

Hiring Workers Through the H-2A Visa Program

What is the H2-A visa program?

The H-2A temporary agricultural workers program – often called the H-2A visa program, is designed to allow US farm employers to bring foreign nationals into the United States to fill temporary agricultural jobs for which the employer cannot find sufficiently willing and qualified US workers to perform. In this way, it joins many other types of visas that allow foreign citizens to work in the United States.

Who can use this program?

Technically any farmer can use the program but that doesn't mean it's a good fit for everyone because it involves additional effort and costs. In terms of effort, farmers are responsible for recruiting and evaluating the candidates they want to hire. The H-2A visa is simply what makes it legal to hire them. Farmers will also need to have financial and other resources to meet the regulations. Importantly, labor costs are usually higher under H-2A. This is because the visa program carries additional regulatory expenses including a higher minimum wage, and paying for transportation to and from the worker's home country to the farm. The farm must also provide suitable housing to H-2A workers. Bottomline: this is not a money-saving strategy, but at the same time, many farms are quite fine with higher labor costs because without labor, crops and livestock won't get to market at all.

How does recruitment work?

Farmers have traditionally turned to industry associations, such as associations of fruit tree growers, for assistance with recruiting. In order to serve their members, associations have developed networks to be able to connect their members to resources that assist them with H-2A programs. Farmers are also able to turn to what are called H-2ALC or Labor Contractors, or also called Farm Labor Contractors or FLCs to recruit workers. FLCs are small business owners themselves who provide, for a fee, recruitment services. They may also provide assistance with paperwork, regulatory obligations, and communication with candidates. An alternative is for farmers to do their own recruitment, which can avoid human exploitation that can occur through FLC networks.

Human Rights Considerations

Because Farm Labor Contractors can control much of the worker's experience, a well-intentioned farmer may not even realize that their workers are being coerced, experiencing wage theft, and being trafficked against their will. If your contractor is distributing pay, deciding where workers live, what they eat, and where they work, then your workers are extremely vulnerable to human trafficking. Recruiters have significant influence over workers because

without them, workers cannot connect to these jobs. A solution to avoiding this is to do your own recruitment. If that's not possible, consider these best practices:

- Develop relationships with those who work for you, using Google translate or other resources to bridge language gap
- Help your workers set up bank accounts and get connected to resources– don't allow others to do that
- Research and get references on every person you work with to use the H-2A program
- Honor the dignity of those who use their bodies to help our farms survive and thrive

What do farm employers need to provide to H-2A workers?

The farm employer must provide the following to their H-2A workers:

- The cost of travel from their home country to the place of employment along with their return trip.
- Payment for all visa fees needed for an H-2A employee to work in the US.
- Pay per hour must be either the state minimum wage or the prevailing wage (AEWR), whichever is greater (note: a farm employer cannot pay the domestic workers less than what they pay H-2A workers).
- Workers' compensation, if not already providing it.
- Free, inspected/certified housing for all H-2A employees.
- Safe, insured transportation at least once per week to shopping destinations.
- Free, convenient access to kitchen and cooking facilities OR 3 meals a day charged at no more than \$14/day.

Application Tips

Applying for a H-2A visa requires a lot of preparation to be successful with the required paperwork. Just as many farmers and ranchers hire someone to help them with their taxes, filling out the necessary forms for the H-2A program is something to consider hiring an attorney for. Farmers can complete the paperwork themselves, and some do, but it's not for the faint of heart. Consider working with a professional if you are new to the process. The same goes for requesting an extension of the end date of an existing contract with H-2A workers. You can request a two week or longer extension (up to a year) but it really helps to work with a professional to give you the best chance of your request being approved.