



November 24, 2009

RE: H-2B Educational and Outreach Materials

Dear _____ :

The Wage and Hour Division of the U.S. Department of Labor has enforcement responsibility to ensure H-2B workers are employed in compliance with H-2B labor certification requirements.

In order to assist you in complying with these requirements, the Wage and Hour Division is providing you with the following materials: an H-2B Fact Sheet and an H-2B worker information card summarizing employer obligations and employee rights under the H-2B program, as well as two sample letters to assist in your compliance with H-2B provisions of the Immigration and Nationality Act (INA) and 20 C.F.R. 655 Subpart A.

The first sample letter, "Requirements for H-2B Workers to Leave the U.S.," would fulfill your obligation to notify the H-2B workers of the requirement that, barring employment by a subsequent employer, they leave the U.S. at the end of the authorized period of stay provided by the Department of Homeland Security (DHS) or separation from the employer, whichever is earlier. The second sample letter, "H-2B Employee Separation," can be used to meet your obligation to notify the Department of Labor and the DHS of the separation from employment of any H-2B worker employed under an Application for Temporary Employment Certification (ETA Form 9142 with Appendix B), if such separation occurs prior to the end date specified in the Application. We remind you that, as a sponsoring employer of H-2B workers, you are obligated to comply with all the conditions to which you attested on the Application and to meet the conditions of the DHS Form I-129 Petition you filed.

For additional information about H-2B compliance, including fact sheets, opinion letters, FAQs, and other resources, please visit <http://www.dol.gov/esa/whd> or contact the Wage and Hour Division of the U.S. Department of Labor at 1-866-4USWAGE.

Sincerely,

U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue, NW
Room S-3510
Washington D.C. 20210

Fact Sheet #69: Requirements to Participate in the H-2B Program

The H-2B provisions of the Immigration and Nationality Act (INA) provide for the admission of nonimmigrants to the U.S. to perform temporary non-agricultural labor or services. [8 U.S.C. 1101(a)(15)(H)(ii)(b)]

The Wage and Hour Division (WHD) of the U.S. Department of Labor (Department) has been delegated enforcement responsibility to ensure H-2B workers are employed in compliance with H-2B labor certification requirements. This enforcement authority has been delegated by the Department of Homeland Security (DHS) pursuant to 8 U.S.C. 1184(c)(14)(B) and 8 U.S.C. 1103(a)(6). The Department's regulations implementing this authority became effective on January 18, 2009, and are applicable to applications for certifications filed on or after that date pursuant to 20 C.F.R. Part 655.

As part of the application process an employer seeking authorization to employ H-2B workers must attest that it:

Job Opportunity

1. Will offer terms and working conditions normal to U.S. workers similarly employed in the area of intended employment, which are no less favorable than those offered to H-2B workers. [20 C.F.R. § 655.22(a)]
2. Will offer a job opportunity to H-2B workers that is a bona fide, full-time temporary position with qualifications that are consistent with the normal and accepted qualifications required by non-H-2B employers in the same or comparable occupations. [20 C.F.R. § 655.22(h)]
3. Will truly and accurately state the dates of temporary need, reason for temporary need, and number of positions being requested for labor certification. [20 C.F.R. § 655.22(n)]

Strike/Lockout

Must not seek H-2B certification for a specific job opportunity that is vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage. [20 C.F.R. § 655.22(b)]

Recruiting

Has met recruiting requirements found in 20 C.F.R. § 655.15(d), which require the employer to:

- A. Obtain a prevailing wage determination from the National Processing Center;
- B. Submit a job order to the State Workforce Agency (SWA) serving the area of intended employment;
- C. Publish advertisements in compliance with 20 C.F.R. § 655.15(f);
- D. Contact the local union as a recruitment source if the employer is a party to a collective bargaining agreement governing the job classification that is the subject of the H-2B labor certification application.

