

## **Some Important H-2B Program Reminders (This is not an all-inclusive list)**

- ✚ Record Retention
  - As the employer, the regulations require that you retain certain documents pertaining to your H-2B application for 3 years from the date of certification to be presented to governmental agencies in the event of a request during an audit or other investigation. Click [here](#) for a detailed list.
- ✚ Disclosure of Job Order
  - The employer must provide a copy of the job order to all H-2B workers no later than when the worker applies for a visa if located abroad, and to corresponding workers no later than on the day work commences. The disclosure must be in a language understood by the workers.
- ✚ Required Department of Labor (DOL) Posters
  - The employer must post and maintain in a conspicuous location at the place of employment a DOL provided poster detailing H-2B and corresponding worker's rights and protections in English ([here](#)), and additional posters in languages common to a significant portion of the workers if they are not fluent in English. A copy of the Spanish version may be found [here](#).
- ✚ Separation of Workers (Contact FEWA for sample templates)
  - The employer will notify the DOL in writing of a separation that takes place before the certified end date of any H-2B, or corresponding worker(s) from employment. The employer must notify the DOL no later than 2 work days after separation is discovered by employer.
  - The employer must notify DHS of the separation of an H-2B worker.
  - Abandonment/abscondment is deemed to begin after a worker fails to report for scheduled work for 5 consecutive working days without the consent of the employer.
- ✚ Earnings Records and Statements
  - The employer must keep accurate earnings records for workers including records showing the nature, amount, and location of the work performed, number of hours offered (broken out by hours offered in three-fourths guarantee and those above it), hours actually worked, reasons for working less than offered hours, time worker began and ended each day, rate of pay, earnings per pay period, worker's home address (foreign address), and the amount and reason for any deductions or additions to wages.
  - The employer must supply the workers with a written earnings statement (pay stub) on or before each payday (at least every 2 weeks) containing the following information (See W&H Fact Sheet #78I [here](#)):
    - The worker's total earnings for each workweek in the pay period;
    - The worker's hourly rate and/or piece rate;
    - If piece rates are used, the daily units produced by the worker;
    - Itemized deductions made from the worker's wages;
    - For each workweek in the pay period, the hours of employment offered to the worker showing offers in accordance with the three-fourths guarantee.
    - Hours actually worked by the worker in each workweek of the pay period;
    - Beginning and ending dates of the pay period;
    - and Employer's name, address, and Federal Employer Identification Number (FEIN)
- ✚ Transportation and Visa Costs
  - The employer must pay or reimburse the worker in the first workweek for all visa, visa processing, border crossing and related fees. The employer must provide or reimburse the worker for transportation and subsistence costs from the place from which the worker has come to work for the employer to the place of employment if the worker completes 50 percent of the period of employment covered by the job order. FLSA requirements for reimbursement of

transportation costs within the first workweek, in as much as they reduce the wage below federal minimum wage, apply independently from this requirement. Outbound transportation and subsistence must be provided to workers who work until the end of the job order or who are dismissed before the end of the job order period. For more information click [here](#). As of March 21, 2018, the meal reimbursement rate for workers traveling is \$12.26 per day or \$51.00 per day with proper documentation of expenses. The most current rate may be found [here](#).

✚ **Supplies, Tools, and Equipment**

- The employer will provide to workers, without charge or deposit, all tools, supplies, and equipment required to perform the duties assigned.

✚ **Holding Documents**

- The employer is prohibited from holding, destroying, or confiscating worker's passports, visas, or other immigration documents.

✚ **Anti-Retaliation**

- The employer will not (and will not cause another person to) intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person who has filed a complaint, instituted or caused to be instituted any proceeding; testified or is about to testify; consulted with a worker's center, community, organization, labor union, legal assistance program, or attorney; or exercised or asserted on behalf of himself/herself or others any right or protection.

✚ **Layoff**

- The employer will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job related reasons and all H-2B workers are laid off first.

✚ **Arrival and Departure**

- While a worker may be granted an extra period of 10 days on his or her arrival/departure document, the worker may not work except during the validity period of the petition.

✚ **Three-Fourths Guarantee**

- The employer guarantees to offer the workers employment for a total number of work hours equal to at least three-fourths of the workdays in each 12-week period. Click [here](#) for more information.
- "In order to comply with the 2016 DOL Appropriations Act, the Department has removed references to these provisions from the Form ETA-9142B – Appendix B. However, the 2016 DOL Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any Fiscal Year 2016 funds to enforce them."

✚ **Corresponding Workers**

- Corresponding workers are non-H-2B workers that perform either substantially the same work included in the job order or substantially the same work performed by the H-2B workers (subject to certain exceptions). Corresponding workers are entitled to the same rights and benefits as H-2B workers. (See W&H Fact Sheet #78A [here](#)).
- "In order to comply with the 2016 DOL Appropriations Act, the Department has removed references to these provisions from the Form ETA-9142B – Appendix B. However, the 2016 DOL Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any Fiscal Year 2016 funds to enforce them."