable discretion.
 - (d) In the event of litigation against Client by a third party related to the Services, Client will retain counsel for itself and defend such litigation. In the event any such litigation also names Agency as a defendant, Client will pay each month any and all fees and expenses incurred by Agency as a result of responding to any Liability, including legal fees of counsel selected by Agency to represent Agency where there is any allegation related to the Services. In addition, Client will pay any judgment or award in any such litigation incurred by the Agency. To the extent Agency is named as a defendant but not Client, Agency will file a third-party complaint to include Client.

- 4. Client Obligations.** Client agrees to comply in a timely manner with all requests made by Agency as reasonably necessary for the provision Services. Further, Client agrees that any and all information furnished to Agency will be truthful. Client agrees to familiarize itself with the terms and conditions of employment developed by the Agency on Client's behalf in its labor certification application and in Client's written disclosure to prospective workers and also to comply with those terms and conditions. Client agrees to familiarize itself with all obligations imposed on it as an employer of U.S. and/or foreign labor under any and all applicable state and federal law and regulations and with such reasonable policies and to comply with those obligations and policies.
- 5. Term.** The term of this Agreement shall start on the Effective Date and shall continue until terminated (a) by either party providing the other party with 60 days' prior written notice, which notice may be given at any time and for any or no reason, or (b) by either party, immediately upon giving written notice of termination to the other party upon the occurrence of a material breach by such other party of this Agreement, which is not cured within 30 days of the delivery of written notice of default by the terminating party.
- 6. Representations.** Each party represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and that this Agreement constitutes a valid and legally binding obligation, enforceable in accordance with its terms and conditions. Each party further represents and warrants that neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge or other restriction of any government, governmental agency or court to which it is subject.
- 7. Independent Contractors.** The parties acknowledge and agree that the Agency is an independent contractor of the Client, and each of the parties to this Agreement shall never take any action inconsistent with the foregoing. Except as set forth in Section 1 of this Agreement, neither party has any general authority to enter into any contract, assume any obligations or to otherwise make any warranties or representations on behalf of the other. It is the intention of Client and Agency in accomplishing the results undertaken by Agency that Agency be an independent contractor and this agreement shall be construed in light of this intention. In no event shall Agency be deemed to be an employer of any workers obtained by or for Client. Agency will not make any hiring decisions on behalf of Client as hiring decisions are the exclusive right and responsibility of Client.
- 8. Confidentiality.** Each of the parties acknowledges and agrees that it and its officers, directors, employees, agents and other representatives shall maintain this Agreement and all of the terms and conditions of this Agreement as strictly confidential, and shall not disclose such to any third party; provided, however, that notwithstanding the foregoing, a party may disclose the terms and conditions of this Agreement (a) to the extent necessary, to its own tax advisors and attorneys, who agree to keep such terms and conditions strictly confidential, (b) as otherwise required by applicable law, and (c) to the extent necessary, to enforce the terms of this Agreement.
- 9. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each party shall have executed one counterpart and delivered it to the other party.
- 10. Survival.** The obligations of the parties set forth in Sections 2 and 3 above shall survive any termination of this Agreement.

- 11. **Applicable Law.** The terms and conditions of this Agreement shall be governed, construed, interpreted and enforced in accordance with the domestic laws of the State of Michigan, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.
- 12. **Modification.** This Agreement cannot be amended, altered, supplemented or modified, unless done so in writing, signed by a duly authorized representative of the party against whom such modification is sought to be enforced.
- 13. **Waiver.** No provision of this Agreement shall be waived by any party hereto, unless such waiver is in writing, signed by a duly authorized representative of the party against whom such waiver is sought to be enforced. A waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
- 14. **Severability.** The parties believe that every provision of this Agreement is effective and valid under applicable law, and whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid. If any portion of this Agreement is found to be invalid or unenforceable for any reason, any court or other tribunal adjudicating the rights and duties of the parties under this Agreement shall alter, modify or strike portions of the Agreement so that it will be enforceable to the fullest extent permitted by law, and the remainder of such provision and this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

[AGENCY]

[CLIENT]

By: _____

By: _____

Its: _____

Its: _____

H-2A Procedures

Preparing H-2A Application

H-2A Services Entity consults with agricultural employer (and Attorney if outside counsel used) to determine job duties and terms and conditions of employment and prepare H-2A petition documents and related employment documents. H-2A job order ([ETA 790](#)) is submitted to State Workforce Agency (SWA). Michigan SWA currently located at 201 N. Washington Square, Lansing, MI 48933-1321.

Recruitment

Once job order ([ETA 790](#)) is accepted by State Workforce Agency, active recruitment period begins through SWA.

H-2A Services Entity send following Information to agricultural employer:

- Active recruitment period begins [start date] and will end [end date]
- During recruitment period, you must:
 - Use Referral Log to record all U.S. referrals (sent by SWA, walk-ins and any other source) and send to H-2A Services Entity daily
 - H-2A Service Entity will conduct interview with each referral
 - H-2A Service Entity will track U.S. referrals interviewed for Recruitment Report
 - Employer contacts and tracks results of returning worker recruitment on Recruitment Log and provides to H-2A Services Entity
 - If applicant passes initial screening conducted by H-2A Service Entity, employer interviews and must offer job to any qualified U.S. applicant available for contract period with a start date not later than H-2A contract work start date
- Workers number certified by DOL will be reduced “one for one,” for each referred worker who is able, qualified, and available for the job
- Decisions not to hire must be made based on legitimate job-related reasons, not age, gender race, nationality, religion or any other protected category
- Decision to hire must be based on the same criteria used for H-2A worker and must be administered consistently for all workers, including pre-employment tests, experience requirement, background check
- Recruitment must continue until [date recruitment ends]
- H-2A Service Entity prepares and submits Recruitment Reports at dates required by regulations
- All recruitment records must be maintained for 3 years

Required H-2A Advertising

- After [ETA Form 9142](#) Application for Temporary Employment Certification is accepted, DOL issues instructions for multi-state (“interstate”) job order

- Includes placing ads in local and out-of-state newspapers – H-2A Service Entity will place
- H-2A Service Entity will inform Agricultural Employer where and when ads will run and will secure tear sheets for H-2A audit file
- Agricultural Employer will forward name of any domestic applicant to H-2A Service Entity to interview
- Agricultural Employer will conduct final interview of eligible applicants
- Suggested interview questions and template for recording results of interview are attached
- All qualified, able and available domestic applicants must be hired. Applicants who are not available during the entire contract period do not need to be hired
- H-2A Service Entity submits recruitment report at end of recruitment period

Templates

Interview Form
Referral Applicant Log
Recruitment Log
H-2A Recruitment Report

Contacting Former Employees

- Potential H-2A employers must contact and offer employment to former employees from the previous work season
- The employer must contact, by mail or other effective means, its former U.S. workers (except those who were dismissed for cause or who abandoned the worksite) employed by the employer in the occupation at the place of employment during the previous year and solicit their return to the job
- Must contact during same time period as DOL mandated recruitment
- Use attached contact log to document contact with former employees and maintain in audit file

Templates

Former Employee Contact Letter
Former Employee Log

H-2A Application for Temporary Employment Certification Processing

- H-2A Service Entity files [ETA Form 9142](#) Application for Temporary Employment Certification with the DOL National Processing Center (NPC) in Chicago
- H-2A Service Entity files first recruitment report
- DOL NPC responds (typically within 30 days) and either grants certification for number of H-2A workers requested, grants partial certification, issues a Notice of Deficiency requesting modifications to the application, or denies the application
- If denied, may appeal to Board of Alien Labor Certification Appeals

Coordination of Workers prior to traveling to U.S.

- You may request foreign workers and attempts will be made to locate workers
- Worker agents in worker's home country assist prospective workers with complying with U.S. consular requirements, completing visa application form, travel arrangements and understanding terms and conditions of employment
- Employees may not pay worker agents
- H2A Services Entity customizes Worker Agent Letter and secures signed copies from worker agents

Templates

Worker Agent Letter

2014 Visa Processing Fees per Worker

- Employer pays the following per worker fees to H-2A Services Entity to facilitate visa processing:
 - U.S. State Department Visa fee: \$190
 - Worker agent fee: \$120
 - Scheduling administration fee \$50
- Recommend scheduling workers as soon as possible because workers may only work within the dates authorized by their visa

Transportation costs

Employer is responsible for inbound transportation costs for workers, daily subsistence and border crossing fee. Employer must reimburse worker for these costs in the first week of employment.

Compliance Documents and Resources

H-2A employers must comply with general labor and employment laws in addition to specific H-2A regulations.