U.S. Applicants

1. Will not reject U.S. applicants for the job opportunity for which the labor certification is sought for reasons other than lawful, job-related reasons. [20 C.F.R. § 655.22(c)]
2. Will retain records of all rejections of U.S. worker applicants for the job opportunity for which labor certification is sought. [20 C.F.R. § 655.22(c)]
3. Has not been successful in locating sufficient numbers of qualified U.S. applicants for the open job opportunity. [20 C.F.R. § 655.22(c)]

Other Laws

Will comply with applicable Federal, State, and local employment-related laws, including health and safety laws. [20 C.F.R. § 655.22(d)]

Wage Payments

1. Will offer and pay the H-2B worker no less than the highest of the prevailing wage, applicable Federal minimum wage, State minimum wage, or local minimum wage during the entire period of the approved H-2B labor certification [20 C.F.R. § 655.22(e)] which:
 - A. Is not based on commissions, bonuses or other incentives unless guaranteed and paid by the employer on a weekly, bi-weekly, or monthly basis; and
 - B. Does not include any deductions that would violate the Fair Labor Standards Act (FLSA) for an employer covered by the FLSA. [20 C.F.R. § 655.22(g)(1)]
2. Will make all deductions from the workers' paychecks that are required by law. [20 C.F.R. § 655.22(g)(1)]
3. Has contractually forbidden any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2B workers to seek or receive payments from prospective employees except as provided at 8 C.F.R. § 214.2(h)(5)(xi)(A) or as reimbursement for costs that are the responsibility of the worker, such as government required passport or visa fees. [20 C.F.R. § 655.22(g)(2)]
4. Has not, whether directly or through its attorney or agent, sought or received payment of any kind for an activity related to obtaining the labor certification, including payment of the employer's attorney's or agent's fees, H-2B application, or recruitment costs. [20 C.F.R. § 655.22(j)]

Layoffs

1. Has not laid off and will not lay off any similarly employed U.S. worker in the occupation for which the labor certification is sought:
 - A. In the area of intended employment within the period from 120 calendar days before the date of need through 120 calendar days after the date of need;
 - B. Except where the employer has offered the job opportunity for which the labor certification is sought to laid-off U.S. workers and such workers either refused the job opportunity or were rejected only for lawful, job-related reasons. [20 C.F.R. § 655.22(i)]

2. Will not place, if a job contractor, any H-2B worker with any other employer or at another employer's worksite unless:
 - A. The employer first makes a bona fide written inquiry as to whether the other employer has displaced or intends to displace any similarly employed U.S. workers within the area of intended employment within the period beginning 120 calendar days before through 120 calendar days after the date of need; and
 - B. The other employer provides written confirmation that it has not so displaced and does not intend to displace U.S. workers; and
 - C. All worksites are listed on the H-2B certification, including amendments or modifications. [20 C.F.R. § 655.22(k)]

Relocating

Will not place any H-2B worker outside the area of intended employment listed on the H-2B certification unless the employer has obtained a new temporary labor certification from the Department. [20 C.F.R. § 655.22(l)]

Notice

1. Will notify the Department and DHS in writing of the separation from employment of an H-2B worker, not later than two work days after such separation is discovered by the employer, if such separation occurs prior to the end date of the employment specified in the H-2B application. [20 C.F.R. § 655.22(f)]
2. Will notify the H-2B workers:
 - A. Of the requirement that they leave the U.S. at the end of the authorized period of stay provided by DHS or separation from the employer, whichever is earlier, absent any extension or change of such workers' status or grace period pursuant to DHS regulations; and
 - B. That the employer is liable for return transportation of the workers if the workers are dismissed before the end of the authorized period of stay. [20 C.F.R. § 655.22(m)]

Failure to meet any of these obligations may result in the assessment of civil money penalties, a recommendation that the employer be disqualified from approval from future petitions (debarment), reinstatement of displaced U.S. workers, payment of back wages owed to H-2B workers, and other legal or equitable remedies as the Administrator of the WHD determines to be appropriate.

