

## WHAT IS H-2A?

This brochure is for agricultural workers who work for farmers using the H-2A program.

The H-2A program permits agricultural employers from the United States to employ foreign workers. The workers do field labor on a temporary basis when there are not sufficient American workers available.

The H-2A workers have the obligation to return to their home country at the end of their employment in the U.S., which will not exceed one year.

## ABLE & LAWO

ABLE and LAWO provide free, high-quality legal assistance in civil matters, in order to assist low-income migrant workers and immigrants.

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# H-2A

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## YOUR LABOR RIGHTS

[2015]

### FREE LEGAL SERVICES

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## CONTRACT GUARANTEES

U.S. law allows agricultural employers to hire foreign workers on temporary H-2A visas if the employer can prove there is a shortage of U.S. workers. The employment protections available to these foreign H-2A workers also apply to U.S. workers who are employed on an H-2A work contract or by an H-2A employer in the same agricultural work as the foreign H-2A workers. All these workers have the following rights:

### WAGES

- In Ohio for 2015, to be paid an hourly wage of \$11.61 for:
  - Every hour you work
  - The time you wait in the field when you are ready to work
  - The time it takes to be transported between fields (but not the time to transport you between the housing and worksite)
  - Any lunch breaks taken during the working day that are less than 30 minutes long
- 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

### DISCLOSURES

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

### TRANSPORTATION

- To be reimbursed, upon completion of 50% of the work contract period, for transportation costs and meals from the place of recruitment to the place of work
- To be reimbursed, upon completion of 100% of the H-2A contract period, for transportation and meals back to the place of recruitment
- Both of these transportation costs can be either reimbursed or paid by the employer up front

- For workers living in employer-provided housing, the workers must be provided free transportation between the housing and worksite
- All employer-provided transportation must meet applicable safety standards, be properly insured, and be operated by licensed drivers

### HOUSING

- Free housing (except for U.S. workers whose residence is close to the worksite)
- 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 specified cost, or provided free and convenient cooking and kitchen facilities

### ADDITIONAL PROVISIONS

- Workers are eligible for state WORKERS' COMPENSATION insurance or its equivalent (compensation and medical benefits for injuries on the job)
- TOOLS, supplies, and equipment required to perform the assigned duties should be provided without cost to the worker

- 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, and the laws regarding proper pesticide use and field sanitation)
- 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 a poster about these rights 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% of the approved work contract period
- Workers who believe their rights under the program have been violated may file confidential complaints with the Department of Labor Wage and Hour Division or contact ABLE or LAWO

## IMPORTANT TAX INFORMATION FOR H-2A WORKERS

In late 2011, the Internal Revenue Service (IRS) issued guidelines on tax withholding and reporting for H-2A employers. These guidelines should make it easier for H-2A workers to comply with the requirement that they file a tax return. All H-2A workers who lived in the United States less than 183 days (approximately 6 months), but who earned more than \$3,950 in 2014 (nonresident aliens for tax purposes), are required to file a tax return. H-2A workers who work more than 183 days in a calendar year (resident alien for tax purposes), are required to file a tax return regardless of how much they earn.

H-2A workers who don't have a Social Security Number should go to their local Social Security office and complete the Form SS-5 in order to get one. Once an H-2A worker has a Social Security Number, he or she can complete an IRS Form W-4 and provide it to his or her employer so that the employer can withhold income tax on the wages that he or she earns. Under the new guidance, the employer then will be able to file a W-2 wage report with the IRS that shows the H-2A worker has paid taxes. The H-2A worker then can file a tax return and claim a refund for any tax overpaid and any refundable credits that he or she might be owed.

Here are some examples of how these guidelines apply:

### Example of a non-resident alien:

If a worker works 40 hours a week at \$11.61 per hour for 10 weeks, the amount earned equals \$4,644. Although the above worker only lived 10 weeks in the US, he or she is required to file income taxes because of earning more than \$3,950.

Most H-2 workers who must file as non-resident aliens will not owe taxes, but will have to get Individual Tax Identification Number (ITIN) for dependents in order to claim the exemptions that will reduce their tax obligation to zero.

**Example:** Jose files as a non-resident. He is married and has one child. He provides more than one-half of the support for his wife and child and they live in the home where he lives when they are in Mexico. He earned \$7,160 while in the United States. If he files as "married filing separately" (the only married category available to non-residents), and claims exemptions for himself, his wife, and his child, his exemptions will total \$11,850, more than his income, and he will owe no tax.

**Note: These are complicated tax issues. If you are an H-2A worker with questions about taxes or residency status (for tax purposes), we urge you to call LAWO or ABLE for a FREE tax consultation.**