- Disclose Terms & Conditions of Employment: H-2A regulations require that all workers (domestic and H-2A) are provided with MSAWPA Disclosure/H-2A Work Agreement
 - Must provide to domestic referrals no later than first day of employment
 - Must provide to H-2A workers no later than visa application date
 - Must be in language of familiarity to workers
- Posting Requirements: Certain information must be posted in a centralized location for worker reference. If multiple locations, post at each. [Michigan Farm Bureau has a package of required postings](#)
- Employment Eligibility Documents: Obtain [Form I-9](#) for each employee, domestic and H-2A

Templates

Work Agreement

Vehicles Used to Transport Workers Rules

- Prior to employment start date, mechanic must inspect all worker transportation vehicles
 - See [Form WH-514](#) for list of items that must be inspected and certified operational
- Drivers must inspect vehicles daily
- All drivers of buses with more than 15-passenger capacity must have Class 2 Passenger CDL
- All drivers need doctor's certificate ([Form WH-515](#)) and driver must keep certificate with him or her when transporting workers

Payroll Rules

- For tax reporting, H-2A worker provides employer with Social Security Number (SSN) or Individual Tax Identification Number (ITIN) (Employer may coordinate with SSA for SSN processing)
- H-2A workers not subject to Social Security/Medicare Tax
- H-2A workers are subject to income taxation, however, employer withholding rules are different than domestic employees
- Federal income tax generally not withheld unless one of two situations:
 - (1) Both employer and H-2A worker agree to withhold (W-4 required), or
 - (2) H-2A worker fails to provide SSN/ITIN and wages are greater than \$600
 - In this case, H-2A worker subject to backup withholding and employer must withhold 28% federal income tax until worker provides SSN or ITIN
 - Employer that fails to do backup withholding can be held responsible for tax that should have been withheld
- Generally, H-2A compensation reported to worker on Form W-2. Wages are not included in compensation subject to social security and Medicare on Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, however, federal income tax withheld voluntarily is reported on Form 943
- Wages subject to backup withholding are reported to worker on Form 1099-MISC and employer must file Form 945 annually

Record Keeping/Reporting

- Hours
 - Hours offered
 - Hours actually worked
- Pay/Wage statement (given to workers at least twice monthly)
 - Total Earnings
 - Hours offered and worked

- Hourly rate or piece rate
- If piece rate, daily pay including daily units produced
- Deductions
 - Must be listed in job order to deduct
 - Cannot include any H-2A costs
- Change of Status
 - Employer must inform H-2A Service Entity immediately if a worker fails to report for work, is terminated, voluntarily resigns, abandons employment or departs early for any other reason
 - Applies to all foreign and domestic workers under H-2A work contract, including returning workers from the previous season who fail to report
 - Employer must report termination within 2 days
 - To US Citizenship and Immigration Services (USCIS) for H-2A workers
 - To DOL for US workers
 - If not timely report, penalties and $\frac{3}{4}$ guarantee potential liability
 - If strike or lockout, cannot use H-2A

Templates

Letter to DOL Notifying of H-2A/Corresponding Worker Termination

Letter to USCIS Notifying H-2A Worker Termination

$\frac{3}{4}$ Guarantee

Employer must guarantee work for $\frac{3}{4}$ of contract period

- Calculated by job order terms
- Document hours offered on pay stub
- If do not offer sufficient hours, employers must pay amount workers would have earned at contract rate
- To calculate hours offered, cannot use hours outside normal work schedule unless those hours were actually worked
- Act of God clause

H-2A Employer Audit Checklist

Housing

- H-2A housing inspected and certified
- Provide to H-2A workers and non-local domestic workers and families
- Free and convenient cooking and kitchen facilities or three meals/ day

Worker Terms & Conditions

- Disclosure/Work Agreement provided no later than visa application date
 - Same work terms and conditions for H-2A/domestic workers
 - Assign only duties included in terms and conditions
 - Furnish tools/supplies
- H-2A/domestic workers guaranteed opportunity to work 3/4 total contract hours
 - Track hours offered and not accepted
 - Pay for any additional hours to meet 3/4
- Workers compensation to H-2A/domestic workers

Recruitment

- Complete required recruitment
- Offer employment to previous season employees (except dismissed for cause/ quit)
- Interview domestic applicants/referrals and offer job if able and available to work
- Decisions not to hire based on legitimate job-related reasons, not age, gender race, nationality, religion or any other protected category
- Employer is maintaining referral log to record U.S. referrals

Employment Verification, Tax Withholding Form, Age Verification

- USCIS Form 1-9 (Employment Eligibility Verification Form (all employees))
- Federal IRS Form W-4 required for domestic workers; optional for H-2A workers if they request income tax withholding
- MITreasury Form W-4 required for domestic workers; optional for H-2A workers if they request income tax withholding
- Certificate of Age (persons under 19), domestic workers
- Work Permit (non-ag work, age 17 & under), domestic workers
- New Hire Reporting

Wages

- 2014 H-2A/domestic workers wage at least \$11.49

Overtime

- If any work outside ag exemption, pay overtime for hours worked > 40/ workweek
- Examples of non-ag work
 - Mechanics
 - Packing other farm's products
 - "Processing"
 - Winery operations
 - Certain farm market activities

Paychecks/Paystubs

- Workers paid at least twice per month at disclosure/work contract rate
- Paystub/wage report must include:
 - Basis upon which wages are paid
 - Number of piece work units earned, if applicable
 - Number of hours offered/worked
 - Total pay period earnings
 - Specific sums withheld and purpose
 - Net pay to employee
 - Employer name, address, FEIN
 - Employee name, address and last 4 digits of SSN

Post-hire tracking

- Maintain records for employees that:
 - Fails to report for work
 - Voluntarily resigns
 - Abandons employment
 - Departs early for any other reason
- Notice to SWA/DOL

Transportation

- Reimburse in first week inbound/outbound transportation/subsistence for H-2A workers and domestic workers unable to reasonably travel from workplace to residence each day
- Daily transportation from housing to worksite for H-2A workers/non-local domestic workers
- Prior to start date of employment, mechanic inspected vehicles and documented on Form WH-514 (<http://www.dol.gov/whd/forms/wh514.pdf>). Keep in audit file

- Drivers inspect vehicles daily
- Class 2 Passenger CDL for all drivers of vehicles with > 15-passenger capacity
- Drivers must secure and keep with them doctor's certificate (Form WH-515)

Required Posters

- Available at location(s) accessible to workers (See ALSS Poster Sets)

Audit File

- Employer maintains the following items in an Audit File (3 year retention)
 - Copy of each filing made during the application process
 - Housing certification
 - Form WH-514 Vehicle Mechanical Inspection Report
 - Former employee contact log
 - Newspaper pages (with date of publication and full copy of the advertisement), including advertisements evidencing publication on 2 separate days, one of which must be a Sunday
 - Referral log
 - Recruitment reports
 - Documentation of former employee contact
 - Copy of employee paystubs

Agricultural Employer Audit Checklist

Housing

- Migrant housing inspected and certified
- Maintain health and safety compliance

Worker Terms & Conditions

- MSAWPA Disclosure provided in language of familiarity
 - Place of employment
 - Wage rate
 - Crops, work activities
 - Period of employment
 - Transportation, housing, employee benefits
 - Existence of any strike, work stoppage, or slowdown
 - Any commission agreements of the employer/contractor

Employment Verification, Tax Withholding Form, Age Verification

- USCIS Form 1-9 (Employment Eligibility Verification Form (all employees))
- Federal IRS Form W-4
- MITreasury Form W-4
- Certificate of Age (persons under 19), domestic workers
- Work Permit (non-ag work, age 17 & under), domestic workers
- New Hire Reporting

Employment Verification, Tax Withholding Form, Age Verification

- USCIS Form 1-9 (Employment Eligibility Verification Form (all employees))
- Federal IRS Form W-4 required for domestic workers; optional for H-2A workers if they request income tax withholding
- MITreasury Form W-4 required for domestic workers; optional for H-2A workers if they request income tax withholding
- Certificate of Age (persons under 19), domestic workers
- Work Permit (non-ag work, age 17 & under), domestic workers
- New Hire Reporting

Wages Paychecks/Paystubs

- Federal/State minimum wage paid
- Workers paid at least twice per month at disclosure rate
- Paystub/wage report must include:
 - Basis upon which wages are paid
 - Number of piece work units earned, if applicable

-
- Number of hours offered/worked
 - Total pay period earnings
 - Specific sums withheld and purpose
 - Net pay to employee
 - Employer name, address, FEIN
 - Employee name, address and last 4 digits of SSN

Overtime

- If work outside ag exemption, pay overtime for hours worked > 40/workweek
- Examples of non-ag work:
 - Mechanics
 - Packing other farm's products
 - "Processing"
 - Winery operations
 - Certain farm market activities

