

Labor Standards in Agriculture



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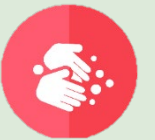
Agricultural Employers' Compliance Responsibilities



Fair Labor Standards Act



Migrant & Seasonal Agricultural Worker Protection Act



Field Sanitation



H-2A Temporary Agricultural Workers



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Fair Labor Standards Act (FLSA)



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Agriculture in the FLSA Topics

This portion of the presentation will include:

- Definitions of primary and secondary agriculture
- FLSA coverage
- Employment relationship
- Minimum wage and overtime
- Required records to be kept
- FLSA exemptions
- Joint employment
- Compliance principles
- Youth Employment



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Agriculture in the FLSA

Primary Meaning: Includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities

Secondary Meaning: Includes any practices that are performed either by a farmer or on a farm as a part of farming or directly related to the farming operations



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Coverage

Coverage refers to whether a business or worker is subject to the FLSA.

- **Covered** means subject to the Act.
- **Not Covered** means not subject to the Act.



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Two Types of Coverage

Enterprise Coverage

If an enterprise (business) is covered, all employees (unless specifically exempt) of the enterprise are entitled to FLSA protections.

Individual Coverage

Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections.



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Enterprise Coverage

The enterprise has:

- At least two (2) employees producing goods for interstate commerce; AND
- At least \$500,000 a year in gross receipts.

If these two conditions are met, then all employees are covered.



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Individual Coverage

Workers who are engaged in:

- Interstate commerce; or
- Production of goods for commerce; or
- Closely-related process or occupations directly essential to such production.



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Employment Relationship under the FLSA

- If a “farm labor contractor” is an employee:
 - All his/her workers are employees of the employer, and the employer must meet all FLSA obligations
- If a “farm labor contractor” is a bona-fide independent contractor:
 - WHD must consider whether the “employer” jointly employs the workers



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FLSA Minimum Wage

Minimum wage of \$7.25 per hour must be paid regardless of the payment method:

- Hourly
- Piece rate
- Job rate
- Day rate
- Salary



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FLSA Minimum Wage Example

Regular rate = wages earned divided by hours worked

Example:

300 boxes per week

\$1.25 per box

50 hours worked

$\$375 \div 50 \text{ hours} = \7.50 per hour



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Wage Credits

Board and lodging may be considered as wages if:

1. The credit does not exceed actual cost, and
2. The credit does not include a profit
3. The employer may not take a credit when no cost is incurred.



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Deductions Not Allowed

Deductions from pay not allowed if:

1. Deduction is for an item that is primarily for the employer's benefit
2. Deduction reduces the employee's earnings below FLSA minimum wage
3. Deduction is from overtime pay



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Overtime to be Paid

1½

Workers who are engaged in:

- Certain packing/processing plants where goods are processed for more than one farmer
- Retail operations off the farm (for example, nursery outlets)
- Reforestation work



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Exemptions



Employees covered by the FLSA can, in some instances, be exempt from certain requirements of the Act.



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FLSA Minimum Wage & Overtime Exempt

Wage requirements do not apply when:

- The employer did not use more than 500 man-days of agricultural labor in any calendar quarter in the preceding calendar year
- Worker is either the spouse, parent, child, brother, or sister of the owner
- A local hand harvest worker is paid a piece rate and worked fewer than 13 weeks in the last calendar year



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FLSA Overtime Exempt

- Workers employed solely in agriculture (as defined in the FLSA) need NOT be paid overtime.
- Examples include field workers, tractor operators, loaders, drivers, and farm office personnel.
- Overtime must be paid when an employee performs some work that is exempt and other work that is not exempt in the same workweek.



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FLSA Recordkeeping

Records that must be kept for each employee include:

- Name, address, and social security number
- Date of birth for anyone under age 19
- Hours worked per day and week
- Rate of pay
- Gross wages



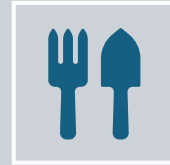
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Common Problems



Employees paid a piece rate may fall below the minimum wage



Deductions for tools, supplies, spoilage or breakage may bring employees below the minimum wage



Employees due overtime in weeks in which they pack produce from multiple farms



Employees due overtime in weeks in which they are engaged in retail duties



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Youth Employment



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Youth Employment in Agriculture

The standards for youth employment in agriculture differ from those for non-farm jobs.