The requirement listed above can be found in the Immigration and Nationality Act § 241, 8 U.S.C. § 1184, and 20 C.F.R. Part 655 Subpart A.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Insert Letterhead

Insert Date

To: U.S. Department of Labor
Employment Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW
Room C-4312
Washington, DC 20210

If the H-2B petition was approved by California Service Center:

U.S. Department of Homeland Security
California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607-3004
Email: CSC-X.H-2BAbs@dhs.gov

If the H-2B petition was approved by the Vermont Service Center:

U.S. Department of Homeland Security
Vermont Service Center
Attn: BCU ACD
63 Lower Welden Street
St. Albans, VT 05479
Email: VSC.H2BABS@dhs.gov

RE: H-2B Employee Separation

Dear Sir/Madam:

Pursuant to the Immigration and Nationality Act and 20 C.F.R. § 655.22(f), this letter provides notification that H-2B worker, **Employee Name**, who had been sponsored and employed by this firm, **Name of Firm**, has separated from employment.

The separation of employment of this H-2B worker has occurred prior to the end date of the period of employment specified in the application for Temporary Employment Certification (ETA Form 9142 with Appendix B). This discovery occurred within the last 48 hours.

Sincerely,

Signature block of person signing the letter

Insert Letterhead

Insert Date

Employee Name
Employee Address
City, State, Zip

RE: Requirements for H-2B Workers to Leave the U.S.

Dear Sir/Madam:

This letter is in reference to your temporary employment in the United States under the H-2B provisions of the Immigration and Nationality Act.

As your employer, **Name of Firm** is informing you that according to applicable regulations, you are required to leave the U.S. at the end of your authorized period of stay provided by the Department of Homeland Security (DHS) or at the time of your separation from **Name of Firm**, whichever is earlier. The date you are required to leave the U.S. may change given any extension or change of your status or grace period, according to DHS regulations.

Also, **Name of Firm** is legally responsible for your return transportation costs if you are dismissed before the end of your authorized period of stay.

A copy of the regulations can be found at the following web address:
http://www.access.gpo.gov/nara/cfr/waisidx_09/20cfr655_09.html . If you have additional questions, please contact the Wage and Hour Division of the U.S. Department of Labor at 1-866-4USWAGE or visit <http://www.dol.gov/esa/whd/>.

Sincerely,

Signature block of person signing the letter

cc: U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue, NW
Room S-3510
Washington, DC 20210



U.S. Department of Labor
Wage and Hour Division

This card provides a summary of information on protections and requirements for H-2B workers. If you would like more information call toll-free **1-866-4US WAGE (1-866-487-9243)** or visit our web site at **www.wagehour.dol.gov**.

Protections for H-2B Workers

NOTICE (cont'd)

- Your employer is required to notify the Department of Labor and the Department of Homeland Security in writing within two days upon discovering your separation from employment.

TRANSPORTATION:

- Your employer is required to provide return transportation to your home country if you are dismissed before the end of your authorized period of stay.

RECORDS:

- You should keep a record of the hours you work and the wages you are paid.

Legal Protections for H-2B Workers

Temporary non-immigrants who enter the United States as H-2B workers to perform non-agricultural labor and services have the following rights:

JOB OPPORTUNITY:

- Your employer must provide you a full-time temporary position.
- Your working conditions and terms must comply with all applicable Federal, State and local employment laws, including health and safety laws.

WAGES:

- You must be paid the higher of either the statutory minimum wage or the prevailing wage for the area of intended employment during your approved H-2B labor certification period.

ALLOWABLE DEDUCTIONS:

- Your employer must make all lawful deductions from your paychecks that are required by law (e.g., Federal and State taxes).

ILLEGAL DEDUCTIONS:

- Your employer may not require you to pay, either directly or indirectly, for anything related to obtaining the labor certification, including any part of the petition filing fee, the employer's attorneys' fees or agent fees, or recruitment costs.

NOTICE:

- Your employer may not place you outside the area of intended employment without obtaining a new temporary labor certification from the Department of Labor; and

(over)

NOTICE (cont'd)

- Your employer is required to notify the Department of Labor and the Department of Homeland Security in writing within two days upon discovering your separation from employment.

TRANSPORTATION:

- Your employer is required to provide return transportation to your home country if you are dismissed before the end of your authorized period of stay.

RECORDS:

- You should keep a record of the hours you work and the wages you are paid.