Required Posters

- Available at location(s) accessible to workers (See ALSS Poster Sets)

Record Keeping

- Must make, keep and preserve for 3 years
 - Basis upon which wages are paid
 - Number of piece work units earned, if applicable
 - Number of hours worked
 - Total pay period earnings
 - Specific sums withheld and purpose
 - Net pay to employee

Transportation

- Provided?
- Properly insured
- Operated by properly licensed driver
- Meet federal and state safety standards – for detailed information, see U.S. Department of Labor Fact Sheet #50: Transportation under the Migrant and Seasonal Agricultural Worker Protection Act included in Resources

Health and Safety

- Field Sanitation
- Hazard Communication
- Agricultural tractors and farm field equipment

[Employer Name], [Street Address], [City, State Zip], [Phone]

Migrant, Seasonal and Agricultural Employment Document Packet; Work Agreement for H-2A Workers and Corresponding Workers

Paquete de Documentos de Empleo Temporal y Agrícola de Emigrantes; Acuerdo de Trabajo para Trabajadores H-2A y Trabajadores Correspondientes

[INTRODUCTION PARAGRAPH]

This packet contains:

- Migrant and Seasonal Agricultural Worker Protection Act – Worker Information – Terms and Conditions of Employment
- Terms and Conditions of Employment required under H-2A regulations
- Employee Handbook
- Good Agricultural Practice Work Rules and Training

***Employer provides the following information voluntarily and does not waive potential exemptions from provisions of the Migrant and Seasonal Agricultural Workers Protection Act.**

English language version is the official and legal language of this document.

THIS DOCUMENT IS A CONTRACT OF EMPLOYMENT BETWEEN EMPLOYER AND EMPLOYEE. Employer agrees to employ employee for the Work Period of [contract start date] to [contract end date]. Employee agrees to perform assigned duties and comply with all terms and conditions included in this contract.

Este paquete contiene:

- Decreto de Protección de Trabajadores Temporales Agrícolas Emigrantes – Información del Trabajador – Condiciones y Estipulaciones de Empleo
- Términos y Condiciones de Empleo Requeridas bajo las reglas H-2A
- Manual de Trabajo
- Reglas y Capacitación de Buenas Prácticas Agrícolas

***El Empleador hace las siguientes declaraciones voluntariamente sin renunciar a excepciones potencial de ciertas provisiones del Decreto de Protección de Trabajadores Temporales Agrícolas Emigrantes.**

El inglés es el idioma oficial y legal de este documento.

EL PRESENTE DOCUMENTO ES UN CONTRATO DE EMPLEO ENTRE EL EMPLEADOR Y EL TRABAJADOR. El Empleador acuerda emplear al Trabajador durante el Periodo Laboral de [contract start date] a [contract end date]. Los Trabajadores acuerdan llevar acabo los deberes y cumplir con todos los términos y condiciones incluidas en este contrato.

[Employer Name], [Street Address], [City, State Zip], [Phone]

Migrant and Seasonal Agricultural Worker Protection Act – Worker Information – Terms and Conditions of Employment / Decreto de Protección de Trabajadores Temporales Agrícolas Emigrantes – Información del Trabajador – Condiciones y Estipulaciones de Empleo

- 1. **Place of Employment:** The central location of [Employer] is [Street Address], [City], [State] [Zip]. Employees will be employed at work locations within a [number] – mile radius of this location.
- 2. **Period of Employment:** Employment season for most workers will commence in [month] and end in [month]. There is no promise of employment for any specific period of time. Specific work schedule and work hours may vary as outlined in the Employee Handbook, incorporated by reference.
- 3. **Wage Rates to be Paid:** Each Employee is asked to record hours that Employee works in every pay period. Employee is expected to immediately notify Employer of any differences between Employee's and Employer's record of hours recorded.

Hourly Rates: Employer will pay workers \$11.49/ hour wage which is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage. If the prevailing hourly wage rate or piece rate is adjusted during a work contract, and is higher than the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed, the employer must pay that higher prevailing wage or piece rate, upon notice to the employer by the Department of Labor.

- **Piece Rates:** Employer will, pay the following piece rates for hand harvest activities: _____

- 1. **Lugar de Empleo:** La oficina principal de [Employer] es en [Street Address], [City], [State] [Zip]. Trabajadores serán contratados en varios locales de trabajo dentro de [numero] millas de la oficina principal.
- 2. **Jornada Laboral:** La temporada laboral para la mayoría de los trabajadores comienza en [month] y termina en [month]. No existe ninguna promesa de empleo durante cualquier período específico. Jornadas laborales pueden variar, así como se explica en el Manual de Trabajo, incorporado por referencia.
- 3. **Tasas de Salarios:** Se le pide a cada Trabajador que registre las horas que haya trabajado dentro de cada jornada laboral. Trabajador debe notificar al Empleador de inmediato si nota cualquier diferencia entre el record de horas del Trabajador y el del Empleador.

- **Cuota Por Hora:** Empleador pagara \$11.49/ hora el cual es el salario más alto entre la Adverse Effect Wage Rate (AEWR, por sus siglas en ingles), la tasa por hora o pago por pieza prevaleciente, la tasa acordada por medio de la negociación colectiva, o el salario mínimo federal o estatal. Si la tasa por hora o pago por pieza prevaleciente es ajustada durante el contrato laboral, y es más alta que el salario más alto entre el AEWR, la tasa prevaleciente, la tasa acordada por medio de la negociación, o el salario mínimo federal o estatal, en efecto al tiempo que el trabajo sea llevado a cabo, el Empleador deberá pagar la tasa prevaleciente o pago por pieza, en cuanto sea notificado por el Departamento de Labor.

- **Pago Por Unidad de Obra:** El Empleador pagara la siguiente cantidad por unidad de obra de la cosecha a mano: _____

[Employer Name], [Street Address], [City, State Zip], [Phone]

- Employer will post changes to piece rates at _____.
- If Employee fails to make the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage based on the piece rate, Employer will increase compensation to amount required to comply with required laws. This provision does not affect Employer's right to enforce productivity standards for its employees. Employer's productivity standards are generally _____.

Employer retains the discretion to adjust standards where it deems appropriate.

- Employer will post any adjustment of productivity standards at _____.
- **(OPTIONAL) Piece Rate Incentive:** Employer reserves right to pay harvest piece rate incentive in addition to hourly rates, only when, to whom, and as Employer may from time to time elect to pay during harvest season.
- **(OPTIONAL) Bonus:** Employer reserves right to pay bonus only when, to whom, and as Employer may from time to time elect to pay.

4. Crops and Kinds of Activities:

- Crops: _____
- **Activities:** May include planting, hoeing/weeding, hand harvesting, trimming and training trees or bushes, packing shed activities, operation of machinery/vehicles, and general maintenance work, _____

_____ together with all activities related to Employer's operations. While Employee may initially be hired to perform a specific activity, Employer reserves right to temporarily or permanently assign Employee to a different activity.

Empleador publicar cambios al Pago por Unidad de Obra en _____.

- Si el Trabajador no consigue el salario más alto entre el Adverse Effect Wage Rate (AEWR), la tasa por hora prevaleciente o pago por pieza, la tasa acordada por medio de la negociación, o el salario mínimo federal o estatal, debido a el Pago por Unidad de Obra, el Empleador aumentara la compensación a la cantidad requerida por la ley. Esta disposición no afecta al derecho del Empleador para hacer cumplir las normas de productividad para sus Trabajadores. Las normas de productividad del Empleador generalmente son _____.

Empleador se reserva el derecho de ajustar las normas cuando se considere oportuno.

- Empleador publicara cualquier ajuste a las normas de productividad en _____.
- **(OPTIONAL) Incentivo de Pago por Unidad de Obra:** Empleador se reserva el derecho a pagar parte de la cosecha por unidad de obra, por encima de la cuota por hora, solamente cuando y a quien el Empleador determine durante la temporada de cosecha.
- **(OPTIONAL) Primas:** Empleador se reserva el derecho a ofrecer primas solamente cuando y a quien el Empleador de vez en cuando elija.

4. Cultivos y Tipos de Actividades:

- Cultivos: _____
- **Actividades:** Pueden incluir la siembra, escarda/escarda, la cosecha manual, el recorte y la formación de árboles o arbustos, las actividades de embalaje cubierto, operación de maquinaria y vehículos, _____

_____ y los trabajos de mantenimiento en general, junto con todas las actividades relacionadas con las operaciones del Empleador. Mientras

[Employer Name], [Street Address], [City, State Zip], [Phone]

- **Must ensure this is consistent with job order**

5. **Transportation:** Commuting employees must provide their own transportation to and from the place of employment. For workers occupying housing, Employer will provide transportation at no cost to worksite and return to housing each day. Daily transportation from farm to worksite will be provided to all employees each day. Employee must advise Employer if employee pays another employee for transportation.