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Minimum Age Standards in Agriculture



- **Age 16+** may work in any farm job at any time.
- **Ages 14 and 15** may work outside school hours in jobs not declared hazardous by the Secretary of Labor.
- **Ages 12 and 13** may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent.



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Minimum Age Standards in Agriculture, cont.

- **Under 12** may work outside of school hours in non-hazardous jobs with parental consent, but only on farms where none of the employees are subject to the minimum wage requirements of the FLSA.
- **Local youths 10 and 11** may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 if their employers have obtained special waivers from the Secretary of Labor.
- **Youths of any age** may work at any time in any job on a farm owned or operated by their parents.



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FLSA Notice of Workers' Rights

- Every employer employing any employee subject to the Fair Labor Standards Act must post an Employee Rights poster at its workplace.
- The poster displayed here is specific to agricultural employees.

EMPLOYEE RIGHTS
UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE
\$7.25 PER HOUR
BEGINNING JULY 24, 2009

AGRICULTURAL EMPLOYEES

MINIMUM WAGE The Fair Labor Standards Act requires the payment of the minimum wage listed above if you perform covered work for an employer who used more than 500 man-days of farm labor in any calendar quarter of the preceding year. A man-day means any day when an employee (except for a member of the employer's immediate family) does agricultural work for at least one hour.
Note: Under specific exemptions in the law, employers do not have to pay the minimum wage to the following:

- Members of the employer's immediate family;
- Local hand-harvest workers who are paid on a piece-rate basis and who worked fewer than 13 weeks in agriculture during the preceding calendar year;
- Migrant hand-harvest workers 16 and younger who are employed on the same farm as their parents and who receive the same piece rates as employees older than 16 working on the same farm;
- Workers mainly engaged in the range production of livestock.

CHILD LABOR At age 16, you may work at any time in any farm job, including those declared hazardous by the Secretary of Labor. At age 14, you may work in nonhazardous farm jobs outside school hours. Minors 12 and 13 years old may work outside school hours with written parental consent or on farms where a parent of the minor is employed, and those under 12 may work with parental consent outside school hours on farms not subject to the minimum wage. Although the FLSA authorizes the Secretary of Labor to issue waivers that would, under specified conditions, permit the employment of local minors 10 and 11 years of age to work outside school hours in the hand harvesting of crops, the Department has been enjoined from issuing such waivers since 1980.

PUMP AT WORK The FLSA requires employers to provide reasonable break time for a nursing employee to express breast milk for their nursing child for one year after the child's birth each time the employee needs to express breast milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Some state laws provide greater employee protections; employers must comply with both.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of the Labor.
- The law requires employers to display this poster where employees can readily see it.

The law requires employers to display this poster where employees can readily see it.

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FLSA Agriculture Compliance Assistance Materials

- Fair Labor Standards Act
- 29 CFR Part 780
- Fact Sheet #12 Agricultural Employers Under the Fair Labor Standards Act (FLSA)
- Fact Sheet #40 Federal Child Labor Laws in Farm Jobs



[FLSA](#)



[29 CFR Part 780](#)



[Fact Sheet #12](#)



[Fact Sheet #40](#)



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Migrant and Seasonal Agricultural Worker Protection Act (MSPA)



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MSPA Topics

This portion of the presentation will include:

- MSPA coverage
- Key terms (e.g., Agricultural Employer, Agricultural Association, Housing Provider)
- Named contracting activities
- MSPA exemptions
- Registration requirements
- Employment relationship
- Joint employment and joint responsibility



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Purpose of the MSPA

Protects migrant and seasonal agricultural workers by establishing standards for their employment.



