



Understanding the Basics of The H-2A Temporary Agricultural Worker Program Resources

Statutes & Regulations

- Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq.
<https://www.law.cornell.edu/uscode/text/8/chapter-12>
 - 8 U.S.C § 1188, “Admission of temporary H-2A workers”
<https://www.law.cornell.edu/uscode/text/8/1188>
- 20 C.F.R. §§ 655.0-655.1319, “Temporary Employment of Foreign Workers in the U.S.”
<https://www.ecfr.gov/current/title-20/chapter-V/part-655?toc=1>
 - 20 CFR § 655 Subpart B, “Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers)”
<https://www.ecfr.gov/current/title-20/chapter-V/part-655/subpart-B>

Recent H-2A Rules & Resources

- 2024 New Rule: <https://www.federalregister.gov/documents/2024/04/29/2024-08333/improving-protections-for-workers-in-temporary-agricultural-employment-in-the-united-states>
 - Wage & Hour Division page: <https://www.dol.gov/agencies/whd/agriculture/h2a/final-rule>
 - Employment & Training Administration Foreign Labor Certification page: <https://www.dol.gov/agencies/eta/foreign-labor/farmworker-protection-final-rule>
 - DOL Farmworker Protection Final Rule Briefing (June 6, 2024)—PowerPoint
<https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Combined%20Agency%20FWP%20FR%20Briefing%20for%20Public%207.11.24%20Update%201.pdf>
 - DOL Farmworker Protection Final Rule Briefing (June 6, 2024)—Video
<https://www.dol.gov/sites/dolgov/files/ETA/oflc/media/Farmworker%20Protection%20Final%20Rule%20Demonstration%20of%20Form%20Changes%20in%20the%20FLAG%20System%208.21.24.mp4>
 - DOL Webinar Resources (June 6, 2024), AILA <https://www.aila.org/library/dol-invitation-to-a-webinar-on-2024-h-2a-farmworker-protection-final-rule>
- 2023 AEWR Methodology Rule <https://www.federalregister.gov/documents/2023/02/28/2023-03756/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>
 - DOL, 2023 H-2A Adverse Effect Wage Rate (AEWR) Final Rule FAQs (March 9, 2023)
https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/2023-AEWR-Final-Rule-FAQs_implementation_FINAL.pdf

Employer Materials

- DOL H-2A Program poster – Required for employers of workers on H-2A visas.
https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/WHd1491Eng_H2A.pdf
- DOL H-2A Program Flowchart <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A%20Flowchart%202.13.23.pdf>
- Nat’l Ag Law Ctr. Recordkeeping Self-Audit for H-2A Employers (Everhart, 2019)
<https://umaglaw.org/wp-content/uploads/2020/10/WHd-Self-Audit-draft-3302402305843009299264082-1.pdf>



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Agency Websites

- DOL ETA H-2A: <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>
- DOL WHD H-2A <https://www.dol.gov/agencies/whd/agriculture/h2a>
- DOL Foreign Labor Application Gateway (FLAG) H-2A <https://flag.dol.gov/programs/h-2a>
- USCIS H-2A page: <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>
- USCIS H-2A Employer Data Hub <https://www.uscis.gov/tools/reports-and-studies/h-2a-employer-data-hub>
- USCIS Handbook for Employers: Evidence of Employment Authorization for Certain Categories: H-2A <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/70-evidence-of-employment-authorization-for-certain-categories/76-h-2a-temporary-agricultural-worker-program>
- DHS H-2A <https://www.dhs.gov/h-2a-temporary-agricultural-worker-program>
- Dept. State Temporary Worker Visas <https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html>
- USDA H-2A <https://www.farmers.gov/working-with-us/h2a-visa-program>
- IRS: Foreign agricultural workers on H-2A visas <https://www.irs.gov/individuals/international-taxpayers/foreign-agricultural-workers>

WHD Fact Sheets

- #26: Section H-2A of the Immigration and Nationality Act (INA) <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>
- #26A: Recruitment Requirements under the H-2A Visa Program <https://www.dol.gov/agencies/whd/fact-sheets/26a-recruitment-requirements-H-2A>
- #26B: Disclosure of Job Order and Notice of Worker Rights under the H-2A Visa Program <https://www.dol.gov/agencies/whd/fact-sheets/26b-disclosure-job-order-notice-H-2A>
- #26C: Records Retention Requirements under the H-2A Program <https://www.dol.gov/agencies/whd/fact-sheets/26c-records-retention-requirements-H-2A>
- #26D: Meal Obligations for H-2A Employers <https://www.dol.gov/agencies/whd/fact-sheets/26d-meal-obligations-H-2A>
- #26E: Job Hours and the Three-Fourths Guarantee under the H-2A Program <https://www.dol.gov/agencies/whd/fact-sheets/26e-job-hours-three-fourths-guarantee-H-2A>
- #26F: Wage Requirements under the H-2A Visa Program <https://www.dol.gov/agencies/whd/fact-sheets/26f-wage-requirements-H-2A>
- #26G: H-2A Housing Standards for Rental and Public Accommodations <https://www.dol.gov/agencies/whd/fact-sheets/26g-housing-standards-for-rental-and-public-accommodations-H-2A>
- #26H: H-2A Labor Contractor (H-2ALC) Surety Bonds <https://www.dol.gov/agencies/whd/fact-sheets/26h-h2a-labor-contractor-surety-bonds>
- #77D: Retaliation Prohibited under the H-2A Temporary Visa Program <https://www.dol.gov/agencies/whd/fact-sheets/77d-h2a-prohibiting-retaliation>



Understanding the Basics of The H-2A Temporary Agricultural Worker Program Resources