For employees that cannot reasonably travel to the place of employment from the workers residence each day, Employer will reimburse Employee in the first workweek for reasonable travel and subsistence costs incurred by the employee to travel to the Employer's workplace from the place from which the worker departed.

Outbound Travel: If Employee completes the work contract period, or is terminated without cause, Employer will provide Employee's transportation and daily subsistence from the place of employment to the place from which the worker departed to work for the employer. If Employee has contracted with a subsequent employer who has agreed to provide for Employee's transportation to the place from which Employee departed, Employer is only responsible for the transportation cost to travel to the subsequent employer.

6. **Worker's Compensation Insurance:** Employer will provide Worker's Compensation Insurance. Employer's Worker's Compensation carrier: **[Name of Insurer]**.

- **Policy Holder:** **[Name/Address of Insured]**.
- In case of injury or death, please notify: **[Name]** at **[Phone]**; Notice should be given as soon as practical following date of injury or death, but no later than 24 hours after incident.
- Unemployment compensation insurance: Employer will provide.

que los Trabajadores inicialmente pueden ser contratados para realizar una actividad específica, el Empleador se reserva el derecho de reasignar de manera temporal o permanente al Trabajador a otra actividad.

- **Debe asegurar que sea consistente con la orden de trabajo.**

5. **Trabajadores conmutadores deben proporcionar su propio transporte hacia y desde el lugar de destino.** Para Trabajadores utilizando viviendas, el Empleador deberá proveer transporte diario, sin costo al Trabajador, al lugar de trabajo y de regreso a la vivienda. Transportación diaria de la granja al lugar de trabajo será proveído cada día a los Trabajadores. El Trabajador deberá avisarle al Empleador si el Trabajador le paga a otro Trabajador por transportarlo.

Para trabajadores que no pueden de manera razonable transportarse diario al lugar de empleo desde su hogar, el Trabajador reembolsara al Trabajador durante la primera semana de trabajo por costos razonables de viaje y subsistencia incurrido por el Trabajador para viajar al lugar de trabajo del Empleador desde el lugar donde el Trabajador salió.

Trabajo de Salida: Si el Trabajador completa el periodo de contrato laboral, o es despedido sin causa, el Empleador proveerá al Trabajador transporte y subsistencia diaria desde el lugar de empleo al lugar desde donde el Trabajador salió para trabajar con el Empleador. Si posteriormente el Trabajador es contratado por un empleador que ha acordado proveer el transporte del Trabajador al lugar desde donde el Trabajador salió, el Empleador es responsable solamente por el costo de transporte a el nuevo empleador.

6. **Seguro de Indemnización de Accidentes al Trabajador:** Empleador proporcionará Seguro de Indemnización de Accidentes al Trabajador. **[Name of Insurer];**

- Titular de la póliza: **[Name Address of Insured];**
- En caso de lesión o muerte, favor de notificar a: **[Name]** al **[Phone]**; La notificación debe ser dada tan pronto como sea posible después de

[Employer Name], [Street Address], [City, State Zip], [Phone]

7. **Other Benefits:** _____
 fecha de la lesión o la muerte, pero a más tardar 24 horas después del incidente.
8. **Housing:** Employer provides rent-free housing to employees who are not reasonably able to travel to and from their residence each day. Housing is also provided to employee's immediate family. Housing is not provided for commuting employees.
- Mailing addresses for housing are:

 - If Employer offers Employee housing, Employer will provide Employee Housing Agreement and Rules detailing the terms and conditions of the housing benefit.
9. **Strike Benefits:** Employer provides no benefits for any strike, work stoppage, slowdown, or interruption of operation by employees.
10. **Commission Arrangement:** Employer has made no arrangements with owners or agents for payment of commission or other benefits for sales made to Employees.
11. **Work Guarantee:**
- 3/4 Guarantee:** Employer guarantees to offer employee employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any.
- Workday means the number of hours in a workday and excludes the worker's Sabbath and Federal holidays.
- If employee worker begins working later than the beginning date of the contract, the guarantee period begins with the first workday after employee's arrival at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect.
- Seguro de Desempleo: Empleador proporcionará.
7. **Otros beneficios:** _____
8. **Vivienda:** Empleador proporciona viviendas sin renta a empleados que no pueden razonablemente viajar diario desde y hacia su residencia. Viviendas también son proporcionadas a la familia inmediata del Trabajador. Viviendas no será proporcionada a empleados conmutadores.
- Dirección de la vivienda:

 - Si el Empleador llegase a ofrecer alojamiento al Trabajador, le proveerá el Contrato y Reglas de Vivienda el cual explica las condiciones y estipulaciones de la vivienda.
9. **Beneficios de Huelga:** Empleador no ofrece beneficios durante cualquier huelga, paro de trabajo, la desaceleración o interrupción de las operaciones del Empleador por parte de los trabajadores.
10. **Comisiones:** Empleador no ha acordado con propietarios o agentes el pago de comisión u otros beneficios por ventas hechas a los trabajadores.
11. **Garantía Laboral:**
- Garantía de 3/4:** Empleador garantiza ofrecerle al Trabajador, en horas totales de trabajo, el equivalente a tres cuartos de los días laborales del periodo total comenzando con el primer día laboral después de que llegue el Trabajador al lugar de trabajo o el primer día de trabajo publicado, dependiendo de cuál sea más tarde, y terminando el día de expiración designado en el contrato laboral o en sus extensiones, si existen.
- Jornada laboral significa las horas de trabajo en un día de trabajo y excluye Sábado y días festivos federales.
- Si el Trabajador comienza su trabajo más tarde del día de comienzo designado en el contrato, el periodo garantizado comienza con el primer día laboral después de que llegue el Trabajador al lugar de empleo, y continua hasta el último día que el contrato laboral, y todas sus extensiones, sean efectivas.

[Employer Name], [Street Address], [City, State Zip], [Phone]

12. Contract Impossibility: If, before the work end date stated in this contract, the services of the employee are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract.

In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in 20 CFR Sec. 122 (i)(1) of this section. Employer will make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not effected, Employer will:

- (1) Return the employee, at the employer's expense, to the place from which the employee (disregarding intervening employment) came to work for the employer, or transport the employee to the worker's next certified H-2A employer, whichever the worker prefers;
- (2) Reimburse the employee the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and
- (3) Pay the employee for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

There is no guarantee of employment if employee voluntarily abandons employment or is terminated for lawful job-related reasons.

12. Imposibilidad Contractual: Si, antes de la fecha de finalización de trabajo establecido en el presente contrato, los servicios del Trabajador no son requeridos por razones ajenas a la voluntad del empleador debido a incendio, clima, u otro Acto de Dios que hace que el cumplimiento del contrato sea imposible, Empleador podrá dar por terminado el contrato laboral.

En tal caso de extinción del contrato, el Empleador debe cumplir con la garantía de tres cuartos por el tiempo que ha transcurrido desde el inicio del contrato laboral al momento de que termine, como se describe en 20 CFR Sec. 122(i)(1) de esta sección. Empleador hará esfuerzos para transferir al Trabajador a otro empleo similar siempre y cuando sea aceptable para el Trabajador, conforme a las leyes de inmigración existentes, según sea el caso. Si dicha transferencia no se lleva a cabo, el Empleador:

- (1) Devolverá al Trabajador, sin costo al Trabajador, al lugar de donde vino el Trabajador (sin tomar en cuenta empleo interviniente) a trabajar para el Empleador, o transportar al Trabajador al próximo empleador certificado H-2A, dependiendo de la preferencia del Trabajador;
- (2) Reembolsar al Trabajador el importe total de las deducciones hechas al pago del Trabajador, por parte del Empleador, por gastos de transporte y subsistencia hasta el lugar de empleo; y
- (3) Pagar al Trabajador por los costos incurridos por el Trabajador para el transporte y subsistencia diaria al lugar de empleo del Empleador. La subsistencia diaria debe ser calculado como se indica en el párrafo (h) de esta sección. La cantidad del pago de transporte no debe ser menor (y no existe obligación de que sea más) que los gastos de transporte público más económicos y razonables para las distancias involucradas.

No existe garantía de empleo si el Trabajador voluntariamente abandona el empleo o si es despedido por razones legales relacionadas a su empleo.