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MSPA Agricultural Workers

Migrant Worker

- Engaged in agriculture on a temporary or seasonal basis
- Required to be away overnight from permanent residence

Seasonal Worker

- Engaged in agriculture on a temporary or seasonal basis
- **Not** required to stay overnight away from permanent residence (local resident)
- Engaged in field work or transported by day-haul



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MSPA Coverage

Statutory responsibilities exist for five categories of “persons”:

- Farm Labor Contractor (FLC)
- Agricultural Employer (AGER)
- Agricultural Association (AGAS)
- Housing Provider (HP)
- User



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MSPA Coverage and FLCs

Farm labor contractors (FLCs) are subject to MSPA if they perform any ONE of the following activities with a migrant or seasonal agricultural worker, *for any money or other valuable consideration* paid or promised to be paid:

Furnishing

Soliciting

Recruiting

Hiring

Employing

Transporting



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MSPA Coverage and AGERS and AGAS

Agricultural Employers (AGERS) and **Agricultural Associations (AGAS)** are subject to MSPA if they perform any ONE of the following activities with a migrant or seasonal agricultural worker:

Furnishing

Recruiting

Employing

Soliciting

Hiring

Transporting



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MSPA Coverage and Housing Providers



Persons not otherwise subject to the MSPA can be subject to the Act when they provide **housing** to migrant workers.



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MSPA Exemptions for Small and Family Businesses

Family Business Exemption

When the contracting activity is performed solely by the owner or another person who is an immediate family member of the owner.

Small Business Exemption

When the employer does not use more than 500 man-days in any calendar quarter of the previous calendar year.
Does NOT apply to FLCs.



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Other MSPA Exemptions

25 mile / 13 weeks

Any person (FLC or AGER) who engages in contracting activities within a 25-mile **intrastate** radius of his permanent residence and for not more than 13 weeks per year.

Custom Poultry

Non-migrant poultry workers employed in operations involving catching, breeding, debeaking, desexing or health services.



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Employment Relationship and MSPA



Determining whether the worker is an “employee” or an “independent contractor” under MSPA is critical because it affects who is ultimately responsible for compliance with the law.



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Employment Relationship and FLCs

If a “farm labor contractor” is an employee:

- All his/her workers are employees of the employer
- The employer must meet all MSPA obligations

If a “farm labor contractor” is a bona-fide independent contractor:

- He/she must meet all MSPA obligations
- WHD must consider whether the “employer” jointly employs the workers



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Who Must Register

NOT Required to Register

- Agricultural employers and their employees
- Agricultural associations and their employees

Required to Register*

- Farm Labor Contractors
- Farm Labor Contractor Employees

* **BEFORE** furnishing, recruiting, employing, soliciting, hiring, or transporting for a fee or other valuable consideration



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Registration Process

- Application for Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration ([Form WH-530](#))
- Additional information required for authorization to drive, house, or transport:
 - Forms are available on the WHD website
 - Registration office in San Francisco, CA



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Proof of Registration

- Must always carry the registration card
- Must present the card upon request
- All persons using the services of an FLC must ensure valid registration



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Disclosure Required



Every FLC, AGER, and AGAS must disclose information to migrant and seasonal agricultural workers.



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Methods of Disclosure

Employment conditions must be disclosed in the language of the worker and must be posted at the site of employment:

- **Migrant workers** must receive written disclosure at time of recruitment
- **Seasonal workers** must receive verbal disclosure at time of hire and must be provided written disclosure upon request



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Items to be Disclosed

- Rates of pay and other benefits
- Period of employment
- Place of employment
- Crops
- Workers' compensation
- Transportation arrangements
- Housing conditions



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Payroll Records

Information to be kept:

- Name, permanent address, and social security number
- Method of payment
- Number of hours and units (if piece rate)
- Total pay period earnings
- Deductions and purpose of sums withheld
- Net pay



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Wage Statement

Every payday, the employer must provide a wage statement that includes:

- Complete employee wage and payroll information
- Name and address of employer
- EIN or Social Security number of employer



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MSPA Notice of Workers' Rights

Each farm labor contractor, agricultural employer, and agricultural association subject to MSPA must place the poster in a conspicuous location at the jobsite.