Related *Understanding Agricultural Law* Presentations

- Understanding the Basics of the Fair Labor Standards Act
<https://aglaw.psu.edu/event/understanding-the-basics-of-the-fair-labor-standards-act/>
- Understanding the Basics of Agricultural Labor Laws
<https://aglaw.psu.edu/event/understanding-the-basics-of-agricultural-labor-laws/>

CRS, USDA ERS Reports

- CRS Report H-2A and H-2B Temporary Worker Visas: Policy and Related Issues
<https://crsreports.congress.gov/product/pdf/R/R44849> May 2023
- Adverse Effect Wage Rate (AEWR) Methodology for Temporary Employment of H-2A Nonimmigrants in the United States
<https://crsreports.congress.gov/product/pdf/IF/IF12408>
- Measuring Wages in the Agricultural Sector for the H-2A Visa Program
<https://crsreports.congress.gov/product/pdf/R/R47944/2>
- USDA ERS Bulletin, The H-2A Temporary Agricultural Worker Program in 2020
<https://www.ers.usda.gov/publications/pub-details/?pubid=104605>

Selected Articles from the National Agricultural Law Center

- Department of Labor Finalizes New H-2A Regulations, Samantha Capaldo (May 16, 2024)
<https://nationalaglawcenter.org/department-of-labor-finalizes-new-h-2a-regulations/>
- Federal Bills Propose Changes to the H-2A Program, Samantha Capaldo (April 18, 2024)
<https://nationalaglawcenter.org/federal-bills-propose-changes-to-the-h-2a-program/>
- Challenges to the 2023 U.S. Department of Labor H-2A AEWR Methodology Rule, Samantha Capaldo (Jan. 25, 2024)
<https://nationalaglawcenter.org/challenges-to-the-2023-u-s-department-of-labor-h-2a-aewr-methodology-rule/>
- DOL, DHS, and USDA Launch New Proposed Rules and Initiatives Affecting H-2 Programs, Samantha Capaldo (Oct. 5, 2023)
<https://nationalaglawcenter.org/dol-dhs-and-usda-launch-new-proposed-rules-and-initiatives-affecting-h-2-programs/>
- Rights of H-2A Workers, Samantha Mikolajczyk (April 21, 2022)
<https://nationalaglawcenter.org/rights-of-h-2a-workers/>



Understanding the Basics of The H-2A Temporary Agricultural Worker Program Resources

Selected Case Law Selected Case Law (summaries provided by the National Agricultural Law Center)

See also NALC's *Agricultural Labor Case Law Index (January 1, 1990 – September 22, 2023)*

<https://nationalaglawcenter.org/aglaw-reporter/case-law-index/labor/>

Maine Forest Products Council v. Cormier, 51 F.4th 1 (1st Cir. 2022) (federal H-2A program preempted Maine law) https://scholar.google.com/scholar_case?case=10314924484894195672&q

Villalobos v. N. C. Growers Ass'n, Inc., 42 F.Supp.2d 131 (D. P.R. 1999) (AWPA and treatment of H-2A workers) https://scholar.google.com/scholar_case?case=15263667946315841540&q

Blake v. H-2A and H-2B Voluntary Employees' Beneficiary Ass'n, 952 F.Supp. 927 (D. Conn. 1997) (ERISA) http://scholar.google.com/scholar_case?case=11285125547160226409&q

Sun Valley Orchards, LLC v. U.S. Dept. of Labor, 2023 WL 4784204 (D.N.J. July 27, 2023) (violations of H-2A program requirements) https://scholar.google.com/scholar_case?case=12754145657028308134&q

Reyes-Gaona v. N.C. Growers Ass'n, 250 F.3d 861 (4th Cir. 2001) (Age Discrimination Employment Act does not apply to hiring H-2A workers outside the United States) https://scholar.google.com/scholar_case?case=10654287068307531999&q

Tijerina-Salazar v. Venegas, 2022 WL 1927007 (W.D. Tex. June 3, 2022) (alleges H-2A visa fraud and failure to pay appropriate wages) https://scholar.google.com/scholar_case?case=12200908170972902822&q

Martinez v. Reich, 934 F.Supp. 232 (S.D. Tex. 1996) (whether tree planters are agriculture workers for purposes of H-2A program) http://scholar.google.com/scholar_case?case=2509036001047087277&q

Elizondo v. Podgorniak, 100 F.Supp.2d 459 (E.D. Mich. 2000) ("job offer" for H-2A workers and OSHA) https://scholar.google.com/scholar_case?case=1282078481669179302&q

Perez-Benites v. Candy Brand, LLC, No. 07-CV-1048, 2010 WL 1250874 (W.D. Ark. Mar. 23, 2010) (H-2A workers; violation of uniform employment contract) https://scholar.google.com/scholar_case?case=4147489439868087388&q

Cordero v. Stemlit Ag Services, LLC, 2023 WL 4877417 (E.D. Wash. July 31, 2023) (alleging breach of contract for imposing production standards in violation of H-2A contracts) https://scholar.google.com/scholar_case?case=8142287817699806648&q

Sarmiento v. Fresh Harvest, Inc., 2021 WL 5632578 (N.D. Cal. 2021) (right to receive prevailing wages under H-2A visa program) <https://casetext.com/case/sarmiento-v-fresh-harvest-inc-3>

Torres v. Mercer Canyons Inc., 835 F.3d 1125 (9th Cir. 2016) (alleging that operator failed to inform them of availability and pay rate of H-2A work in violation of AWPA) https://scholar.google.com/scholar_case?case=1438259361676545018&q

Ojeda-Sanchez v. Bland Farms, No. 608CV096, 2010 WL 3282984 (S.D. Ga. Aug. 18, 2010) (claim of inadequate compensation by H-2A guest workers) https://scholar.google.com/scholar_case?case=516144971106662199&q