[Employer Name], [Street Address], [City, State Zip], [Phone]

Employee Handbook / Manual de Trabajo

1. **Standards Of Conduct/Performance:** Employees are to work productively and in compliance with Employer policies and job instructions. Certain behaviors are not acceptable to the Employer and cannot be allowed in the workplace. Failure to obey the following rules may result in immediate termination.
 - You must not falsify age documents or misrepresent the age of a minor to gain employment for underage youth.
 - You may not bring children to work with you, or allow your children, or any children under your supervision, in the fields or any part of the farm's work areas.
 - Assault, intimidation, or extortion of another person--with or without a weapon--is prohibited.
 - You must not drink alcohol on the job or use illegal drugs at any time.
 - Theft from the farm or other person is prohibited.
 - You must not tamper or alter the products harvested or packed.
 - You must not violate posted visitor or restricted access policies.
 - You must not falsify any time records, or punch or swipe the time card, badge, or ticket of another employee.
 - You must not violate Employer's policies against unlawful discrimination, harassment, or retaliation.
 2. **No Children In Fields And Work Areas:** Children are never allowed in fields, or on or about any farm equipment, or in food handling or storage areas.
 3. **Restricted Access:** Entry to Employer's fields and facilities is limited to Employees and authorized personnel only. Entry by unknown persons must be reported immediately to your supervisor.
1. **Normas De Conducta/Rendimiento:** Los Trabajadores deben trabajar productivamente y en cumplimiento con las políticas e instrucciones de trabajo del Empleador. Ciertos comportamientos no son aceptables y no serán permitidos en el lugar de trabajo. El no seguir las siguientes reglas pueden resultar en la terminación inmediata.
 - No debe falsificar documentos de edad u ofrecer una manifestación falsa acerca de la edad de un menor para conseguirle empleo.
 - No podrá traer a sus niños o los niños de otros a trabajar con usted, o permitir que sus niños o cualquier niño bajo su supervisión entren a las huertas o cualquier parte de las áreas de trabajo de la granja.
 - Asaltar a otra persona, intimidar o extorsionar – con o sin arma está prohibido.
 - No debe de tomar alcohol en el trabajo o usar drogas ilegales.
 - Robo de cualquier artículo de la granja o a otra persona está prohibido.
 - No puede manipular o alterar los productos cosechados o empacados.
 - No debe violar políticas públicas de visitantes o de acceso restringido.
 - No debe falsificar los registros de horario, o escanear o punzar la tarjeta de identificación o boleta de otro Trabajador.
 - No debe violar las políticas del Empleador contra la discriminación ilegal, acoso o represalias.
 2. **Niños En Las Huertas O Áreas De Trabajo:** Los niños nunca están permitidos en la granja, o dentro o cerca de maquinaria y equipa agrícola, o en áreas de manejo de comida o áreas de almacenaje.
 3. **Acceso Restringido:** La entrada a las huertas e instalaciones del Empleador está limitada únicamente a los Trabajadores y personal autorizada. Entrada por personas desconocidas tiene que ser reportada inmediatamente a su supervisor.

[Employer Name], [Street Address], [City, State Zip], [Phone]

4. **Visitor Policy:** All visitors must check in at office and sign visitor registration log. No visitors or guests are allowed on farm premises, with the exception of Employee housing, unless Employer gives permission. No trespassing, no solicitation, and restricted access signs will be posted.
5. **Parking:** Parking is allowed in designated areas only. If you have questions on where parking is allowed ask your Supervisor. Children are NOT allowed in cars at anytime.
6. **Work Schedule And Work Hours:** The regular work schedule is [number of days] days per week. Employer will offer [35 or greater] hours per week, weather permitting. Unless prior arrangement has been made with your Supervisor, Employees are expected to be at work each day at in-structed times. Employees must check in with Employer or Supervisor when Employees leave and return during workday. Employment hours are always influenced by factors such as weather conditions, size of harvest, customer expectations of delivery of product and other business reasons. Hours worked each day and days worked each week shall not exceed legal limitations. There is no promise of employment for any specific period of time and Employees will be paid only for work actually performed when and as work is made available to Employer.
7. **Absences:** Unless excused by your Supervisor in advance, Employees are expected to work all scheduled hours of all scheduled days. Unexcused tardiness is treated as an unexcused absence and neither will be permitted.
8. **Lunch Period:** Employees must take unpaid lunch period that may vary from 1/2 to 1 hour at direction of Employer. Employees may not work during their lunch periods. Employer will confirm lunch periods are taken and deduct lunch periods from hours worked.
4. **Política De Visitantes:** Todo visitante tiene que registrarse en la oficina central y firmar el registro de visitantes. Ningún visitante o invitado será permitido en las instalaciones de la granja, con la excepción de viviendas del Trabajador, al menos que el dueño o gerente de la granja haya dado permiso. Avisos serán publicados prohibiendo el paso, la solicitud y restringiendo el acceso.
5. **Estacionamiento:** Estacionamiento solo es permitido en áreas designadas. Si tiene preguntas sobre donde se permite estacionarse, pregúntele a su Supervisor. En ningún momento se permiten niños en los carros.
6. **Hora De Inicio:** El horario laboral regular es [number of days] días por semana. El Empleador ofrecerá [35 or greater] horas por semana, siempre y cuando el clima lo permita. A menos que un acuerdo se hay hecho de ante mano con su Supervisor, se espera que todos los Trabajadores se reporten a trabajar a la hora indicada. Los Trabajadores tienen que reportarse con el Empleador o Supervisor cuando salgan o regresen durante la jornada laboral. La jornada laboral puede ser influida por factores como las condiciones del tiempo, tamaño de la cosecha, expectativas de entrega del producto del cliente y otras razones de negocios. Horas trabajadas diarias y días trabajados por semana no excederán los límites legales.
7. **Ausencias Al Trabajo:** Al menos que haya pedido permiso a su Supervisor por anticipado, Se espera que Trabajador trabaje todas las horas y días programados. Tardanzas sin previa autorización serán tratadas como ausencias sin permiso y ninguna de las dos serán permitidas.
8. **Hora De Almuerzo:** Trabajadores tienen que tomar un período de almuerzo sin paga que podrá variar por dirección del Empleador de media-hora a una-hora en duración. Trabajadores no deben realizar trabajo durante su periodo de almuerzo. El Empleador podrá confirmar que se tomó el período de almuerzo y descontar el periodo de almuerzo de las horas trabajadas.

[Employer Name], [Street Address], [City, State Zip], [Phone]

- 9. Breaks:** For packing room or other hourly rate work, Employees will be given two scheduled breaks each day. Breaks shall not exceed 15 minutes. Restroom visits should occur during scheduled breaks if possible.
- 10. Job Assignments:** Supervisors are responsible for all job assignments. Employees must not leave job assignment area unless authorized. Supervisors will give instructions daily and modify Employees' activities. Leaving job area or farm without permission could be considered "walking off the job" and resignation.
- 11. Work Week:** Workweek is _____ through _____. Employees may pick up checks each _____ after scheduled work is completed at office unless other instructions are provided.
- 12. Employee Timekeeping:** Employees will maintain time records for purposes of comparison with time records/weigh tickets maintained by Employer. Employees must turn in time cards as directed by Supervisor. If Employees leave for any reason during workday, they must clock out and in again at return. If employees fail to properly clock in and out, Employer may adjust time to reflect an absence. REMEMBER never clock in for another employee, for any reason. This is grounds for termination.
- 13. Receipt Of Pay Check:** Employees must personally take delivery of own paychecks. Employees may not pick up another Employee's check.
- 9. Descansos:** Para la sección de empaques y trabajo de cuota por hora, se dará a los Trabajadores dos descansos diarios. Ningún descanso excederá 15 minutos. Si es posible, visitas al baño deben ocurrir durante los descansos programados.
- 10. Asignación De Trabajos:** Los Supervisores son responsables de asignar todos los trabajos. Los Trabajadores no deben de salir del área de trabajo a menos que sea autorizado a hacerlo. Los Supervisores darán instrucciones diariamente y modificaran las actividades de los Trabajadores. Salir del área de trabajo o salir de la granja sin permiso podría ser considerado "dejar el trabajo y renunciar".
- 11. Semana Laboral:** La semana laboral es del _____ a _____. Los Trabajadores podrán recoger su cheque cada _____ después que el trabajo sea completado en la oficina, al menos que se den otras instrucciones.
- 12. Registro De Tiempo Del Trabajador:** Trabajadores mantendrán su record de tiempo [horas] con el propósito de comparar el record de tiempo/tiquetes de peso que mantiene el Empleador. Trabajadores deben de entregar sus tarjetas de tiempo como les indique su Supervisor. Si el Trabajador sale por cualquier razón durante el día de trabajo, él/ella tendrá que registrarse y volver a marcar su entrada cuando regrese. Si el Trabajador no marca el reloj cuando sale y cuando entra, el Empleador podrá ajustar el tiempo para reflejar una ausencia. RECUERDE, por ninguna razón marque el reloj por otro Trabajador. Esto es motivo de terminación.
- 13. Recibo De Cheque De Pago:** Trabajadores tienen que recibir personalmente sus propios cheques. Trabajadores no podrán recibir el cheque de pago de otros Trabajadores.