Notice

Migrant and Seasonal Agricultural Worker Protection Act

This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment



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Payroll

- Pay the appropriate wage rate whether disclosed, promised, or contracted
- Pay not less than minimum wage or another legally obligated wage
 - H-2A, H-2B, SCA, etc.
- Pay at least semi-monthly
- Deposit and report taxes withheld



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Deductions from Wages

- Must be properly disclosed
- May not create a profit for the employer
- May only deduct for cigarettes or alcohol when the employer is properly licensed to sell those items



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MSPA Transportation



- Safe and properly insured vehicles
- Appropriate driver's license for the vehicle class
- Authorization to transport for FLC
- Authorization to drive for FLC/FLCE



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Joint Responsibility



Agricultural employers can be jointly responsible for transportation safety when they direct, request, or cause the transportation.



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Vehicle Safety

29 CFR 500.104 applies to:

- Passenger automobiles
- Station wagons
- Vans with 10 or fewer passengers
- Pick-up trucks with workers riding in the cab, and
- Trips of 75 miles or less for all other vehicles

29 CFR 500.105 generally applies to:

- Buses and day haul transportation for trips of more than 75 miles for certain vehicles



[Fact Sheet #50](#)



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Driver's License Required

Every driver must be properly licensed to operate the vehicle being used for transporting workers to be properly licensed, the driver must have:

- A valid, current driver's license
- A commercial driver's license (CDL) if required for the vehicle
- A doctor's certificate



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Insurance Requirements

All vehicles used for transporting agricultural workers must have proper insurance. The transporter must have either:

- Liability and property insurance
 - \$100,000 per seat
 - not to exceed \$5,000,000 per vehicle
- **OR** workers' compensation coverage in effect
 - with \$50,000 property damage
- **OR Option B:** Obtain a liability bond from a U.S. Department of Treasury approved “surety,” assuring payment for any liability up to \$500,000 for damages to persons or property



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Carpooling

The MSPA transportation requirements do not apply to bona fide **carpooling** arrangements.

A bona fide carpooling situation CANNOT exist if the FLC, FLCE, AGER or AGAS directs, requests, or participates in the arrangement of the carpool.



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Common Transportation Problems

- No fixed seats on vehicles
- Insufficient insurance
- Improper or no license for driver
- Vehicle safety problems - broken windshield, brake lights not working, bald tires, etc.
- Overloaded vehicle



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Housing Safety and Health



AGERs, FLCs, AGASs, and housing providers are responsible for housing safety and health when they own or control the property used to house migrant agricultural workers.



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Housing Safety and Health Requirements



- Pre-occupancy inspection must be obtained and posted.
- Terms and conditions of the housing must be posted at the housing site.
- Housing must meet applicable safety and health standards.



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Communicable Diseases

Communicable diseases must be reported to appropriate local health authorities:

- Report any individual with communicable disease
- Report any camp outbreak of illness



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MSPA Compliance Assistance Materials

- Fact Sheet #35: Joint Employment and Independent Contractors Under the MSPA
- Fact Sheet #49: The MSPA
- Fact Sheet #50: Transportation under the MSPA
- The Migrant and Seasonal Agricultural Worker Protection Act
- The Regulations at 29 CFR Part 500
- MSPA Poster

[Fact Sheet #35](#)

[Fact Sheet #49](#)

[Fact Sheet #50](#)

[MSPA](#)

[29 CFR Part 500](#)



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Field Sanitation Standards



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Field Sanitation Standards Topics

This portion of the presentation will include:

- Compliance principles
- Drinking water
- Toilet facilities
- Handwashing facilities
- Maintenance
- Reasonable use
- Employee notification
- State plan states



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Field Sanitation

- Facilities provided free of charge
- Drinking water available for entire work period
- Toilet and handwashing facilities provided when working more than 3 hours, including travel time



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Who Must Comply?



Agricultural establishments that employ 11 or more field hand-laborers on any one day during the previous 12 months must comply.



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Drinking Water



Drinking water must be:

- Readily accessible
- Potable
- Cool and in sufficient amounts
- Dispensed in single-use cups or fountains



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Toilet Facilities

- One facility for every 20 workers
- Within 1/4-mile walk
- Adequate toilet paper
- Sanitary, operational, and adequately ventilated
- Self-closing door with lock
- Pest and rodent-free



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Handwashing Facilities

- One facility for every 20 workers
- Located at toilet facility
- Potable water
- Soap and paper towels
- Kept sanitary
- Wastes disposed of



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Maintenance

Toilet unit must be operational.

