

FY22 SWA Update - H-2A TFLC Program Webinar Q & A

Q. Does this program allow for recruitment for landscaping companies? I'm not sure "landscaping" falls under the umbrella of agriculture?

A. Landscaping will fall under H-2B however if the landscaping company has their own greenhouse/nursery they could apply for H-2A Temporary Foreign Labor depending on the job duties outlined in the job order.

Q. Do your employers share if they find the FLAG site helpful / user friendly?

A. We have received feedback indicating that the website has very useful information with the tutorials provided, and we have also received information indicating that there's too much information and individuals get overwhelmed with the amount of information. We encourage employers to contact the [Office of Foreign Labor Certification helpdesks](#) and/or the [H-2A](#) Ombudsman's Office for any technical assistance questions.

Q. How do you ensure former employees have been informed of the job before bringing in H-2A workers?

A. **Recruitment of U.S. Workers:** In order for the Department of Labor to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers, employers must demonstrate the need for a specific number of H2A workers. In addition to contacting certain former U.S. employees and coordinating recruitment activities through the appropriate State Workforce Agency, employers are required to engage in positive recruitment of U.S. workers. H-2A employers must provide employment to any qualified, eligible U.S. worker who applies for the job opportunity until 50 percent of the period of the work contract has elapsed. Employers must offer U.S. workers terms and working conditions which are not less favorable than those offered to H-2A workers. Employer must be able to prove that efforts to contact former employees was made.

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Q. Why is the pay rate so low? Since the pandemic we have local fast-food restaurants paying \$16.50 or more an hour.

A. As stated in federal regulations, an employer seeking to employ foreign workers under the H-2A program is required to offer, advertise in its recruitment, and pay a wage that is at least equal to the Adverse Effect Wage Rate (AEWR) when it is the highest applicable wage rate among the wage sources applicable to the employer's job opportunity. Michigan's current AEWR for Range Occupations (effective December 15, 2020) is \$1,727.75, and for Non-Range Occupations (effective February 23, 2021) is \$14.72 per hour. See the [AEWR](#) page on the USDOL website for more information.

Q. Are these temporary job opportunities or seasonal? Or both?

A. The job opportunities themselves must be “of a temporary or seasonal nature.”, not to last more than one year (12-month period), except in extraordinary circumstances.

However, due to a temporary final rule published by the U.S. Department of Homeland Security on December 18, 2020, the USCIS may grant H-2A classification for up to the period authorized on the temporary labor certification. H-2A classification may be extended for qualifying employment in increments of up to 1 year each. A new, valid temporary labor certification covering the requested time must accompany each extension request. The maximum period of stay in H-2A classification is 3 years.

Q. If a US worker is hired before the 50% point of the contract and does the job tasks listed in the job order- they should receive the wage rate and other benefits of the contract. Right?

A. Employers whose Application for Temporary Employment Certification has been certified by the OFLC *and where the U.S. worker is hired to perform work under the certified Agricultural Clearance Order*, the employer must offer U.S. workers terms and working conditions which are not less favorable than those offered to H-2A workers.

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