[Employer Name], [Street Address], [City, State Zip], [Phone]

- 14. Spraying:** All Employees and vehicles must leave field during spraying of pesticides. If spraying occurs while Employees are at place of housing, Employees must take shelter inside housing unit and remain there until spraying is completed. You will be provided additional training and Personal Protective Equipment (PPE) if you are involved in the application of spray materials.
- 15. Cell Phones/Radios/Electronic Devices:** No cell phones, radios, CD players, MP3 players, or other electronic devices with headphones are permitted during work activity and/or while driving company vehicles.
- 16. Alcoholic Beverages, Firearms, And Illegal Drugs:** Alcohol, firearms and illegal drugs are not permitted in any field, farm building or work area anywhere on farm property. Possession of prohibited items may result in immediate termination, requiring Employees to vacate housing immediately. This includes weapons under local carry and concealed weapons laws.
- 17. Testing For Alcohol And/Or Illegal Drugs:** Employer may require alcohol and drug testing when it has a reasonable suspicion that Employee is under the influence at work, when Employee suffers an injury and requires medical attention or reporting to regulatory agency either while on duty, or while on Employer's work premises. Testing may also be required if Employee is involved in workplace injury resulting in damage to property or injury to others. Grounds for reasonable suspicion include, but are not limited to observation of slurred speech, bloodshot eyes, erratic behavior, difficulty walking, difficulty performing assignments, paraphernalia, and/or the smell of alcohol or drugs on the employee. Employees agree to testing under this policy as a condition of employment. Refusal to consent or submit to testing is a violation that could result in immediate termination.
- 14. Fumigación:** Todos los Trabajadores deben abandonar la huerta durante la fumigación de pesticidas. Todos los vehículos también deben ser alejados del área. Si la fumigación ocurre cuando el Trabajador está en la vivienda, el Trabajador debe refugiarse dentro de su unidad y permanecer ahí hasta que la fumigación termine. Se le proporcionara capacitación y Equipo de Protección Personal (PPE por sus siglas en inglés) si usted está involucrado en la aplicación de materiales de fumigación.
- 15. Teléfonos Celulares/Radios/Aparatos Electrónicos:** No se permite el uso de teléfonos celulares, radios, aparatos de CD o MP3, o cualquier otro aparato electrónico con audífonos durante la jornada laboral o mientras conduzca un automóvil de la empresa.
- 16. Bebidas Alcohólicas, Armas De Fuego Y Drogas Ilegales:** Bebidas alcohólicas, armas de fuego y otras drogas ilegales no son permitidas en cualquier huerta, área de trabajo o en cualquier propiedad de la granja. Posesión de artículos prohibidos podría resultar en terminación inmediata, requiriendo al Trabajador a desocupar la vivienda inmediatamente. Esto incluye armas bajo leyes locales de portar y ocultar armas.
- 17. Análisis De Alcohol Y/O Drogas Ilegales:** El Empleador podrá requerir análisis de alcohol y drogas cuando tenga una sospecha razonable de que el Trabajador esta bajo la influencia de alcohol o drogas en el trabajo, cuando el Trabajador sufra una herida que requiere atención medica o reportando a una agencia regulatoria ya sea mientras esté trabajando o mientras este en la propiedad de trabajo del Empleador. Un análisis también podría ser requerido si el Trabajador está involucrado en un accidente en el lugar del trabajo resultando en daño a propiedad o heridas a otros. Motivos por sospecha razonable incluyen, pero no está limitado a observar que el Trabajador no hable de manera articulada, ojos rojos, acciones volubles, dificultada al caminar, dificultad realizando responsabilidades asignadas del trabajo, el olor a alcohol o drogas sobre el Trabajador, o parafernalia. Trabajadores están de acuerdo a someterse a los análisis bajo

[Employer Name], [Street Address], [City, State Zip], [Phone]

18. No Illegal Activities Are Permitted On Any Farm

Premises: Employee must not participate in, or allow any illegal activities while on any farm premises or employee housing areas.

19. Bottles, Cans And Litter: In all work areas, Employees must place trash in proper trash containers. Glass bottles, cans or food containers are not allowed in fields or food handling, packing/ storage areas. Employees must pick up all paper, trash and litter brought to fields.

20. Equal Employment Opportunity Discrimination / Harassment, Reasonable Accommodation:

Employer provides equal employment opportunity without regard to national origin, race, sex, color, disability, age, familial status, height, weight, marital status, religion, genetic information, or any other legally protected characteristic. Discrimination and/or harassment against any Employee on the basis of any of the above is prohibited. Employer provides reasonable disability and religious accommodation as required by law. Concerns of prohibited harassment or discrimination, or requests for accommodation should be reported to your Supervisor, or Employer's Farm Manager or _____. Employer will investigate reports and take reasonable responsive action as warranted to correct or prevent violations of this policy, and will engage in an interactive process with Employee to determine if accommodation requests can be granted. Retaliation against employees who take good faith actions under this policy is prohibited. Violations of this policy may result in discipline up to and including termination of employment.

esta política como condición del empleo. El negarse a consentimiento o someterse a los análisis es una violación y es motivo para terminación inmediata.

18. No Se Permiten Actividades Ilegales En Las Instalaciones De La Granja: El Trabajador no debe participar ni permitir ninguna actividad ilegal mientras este en las instalaciones de la granja o la vivienda del Trabajador.

19. Botellas, Latas Y Desperdicios: Los Trabajadores tienen que colocar la basura en los recipientes de basura apropiados en todas las áreas de trabajo. No se permiten botellas de vidrio, latas o contenedores de comida en las granjas o áreas de manejo de alimentos, empaque o almacenaje. Los Trabajadores tienen que levantar todos los papeles, basura, y desperdicios que traigan con ellos mismos a las huertas.

20. Discriminación Dentro De La Oportunidad De Igualdad De Empleo / Acoso, Acomodos Razonables:

El Empleador provee oportunidad de igualdad de empleo sin tomar en cuenta origen nacional, raza, sexo, color, discapacidad, edad, estatus familiar, altura, peso, estado civil, religión, información genética, o cualquier otra característica protegida por ley. Discriminación y/o acoso en contra de cualquier Trabajador con base a cualquiera de lo mencionado arriba está prohibido. El Empleador provee comodidades razonables por discapacidad y religión como sea requerido por ley. Preocupaciones de acoso o discriminación prohibida, o solicitudes para comodidades deben de ser reportados a su Supervisor, o al Gerente de la Granja del Empleador o a _____. El Empleador investigara reportes y tomara acción razonable así como sea justificada para corregir o prevenir violaciones de esta política, y participara en un proceso interactivo con el Trabajador para determinar si solicitudes de comodidades pueden ser otorgadas. Represalias en contra de Trabajadores quienes toman acciones de buena fe bajo esta política son prohibidas. Violaciones de esta política podrían resultar en disciplina que puede incluir la despedida.

[Employer Name], [Street Address], [City, State Zip], [Phone]

Good Agricultural Practice Work Rules and Training / Reglas de Trabajo y Capacitación y Buena Practica Agrícola