Water containers must be constructed of materials that maintain water quality:

- Water replenished as necessary
- Containers regularly cleaned
- Containers free of foreign objects



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Employee Notification

- Location of water and toilet facilities
- Reasonable opportunity for use
- Wash hands before and after using toilet
- Wash hands before eating or smoking



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State Plan Jurisdiction

The Wage and Hour Division of the U.S. Department of Labor has enforcement authority under Field Sanitation except in those States and Puerto Rico which have Occupational Safety and Health Administration (OSHA) plans.



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State Plans (+ Puerto Rico)



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Compliance Assistance Materials



Field Sanitation Standards at 29
CFR 1928.110

[29 CFR Part 1928.110](#)



WHD Fact Sheet #51

[Fact Sheet #51](#)



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H-2A Provisions of the Immigration and National Act



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H-2A Visa Program Topics

This portion of the presentation will include:

- H-2A coverage
- Filing requirements
- Key H-2A definitions
- U.S. worker protections
- Written disclosure
- Required wages
- Recordkeeping
- Housing and meals
- Transportation
- Legal requirements



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Immigration & Nationality Act: H-2A Provisions



INA: Where there is a shortage of U.S. workers to perform temporary or seasonal agricultural labor or services, the H-2A program allows foreign agricultural workers to enter the country on a temporary basis under appropriate conditions.



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H-2A Responsibilities

The H-2A provisions of the INA are administered by the Employment and Training Administration (ETA) and the Wage and Hour Division (WHD) of the U.S. Department of Labor.



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ETA Responsibilities



ETA is responsible for issuing or denying temporary labor certifications.



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WHD Responsibilities

- WHD enforces the contractual obligations related to wages, transportation, meals, housing, and all other provisions of the work contract.
- WHD also enforces the U.S. worker recruitment requirement and provisions forbidding preferential treatment of H-2A workers.



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H-2A Applications

- Agricultural employers who anticipate a shortage of U.S. workers may file an application with ETA.
- The application must include a Job Order that explains the working conditions, pay, and benefits.



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Agency Responsibilities

- For information about ETA's responsibility, see [ETA Responsibilities](#).
- This presentation focuses primarily on Wage and Hour's responsibilities and related employer obligations.



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Types of Employers

- Fixed-site employer
- Agricultural association
- H-2A Labor Contractor (H-2ALC)



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Types of Workers

- H-2A workers
- Non-H-2A workers in corresponding employment
 - Workers in corresponding employment are those employed in any work included on the job order or engaged in any agricultural work that the H-2A workers also perform.



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Corresponding Employment



Corresponding workers may also be protected by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).



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Employer Obligations

- U.S. Worker Recruitment
- Disclosure
- Wage Requirements
- 3/4 Guarantee
- Housing Requirements
- Transportation
- Inbound and Outbound Expenses
- Meals
- Preferential Treatment
- Record Keeping



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U.S. Worker Recruitment

Before hiring H-2A workers, employers must:

- Contact former U.S. workers employed in the same occupation during the past year to solicit their return
- Maintain a report listing all U.S. workers who applied for the job, whether they were hired, and the lawful job-related reasons for any workers not hired, and
- Hire all able, willing, and qualified U.S. workers who apply during the recruitment period



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Disclosure of the Work Contract

Each worker must receive a copy of the work contract or a copy of the **job order** if no separate contract exists.

The work contract must include:

- Beginning/ending dates
- Conditions of employment
- Hours of work
- Rate(s) of Pay
- Crops



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Disclosure

- Disclosure must be in a language the worker understands, as necessary or reasonable.
- A copy of the work contract must be provided to H-2A workers no later than the time of visa application.
- A copy of the work contract must be provided to corresponding workers no later than the day work begins.



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Wage Requirements Under H-2A

- Employer must pay the higher of the applicable:
 - Adverse effect wage rate (AEWR)
 - Prevailing piece rate or hourly wage
 - Federal / State minimum wage
 - Agreed-upon Collective Bargaining rate
- Employer must pay no less often than semi-monthly (and more frequently if stated in the job order).
- Only deductions required by law or disclosed in the job order /work contract are permitted.



