H-2A Agricultural Visa Workers

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U.S. Workers Rights under H-2A

- Employers may not offer better wages and working conditions H-2A than it offers to U.S. workers. 20 C.F.R. §655.122(a)—this includes the provision of free housing who migrate to the job.
- 2. Employers may not impose job restrictions or obligations on U.S. workers that it does not also impose on H-2A workers. 20 C.F.R. §655.122(a)
 - . Employers must provide Workers' Compensation insurance as required by state law or its equivalent (in states in which agricultural workers are not covered by workers' compensation). 20 C.F.R. §655.122(c)

U.S. Workers Rights under H-2A

- Employers must provide <u>free tools, supplies and equipment</u> needed to perform the job. 20 C.F.R. §655.122(f)
- MEALS: Employers must either provide each worker with three meals a day or furnish free and convenient kitchen facilities to the workers in which the workers may prepare their own meals. 20 C.F.R. §655.122(g)
 TRANSPORTATION: Employer shall provide transportation or reimburse the costs of inbound transportation and subsistence *en route* for any worker who completes 50% of the contract period. 20 C.F.R. §655.122(h)(1)
 - Domestic **U.S. workers must be hired** through first 50% of contract period.

RECRUITING WORKERS

BEFORE HIRING H2A WORKERS, EMPLOYERS MUST FIRST:

- A) <u>File a clearance order</u> through the interstate clearance system to find domestic workers . 20 C.F.R. §655.150(a).
- B) Place <u>newspaper advertisements</u> describing the job, wages and benefits in newspapers or radio as determined by the Certifying Officer. 20 C.F.R. §§655.151 and 152.
- C) <u>Contact former U.S. worker</u> employees by mail or other effective means. 20 C.F.R. §655.153.

H2A Workers Rights

- 3/4 Guarantee: The employer shall guarantee employment for at least threefourths of the workdays of the total contract period set out in the job offer/clearance order. 20 C.F.R. §655.122(i)(1).
- AWER: If paid by the hour, the amount shall be at least the Adverse Effect Wage Rate (AEWR), the prevailing wage, the federal or state minimum or the agreed-upon collective bargaining rate (whichever is highest). 20 C.F.R. §655.122(I) –in 2018, \$13.06 in Michigan.
- Arriaga protections: FLSA violation in first week if employer shifts costs to H-2A worker for recruitment, travel or visa fees. Arriaga v. Florida Pacific Farms, L.L.C., 305 F.3d 1228, 1236 (11th Cir. 2002)
- PAYROLL RECORDS: The employer must keep records including: field tally records; supporting payroll records; number of hours of work offered each day; hours actually worked each day; time worker began and ended each workday; rate of pay; worker's earnings per pay period; worker's home address; amount and reason for any deductions from worker's wages. 20 C.F.R. §655.122(j)

H2A Workers Rights

- The employer shall provide the worker with a contract with all terms and conditions of employment no later than the time at which the worker applies for a visa. 20 C.F.R. §655.122(q)
- Transportation and subsistence expenses. 20 C.F.R. §655.122(0)(2)— Employer must pay for transportation or reimbursement from recruitment site to work place AND if worker completes 100% of contract, transportation costs home.
 - Free housing, including family housing if that is prevailing practice
 - The **employer may not retaliate**, threaten, coerce, blacklist, discharge, or in any manner discriminate against anyone who has: Filed a complaint or exercised legal rights under or related to the H-2A provisions of the Immigration and Nationality Act (or regulations). 20 C.F.R. §655.135(h)(1)

H2A Rights & Responsibilities

- Eligible to obtain Social Security number and driver's license
- Eligible to enroll in Affordable Health Care
- Paying state and federal income taxes
- Immediate relatives are eligible for H4 derivative visas to come to the U.S.

Planning Outreach to H2A

- Find the H2A Job Order (ETA 790) on Icert or FLS website Review the Job Order
- When does the order start and end?
- How many workers were requested?
- Where is the housing located? Is this housing licensed appropriately? (may require cross checking with local housing agency)
- What type of work is required of workers? .
- Where is work located (multi-state work)? How many hours are workers promised?
- Are workers paid by hour or by piece rate?
- 3) Prepare to bring H2A specific information and be ready common "non-work" questions
 - Tax information
 - Health clinics
- Worker's compensation
- mmigration

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Más Garantias del Trabajo

Leves de protección de los pesticidar

El natrón no le nuede cobrar nor las

herramientas que necesita para trabaia

· Si sus derechos bajo del programa

deben contactar el Departamento del

H2A han sido violados, los trabajadores

Trabaio a 1-866-487-9243 o 1-313-226-

5549 (se habla escañol) o el estado de

Michigan a 1-269-657-7014 ext. 1254 (se

Servicios Legales Gratis Para Trabajadore

En Michigar worker Legal Serv 3030 South 9th Street Suite 1 alamazoo MI 4900

Agricolas

· El patrón debe proveer tres comidas (a

precio fijo) o derechos a cocina gratuita y

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Las Garantias del Pac Todos los trabajadores tienen los siquientes derechos:

- · Requisitos de sanidad en los campos · Recibir por lo menos \$12.02" por cada hora de trabajo en Michigan. La compensación para trabajadores Recibir pago por el tiempo que esperlastimados en el trabajo es garantizada. en el campo mientras que comie
- trabaiar · Si durante el día de trabajo, le da menos de 30 minutos para comer, el patrón debe pagarle por el tiempo
- · Recibir el pago establecido por lo menos dos veces al mes. Se debe papar 3/4 (tres cuartos) del
- total de horas establecidas en el contrato, siempre y cuando esté disponible para trabajar (aun si la cosecha no se da debido a las condiciones del mal tiempo). · Deducciones: Recibir un resumen de
- ganancias por escrito (talón de cheque) de los ingresos por cada periodo de 0900

Horas trabajadas en una semana:	Mi pago total po lo menos:		
30	\$360.60		
35	\$420.70		
40	\$480.80		

55

\$540.90	Telefono gratis: 1-800-968-404
\$601.00	En México:
\$661.10	Centro de los Derechos del Migranti
\$721.20	Zamora 169-4, Col. Condesa, C.
	México D.F., 06140
	Teléfono gratis:
	En México: 01 800 590 1773

disponible

habla español).

H-2A: SUS DERECHOS LABORALES



SERVICIOS LIGALES GRATIS PARA RABAJACORES AGRICOLAS Para el estado de Michigan



During Outreach to H2A: Issue Spotting

Risks Posed to U.S. workers:

- Wage theft
- Displacement by H-2A workers
- Discrimination race, gender, age, etc.
- Unsafe & unsanitary working conditions
- Unhealthy housing conditions
- Retaliation

"The growers only want single men with no families and the H-2A jobs make it worse."

-Testimony from a female farmworker to the Michigan Civil Rights Commission, quoted in A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan (2010).

Risks Posed to H-2A workers

- Wage Theft
- Unsafe & unsanitary working conditions
- Unhealthy housing conditions
- Visa Fraud
- Fraud in Foreign Labor Contracting
- Human trafficking
- Fear of not being re-hired encourages silence
- Often uncompensated for workrelated injuries due to state-to-state worker's compensation rules
- Retaliation

Example of Worker Visa



Image from Immigration law Services, Amigos Veracruzanos

<u>THE EMPLOYMENT CONTRACT</u> Job/Clearance Order – Form ETA 790---

U.S. Department Labor Employment and Training Administration

Agricultural and Food Processing Clearance Order ETA Form 799 Orden de Empleo para Obreros/Trabajadores Agricolas y Procesamiento de Alimento

E Control No. 12(6-01)

(Print or type in each field block - To include additional information, go to block # 28 - Pierce follow Shep-By-Step Instructions) (Parce de user lens de monte en la solicitud - Para incluir información addoenal vez el punto # 28 - Faron de seguir las instrucciones paso e pasol

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Employers must provide H-2 workers with a <u>written copy</u> of the job order with the terms and conditions of the job- in <u>a language understood by the</u> worker – by the time the worker applies for his or her visa. The H-2A work contract serves as a <u>legally binding</u> <u>employment contract</u> enforceable by either the U.S. Department of Labor or by the workers themselves in civil court.

20 C.F.R. §§ 655.20(I), and 655.122(q); 20 C.F.R. §§ 655.102(b)(14),

Potential Questions to ask H2A

- How many years have you worked as an H2A worker?
- Did you have to pay someone in your home country in order to receive this job?
- Did you receive your contract or work order before leaving your home country?
- Are you paid by hour or by piece rate?
- How many hours of work per week were you promised? How many hours per week are you currently working?
- Are there deductions being taken from your pay check?

Do you have free kitchen facilities or is your employer providing meals? How often do you get to go to the grocery store? Does your employer offer you transportation there?

Expect it to take time to build trust with H2A workers – return visits are important!

Labor Trafficking and H2A

Signs:

- O Confiscation of passport, visa, or other documents
- O Debt
- O Recruited through false promises concerning the nature and conditions of his/her work
- O Threats to family members in home country
- O Threatened or intimidated by an employer, supervisor, or recruiter
- Fear of employer, supervisor, or authorities

Contact local legal aid or the trafficking hotline - <u>National Human Trafficking</u> <u>Resource Center Hotline</u> at 1-888-373-7888 or text HELP to BeFree (233733)

Enforcing H-2A Workers' Rights

Federally funded legal aid programs can serve H-2A workers

- H-2A workers are protected by the Fair Labor Standards Act and state contract & employment laws
- The Department of Labor, Wage and Hour Division can enforce the H-2A protections

H-2A workers are not covered by AWPA (the Migrant and Seasonal Agricultural Worker Protection Act)

Potential H2A Outreach Partnerships

• Workforce Development and Foreign Labor Certification Office Can help connect domestic workers to H2A jobs, and Foreign Labor Certification officers can clarify questions about H2A job orders

 Migrant Education and Migrant Health Services
 Can be good "cover" for legal aid outreach workers to speak with H2A, if worried about retaliation

Other Farmworker Law Offices