1. **Employee Health And Hygiene:** Employees must follow proper sanitation and hygiene practices including use of water, bathroom and hand washing facilities. Employees must wash hands before beginning, or returning to work.
 2. **Designated Eating And Smoking Areas:** Smoking is permitted only outside in designated areas. Employees may not eat, drink or smoke in fields or any farm buildings except for areas designated by farm management.
 3. **Illness And Injury:** Employees who have diarrhea or any symptoms of infectious diseases must not handle any produce, and must immediately report condition to Employer. Cuts or other open injuries must be treated by proper first aid supplies and be properly covered. Employees must report any time produce comes in contact with blood or other bodily fluid. Contacted produce must be discarded. Any equipment or containers exposed to any bodily fluid must be disinfected prior to reuse. This includes harvesting buckets and plastic lugs.
 4. **Contamination Of Produce:** Employees must inspect fruit and containers. If Employees find evidence of glass, metal, plastic, or other dangerous object in field, packing area or any farm building, Employees must notify Employer immediately and any contaminated produce must be discarded under standard operating policy. If Employees know of any contamination of produce by chemicals, petroleum, pesticides, or any other contaminating factors, Employees must notify Employer immediately and fruit must be discarded. If fruit is spilled on the ground or comes in contact with any unsanitary surface, it also must be discarded and containers cleaned and disinfected prior to reuse. If Employee notices any unknown persons handling fruit, or in unauthorized areas, such persons should be reported to Employer.
1. **Salud E Higiene Del Trabajador:** Los Trabajadores deben seguir las prácticas de higiene, incluyendo el uso de agua, baño y deben lavarse las manos. Los Trabajadores deben lavarse las manos antes de empezar, o volver al trabajo.
 2. **Areas Designadas Para Comer Y Fumar:** Solo se permite fumar en áreas designadas fuera de los edificios. Los Trabajadores no pueden comer, beber o fumar en las huertas o edificios agrícolas excepto en las áreas designadas por la gerencia de la granja.
 3. **Enfermedad Y Lastimadura:** Cualquier Trabajador que tenga diarrea o síntomas de otras enfermedades contagiosas no debe de trabajar con cualquier producto y debe de reportar su condición al Empleador. Cualquier cortada u otras heridas abiertas deben de ser inmediatamente tratadas con primeros auxilios y ser apropiadamente cubierta. Trabajadores tienen que reportar cuando el producto venga en contacto con sangre u otros líquidos del cuerpo. Productos que tengan este contacto deben de ser deshechas. Cualquier equipo o contenedor expuesto a cualquier líquido del cuerpo tiene que ser desinfectado antes de ser reutilizado. Esto incluye cubetas de cosecha y botes de plástico.
 4. **Contaminación Del Producto:** Trabajadores tienen que inspeccionar la fruta y los contenedores. Si los Trabajadores encuentran evidencia de vidrio, metal, plástico, u otros objetos peligrosos en las huertas, área de empaque, o cualquier edificio agrícola, el Trabajador tendrá que notificar al Empleador inmediatamente y cualquier producto contaminado será desechado bajo las normas de procedimiento de operación. Si el Trabajador sabe de cualquier contaminación del producto por químicos, petróleo, pesticidas, u otros factores contaminadores, el Trabajador le notificara al Empleador inmediatamente y la fruta será descartada. Si la fruta es regada en el suelo o tiene contacto con cualquier superficie antihigiénica, tendrá que ser descartada

[Employer Name], [Street Address], [City, State Zip], [Phone]

5. **Harvesting Containers And Equipment:** Harvesting containers must not be used for carrying anything except fruit. Employees must clean all harvesting containers prior to use, including picking buckets. Employees must repair or discard damaged containers. Employees will use care to remove or keep dirt, sand, and mud from entering harvest or storage containers during harvest.
 6. **Animals:** Animals are not allowed in fields or packing areas of the farm. Employees shall notify Employer if there is evidence of domestic or wild animals in any of these areas.
 7. **Packing Areas:** Employees shall keep all surfaces of the packing line clean and in good condition. Area shall be well kept and sanitized. Packaging shall be kept in a dry area and be in compliance with rodent and insect protection. Any rodent droppings or insect damage shall be reported to your supervisor.
 8. **Personal Hygiene Rules On Packing Lines:** Employees must tie back or cover long hair, roll up sleeves, keep nails cut short and not use nail color, not wear jewelry, chew gum or chew tobacco. Employees must wash hands at the start of production, and after returning from break, lunch period, or restroom. Employees must wear sanitation equipment and clothing as required by Employer, and must remove and store such items in a designated sanitary area when leaving work area. If gloves are required, Employees must wear gloves when working on packing line, and must remove gloves before breaks, lunch periods, or bathroom use. Employee must use designated hand sanitizer prior to putting on gloves. Hand sanitizer is not a substitute for required hand washing. Employee personal items must not be stored in packing areas.
- y los contenedores limpiados y desinfectados antes de ser reutilizados. Si los Trabajadores notan a cualquier persona desconocida manejando la fruta, o en áreas no autorizadas, deberán reportar a tales personas al Empleador.
5. **Contenedores Y Equipo Para Cosechar:** Contenedores para cosechar no pueden ser usados para cargar cualquier otra cosa que no sea fruta. Trabajadores tienen que limpiar todos los contenedores para cosechar antes de usarlos, incluyendo cubetas de pizar. Trabajadores tienen que reparar los contenedores dañados o deshacerse de ellos. Trabajadores tendrán cuidado para remover o mantener tierra, arena, y lodo fuera de la cosecha o contenedores de almacenaje durante la cosecha.
 6. **Animales:** Animales no son permitidos en las huertas o áreas de empaque del granja. Trabajadores le avisaran al Empleador si hay pruebas de animales domesticados o salvajes en cualquiera de estas áreas.
 7. **Instalaciones De Empaque:** Trabajadores tienen que mantener todas las superficies de la línea de empaque limpias y en buenas condiciones. Las áreas serán bien mantenidas y desinfectadas. Material de empaque será mantenido en un área seca y en cumplimiento con protección contra bichos y ratones. Cualquier excremento de ratón o daño de bichos debe ser reportado a su supervisor.
 8. **Reglas De Higiene Personal En Lineas De Empaque:** Trabajadores tienen que amarrarse o taparse el pelo largo, doblarse las mangas de su camisa, mantener sus uñas cortas, no podrán usar esmalte, ni ponerse joyas, mascar chicle o mascar tabaco. Deben de lavarse las manos al inicio de producción, después de regresar del descanso, periodo de comida, o del baño. Trabajadores tienen que usar equipo y ropa de higiene como es requerido por el Empleador, y quitarse y guardar tales artículos en un área sanitaria designada cuando dejen el área de trabajo. Si guantes son requeridas, los Trabajadores tienen

[Employer Name], [Street Address], [City, State Zip], [Phone]

- 9. Storage Of Packed Produce:** Before packing produce into containers, Employees must inspect containers to assure good condition. Filled containers shall be tightly sealed, and if stored outside, must be tightly covered.
- 10. Access:** Entry to Employer's fields and facilities is limited to Employees and authorized personnel only. Entry by unknown persons must be reported immediately to your supervisor.

TRAINING PROVIDED

1. Food Safety
2. Personal Hygiene & Food Handling
3. Worker Safety

que usar guantes cuando estén trabajando en la línea de empaque, y tienen que quitarse los guantes antes del descanso, periodo de comida o uso del baño. Trabajadores tienen que usar el líquido higiénico para las manos antes de ponerse los guantes. Líquido higiénico para las manos no es un sustituto del requisito de lavarse las manos. Artículos personales del Trabajador no pueden ser guardados en áreas de empaque.

- 9. Almacenamiento De Producto Empacado:** Antes de empaquetar producto en un contenedor, los Trabajadores tienen que inspeccionar el contenedor para asegurarse que estén en buenas condiciones. Contenedores que estén llenos serán sellados y cubiertos si serán almacenados afuera.
- 10. Acceso:** Entrada a las huertas e instalaciones del Empleador está limitada únicamente a los Trabajadores y personal autorizada. Entrada por personas desconocidas tiene que ser reportada inmediatamente a su supervisor.

CAPACITACIÓN PROPORCIONADA

1. Seguridad Alimentaria
2. Higiene Personal & Manejo de Alimentos
3. Seguridad del Trabajador

[Employer Name], [Street Address], [City, State Zip], [Phone]

Name Employee #

Nombre Trabajador #

I have read, understand and agree to pages 1-_____ of the [Employer Name] Migrant, Seasonal and Agricultural Employment Document Packet; Work Agreement for H-2A Workers and Corresponding Workers.

He leído, entiendo y estoy de acuerdo con las páginas 1-_____ del [Employer Name] Paquete de Documentos de Empleo Temporal y Agrícola de Emigrantes; Acuerdo de Trabajo para Trabajadores H-2A y Trabajadores Correspondientes.

Signature Date

Firma Fecha

Name Employee #

Nombre Trabajador #

I have read, understand and agree to pages 1-_____ of the [Employer Name] Migrant, Seasonal and Agricultural Employment Document Packet; Work Agreement for H-2A Workers and Corresponding Workers.

He leído, entiendo y estoy de acuerdo con las páginas 1-_____ del [Employer Name] Paquete de Documentos de Empleo Temporal y Agrícola de Emigrantes; Acuerdo de Trabajo para Trabajadores H-2A y Trabajadores Correspondientes.

Signature Date

Firma Fecha



H-2A Recruitment Report

[Date]

U.S. Department of Labor
Employment & Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105

RECRUITMENT REPORT

Case No: [Case number]
Employer: [Employer name]

Dear Officer:

As set forth in the Notice of Acceptance dated [date of Notice of Acceptance], [Employer] submits the following recruitment report documenting [Employer] has met all the recruitment conditions required for participation in the H-2A Temporary Agricultural Workers Program.

Recruitment Process and Results

[Employer] engaged in recruitment which consisted of the following:

[List the name of each recruitment source]
[For example: Newspaper] [date of ad]

The name and contact information of each U.S. worker who applied or was referred to the job opportunity, and the disposition of each worker is stated below.