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Wage Requirements

When the worker is paid by a method other than an hourly rate, the worker must receive an average hourly rate that equals or exceeds the amount stated in the work contract.

If not, the employer must supplement the earnings so that the worker averages at least the stated hourly rate.



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$\frac{3}{4}$ Guarantee

- Employer must guarantee to offer employment for at least $\frac{3}{4}$ of the total hours promised in the work contract.
- Guarantee period begins on the first workday after the worker arrives at the place of employment (after beginning date of contract) and ends on the date the contract expires, including any extensions.
- Failure to meet this provision would require employer to supplement workers' pay to meet the $\frac{3}{4}$ guarantee.



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Housing Requirements Under H-2A

- Provided at no charge to the employee
- Certified before occupancy
- Maintained during occupancy to meet applicable safety and health standards



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Reporting Communicable Disease

Reporting communicable disease to appropriate local health authorities:

- Report any individual with communicable disease
- Report any outbreak of illness at the camp



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Meals

- The employer must either provide meals or provide cooking facilities.
- If meals are provided to H-2A workers, they must also be provided to corresponding workers on the same basis.
- If disclosed, the employer may charge the ETA-approved amount for the meals.



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Inbound Transportation



- The employer must pay no less than the most economical and reasonable common carrier transportation charges for the distance involved.
- Transportation begins at the place of recruitment, as stated in the job order.
- An employer must advance transportation and subsistence costs to corresponding workers when it is the prevailing practice, or when such benefits are extended to H-2A workers.
- The employer must provide transportation and subsistence costs to the worker, as indicated, once the worker has completed 50% of the work contract period.



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Outbound Transportation

If the worker completes the contract period, the employer must either provide or pay for transportation and subsistence:

- From living quarters to place of recruitment by most economical means, or
- From current employer to subsequent employer, absent agreement from new employer to pay

The employer must also pay the outbound transportation for any displaced H-2A workers.



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Daily Transportation

The employer must provide transportation between the workers' living quarters and the worksite at no cost to the workers.



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Transportation Safety

- All employer-provided transportation must comply with all applicable Federal, State, or local laws and regulations.
- At a minimum, this transportation must provide the same vehicle safety standards, driver licensure, and vehicle insurance required under 29 CFR 500.105 and 29 CFR 500.120-.128.



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No Preferential Treatment

- The employer's job offer to U.S. workers must include at least the same benefits, wages, and working conditions offered to H-2A workers.
- The job offer may not impose restrictions or obligations on U.S. workers that are not imposed on H-2A workers.
- The employer must provide employment to any qualified, eligible U.S. worker who applies during the applicable recruitment period.



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No Layoffs

- The employer must assure that there have been no layoffs of similarly employed U.S. workers within 60 days of the date of need, except for lawful, job-related reasons.
- If such a layoff has occurred, the employer must first offer the job opportunity to those laid-off U.S. workers before hiring any H-2A workers.



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Deductions From Pay

- Tools, equipment, and supplies required to perform the assigned duties must be provided at no charge.
- State Workers' Compensation Insurance or its equivalent must be provided at no cost, unless allowed by State law.



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Fees

Employers and their agents are prohibited from seeking or receiving payments from workers related to obtaining labor certification, including:

- Employer's attorney's fees and application fees
- All recruitment costs

All visa-related expenses must be paid by the employer.



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Area of Intended Employment

- H-2A workers may only work in the occupation and in the geographic location indicated on the Temporary Employment Certification.
- Employment of H-2A workers in an occupation or geographic area not listed on the TEC may result in underpayments.
- H-2A employers may not “lend” H-2A workers to other employers.



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Compliance with Other Laws

Employers must comply with all other applicable Federal, State, and local laws and regulations, including the prohibition against holding workers' passports or other immigration documents.



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Recordkeeping

The following earnings information must be maintained:

- Field tally records
- Number of hours offered/worked
- Beginning and ending times each workday
- Rate of pay
- Earnings per pay period
- Home address
- Deductions



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Pay Statements

The employer must provide each worker with a written earnings statement no later than each payday.

The earnings statement must include all required payroll information.



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H-2A Notice of Workers' Rights

- Post and maintain in a conspicuous location at the place(s) of employment
- Provided by the DOL in English
- If applicable, in any language common to a significant portion of the workers (if they are not fluent in English)

EMPLOYEE RIGHTS UNDER THE H-2A PROGRAM

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The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in agriculture (H-2A WORKERS) only if the employment of U.S. workers would not be adversely impacted. To ensure that U.S. workers are not adversely impacted, H-2A WORKERS and OTHER WORKERS employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the H-2A workers have the following rights:

DISCLOSURE

- To receive accurate, WRITTEN INFORMATION about the wages, hours, working conditions, and benefits of the employment being offered
- To receive this information prior to getting a visa and no later than on the first day of work
- To receive this information in a language understood by the worker

WAGES

- To be PAID at least twice per month at the rate stated in the work contract
- To be informed, in writing, of all DEDUCTIONS (not otherwise required by law) that will be made from the worker's paycheck
- To receive an itemized, written STATEMENT OF EARNINGS (pay stub) for each pay period
- To be guaranteed employment for at least THREE-FOURTHS (75%) of the total hours promised in the work contract

TRANSPORTATION

- To be provided or, upon completion of 50 percent of the work contract period, reimbursed for reasonable costs incurred to the place of employment for transportation and subsistence (lodging incurred on the employer's behalf and meals)
- Upon completion of the work contract, to be provided or paid for return transportation and subsistence
- For workers living in employer-provided housing, to be provided TRANSPORTATION, at no cost to the worker, between the housing and the worksite
- All employer-provided transportation must meet applicable safety standards, be properly insured, and be operated by licensed drivers

HOUSING

- For any worker who is not reasonably able to return to his/her residence within the same day, to be provided HOUSING AT NO COST
- Employer-provided housing must meet applicable safety standards
- Workers who live in employer-provided housing must be offered three meals per day at no more than a DOL-specified cost, or provided free and convenient cooking and kitchen facilities

ADDITIONAL PROVISIONS

- To be provided state WORKERS' COMPENSATION insurance or its equivalent
- To be provided, at no cost, all TOOLS, supplies, and equipment required to perform the assigned duties
- TO BE FREE FROM DISCRIMINATION or discharge for filing a complaint, testifying, or exercising your rights in any way or helping others to do so
- Employers MUST comply with all other applicable laws (including the prohibition against holding workers' passports or other immigration documents)
- Employers and their agents, including foreign recruiters, or anyone working on behalf of the employer, MUST NOT receive payment from any worker for any costs related to obtaining the H-2A certification (such as application and recruitment fees)
- Employers MUST display this poster where employees can readily see it
- Employers MUST NOT lay off or displace similarly employed U.S. workers within 60 days of the date of need for H-2A workers
- Employers MUST hire any eligible U.S. worker who applies during the first 50 percent of the approved work contract period

Workers who believe their rights under the program have been violated may file confidential complaints.



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Information on Application Process

Any office of the U.S. Department of Labor, Employment and Training Administration (ETA) can help interested parties with the H-2A application process.

ETA will specify who may apply, where to apply, and how to apply.

[Application Process](#)



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Compliance Assistance

- Immigration and Nationality Act
- The Regulations at 20 CFR Part 655 Subpart B and 29 CFR Part 501
- Fact Sheet #26 Section H-2A of the Immigration and Nationality Act
- Worker Rights Card
- Poster



[INA](#)



[29 CFR Part 501](#)



[20 CFR Part
655 Subpart B](#)



[Fact Sheet #26](#)



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Information on Enforcement

Any office of the U.S. Department of Labor, Wage and Hour Division can provide compliance assistance with the H-2A worker protection requirements.

[Local Offices](#)

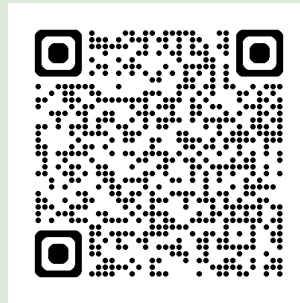


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