[U.S. Applicant Name], [U.S. Applicant Contact Information] [Hired/Not Hired][If not hired, lawful job-related reason why not hired]

All former U.S. employees required to be contacted by §655.153 were contacted by [mail/telephone].

Sincerely,

[Employer]



Former Employee Contact Letter

Sent Via Certified Mail with Return Receipt

[Date]

[Former Employee Name, Address]

Dear [Former Employee Name]:

The purpose of this letter is to offer you employment from [contract start date] to [contract end date]. You must be available to work the entire period. The hourly wage is \$11.49.

Please contact us within two days of receiving this letter if you will accept the position.

Sincerely,

Agricultural Employer

Interview Form

Agricultural Employer name: _____

Name and title of interviewer: _____

Name of applicant: _____

Applicant's phone number: _____

Date of interview: _____

The following are questions you can ask the applicant to determine if he/she meets the minimum requirements of the job order. You should ask if the applicant has reviewed the job order and have a copy of the ETA 790 at the interview.

Where did you hear about the job opening? _____

Have you reviewed a copy of the job order? ____ Yes ____ No

Requirements	Yes	No	Not Applicable / Comments
Are you available to work the days and hours specified in the job order?	____	____	_____
Are you willing and able to work for the entire contract period?	____	____	_____
Are you willing and able to work in adverse weather conditions for extended periods of time? <i>Discuss the details of the working conditions included in the job order.</i>	____	____	_____
This position is physically demanding. Do you meet the physical requirements of the position? <i>Discuss the specifics of the physical requirements included in the job order.</i>	____	____	_____

Agricultural Experience Requirement, if applicable:

Tell me how many months of experience you have in the following:

Type of agricultural experience (you should list specifics from your job order in each of the sections below, i.e. tomatoes, pruning, weeding, etc.)

Months of experience

Crops: _____ months

Crop activity: _____ months

Using hand tools: _____ months

Operating equipment: _____ months

What are the names and phone numbers of the employers where you gained the agricultural experience?

Other:

Discuss the terms and conditions included in the job order that were not covered in the above questions (i.e. house/camp rules; certification/licensing requirement; transportation, etc.).

The following should be completed by the interviewer once the interview is over.

Was this applicant hired for the position? Yes No

Did you contact the applicant's previous employer(s)? Yes No Date of contact: _____

If not hired, what are the lawful job-related reasons for not hiring the applicant? Check all that apply.

Applicant does not meet the following:

Physical requirement

Experience requirement

Unable to verify experience

Contract period

Work schedule

Certification/Licensing requirement

Other (specify): _____

Did you inform the applicant if he/she was not hired? Yes No Date of notification: _____

Notes:

Recruitment Log

Employer: _____ Date: _____

Method of Contact (check one):

Walk-in Telephone Communication from SWA Telephone Communication from Applicant

Written Communication from Applicant Other (specify): _____

Name of Applicant: _____ Phone Number of Applicant: _____

Address of Applicant: _____

Date of Initial Phone Call to Applicant: _____

Results of Initial Phone Call (scheduled interview, applicant declined position, etc.): _____

Date of Follow-Up Phone Call From: _____

Results of Follow-Up Phone Call: _____

Date of Interview with Applicant: _____

Results of Interview (check one).

Show either anticipated start date if Applicant was hired or lawful, job related reason for not hiring.

Hired Not hired Name of Interviewer: _____

Additional Comments/Change of Status (to be completed after intended start date): _____

Current Status of Applicant (check one).

Currently Employed Did Not Report Voluntarily Resigned Terminated Abandoned Employment

Other, please explain: _____

Date: _____ Explain: _____



Referral Applicant Log

Date _____

Applicant Name _____

Applicant Address _____

Applicant Phone Number _____

Source of Referral: (Walk-in, SWA, Telephone call from applicant, Other) _____

Date _____

Applicant Name _____

Applicant Address _____

Applicant Phone Number _____

Source of Referral: (Walk-in, SWA, Telephone call from applicant, Other) _____

Date _____

Applicant Name _____

Applicant Address _____

Applicant Phone Number _____

Source of Referral: (Walk-in, SWA, Telephone call from applicant, Other) _____

Date _____

Applicant Name _____

Applicant Address _____

Applicant Phone Number _____

Source of Referral: (Walk-in, SWA, Telephone call from applicant, Other) _____



Worker Agent Letter

[Agricultural Employer Name]
[Address]

To: [Worker Agent]
[Address]

PROHIBITED FEES

[Worker Agent name], a subcontractor of [H-2A Service Entity] is prohibited contractually from accepting or collecting fees from prospective employees as a condition of H-2A employment.

[Agricultural Employer] forbids and any agent or sub-agents from seeking or receiving payments or other compensation from prospective H-2A employees, except as permitted in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A).

Acknowledged by your signature below, you agree that prospective workers are not required to pay any fee other than those permitted in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A).

[Subcontractor Name]

Date: _____

Former Employee Log

Name of Former U.S. Worker	How Contact Was Made: (Phone, Email, Mail, In Person-include contact information)	Date(s) Contacted	Rehired? Yes / No
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			
_____	_____	_____	_____
Comments: _____			

Letter to DOL Notifying of H-2A/Corresponding Worker Termination

[Date]

*Sent via [U.S. mail] [facsimile: ATTN: H-2A Abandonment and Termination (312) 886-1688]
[email: TLC.Chicago@dol.gov "H-2A Abandonment/Termination Notice" in subject line]*

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification,
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105
ATTN: H-2A Abandonment and Termination

RE: [Employer Name, Address, Phone Number, Federal Employer Identification Number]; [H-2A Certification Case Number]

Dear Officer:

[Employer Name] is writing to inform Department of Labor that:

The following [# of workers] H-2A workers abandoned employment.

Name	Last known physical address (other than employer-housing)	Date of abandonment	Reason [left without notice/failed to report for work for 5 consecutive workdays without consent]
_____	_____	_____	_____
_____	_____	_____	_____

The following [# of workers] workers in corresponding employment abandoned employment.

Name	Last known physical address (other than employer-housing)	Date of abandonment	Reason [left without notice/failed to report for work for 5 consecutive workdays without consent]
_____	_____	_____	_____
_____	_____	_____	_____

The following [# of workers] H-2A workers were terminated for cause from employment.

Name	Last known physical address (other than employer-housing)	Date of abandonment	Reason [violation of specific work rule – list work rule]
_____	_____	_____	_____
_____	_____	_____	_____

The following [# of workers] workers in corresponding employment were terminated for cause from employment.

Name	Last known physical address (other than employer-housing)	Date of abandonment	Reason [violation of specific work rule – list work rule]
_____	_____	_____	_____
_____	_____	_____	_____

Sincerely,

[Employer]



Letter to USCIS Notifying H-2A Worker Termination

[Date]

Sent via [U.S. mail] [email to (CSC-X.H-2AAbs@dhs.gov)]

US Citizenship and Immigration Services
California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607-3004

RE: [Employer Name, Address, Phone Number, Employer Identification Number]; [Receipt Number of Approved Petition]

Dear Officer:

[Employer Name], the petitioner and employer, is submitting this letter as notification related to [H-2A Worker's full name].

[Choose one of the following reasons, delete others]

No show: [H-2A worker's full name] failed to report to work within 5 work days of the latter of [the employment start date on the H-2A petition OR the start date established by the employer]

Abscndment: [H-2A worker's full name] left without notice and failed to report for work for 5 consecutive workdays without consent

Termination: [H-2A worker's full name] was terminated prior to the completion of the H-2A labor or services for which [he/ she] was hired; or

Early Completion: [H-2A worker's full name] finished the labor or services for which [he/she] was hired more than 30 days earlier than the date specified in the H-2A petition.

[H-2A Worker's full name]'s complete information is as follows.

[H-2A Worker's full name]

[H-2A Worker's date of birth]

[H-2A Worker's place of birth]

[H-2A Worker's last known physical address]

[H-2A Worker's last known phone number]

[H-2A Worker's SSN or Visa]

Sincerely,

[Employer]

Resources

[H-2A Employer handbook including link to regulations](#)

[2014 Adverse Effect Wage Rates](#)

[List of SWAs by State](#)

[US DOL ICERT Visa Portal System](#)

[US DOL Temporary Agricultural Employment of Foreign Workers](#)

[Foreign Labor Certification Forms \(ETA 9142A and ETA 790\)](#)

[USCIS H-2A Temporary Agricultural Workers](#)

[Petition for a Nonimmigrant Worker \(Form I-129\)](#)

[Department of Labor Posters \(English & Spanish\)](#)

[IRS Guidance - Foreign Agricultural Workers](#)

