



This presentation is not legal advice. AgWorks H2, LLC is not a law firm and does not give legal advice. The information and materials are meant to bring certain topics to your attention only. Please consult an attorney for legal advice.

## AgWorks

- Has been helping employers navigate the H-2A program since 1998
- Helps hundreds of seasonal employers bring over 15,000 temporary foreign workers to fill vacant jobs each year
- Takes a compliance based approach to help employers gain necessary approvals and pass Wage and Hour audits



## Avoid the Program Pitfalls - Seasonality

- Single orders that exceed 10 months
- Related employers that file multiple orders that together exceed 10 months in a growing region
- Occupations that could utilize workers for more than 10 months
  - Nursery/Greenhouse
  - Construction
  - Dairy
- Changes in dates of need that present a need of more than 10 months over a series of years
  - Consistent off season
- Changes in period of need less than 10 months



## Avoid the Program Pitfalls – FLC

- New FLC Registration Forms
- All duties must qualify as agricultural under allowable definitions for H2A
- All duties must be listed in the job order
- All locations must be listed in the job order and within one commuting area
- Joint Employment with fixed site grower
- Work Contract/Agreement



## Avoid the Program Pitfalls – U.S. Recruitment

- Hire all U.S. workers that are qualified, willing, and able to do the job
- If a U.S. referral from the State or applicant is not qualified or declines the work, write it down.
- Reach out to former workers to see if they want to return to the job
- If all of your jobs are full with H-2A and U.S. workers and more workers apply, do not tell applicants that you are not hiring. There is a provision to displace the H-2As.
- Keep everything on your recruitment log.



## Avoid the Program Pitfalls - Wages

- Watch for AEWL increase and increase pay on the correct date
- Pay prevailing rate if notified by SWA
- Ensure piece rate earnings are equivalent to or higher than AEWL
- You can offer and pay more than the AEWL only if you list it in your work contract.
- Know what to include in hours worked
  - Rest Breaks
  - Vehicle inspections
  - Loading equipment
  - Engaged to wait
- Carefully consider before including a combination of occupations in one order.



## Avoid the Program Pitfalls – Pay Statement

- Includes all required information
- Given to the workers every pay day
- Copies kept and available during investigation
- Deductions itemized on statement and disclosed in job order
- Pay increases and/or bonuses disclosed
- Everything does not have to be on one piece of paper.



## Avoid the Program Pitfalls – Transportation and Housing

- All drivers transporting workers have proper valid license
- All drivers transporting workers have valid doctor's certificate
- All vehicles provided by employer to transport workers have valid inspection and insurance
- Transportation provided at no cost
  - From and to employer provided housing
  - Between worksites
  - To town to buy groceries, cash checks, etc.
- One seat per worker
- Housing is on Job Order, or subsequently approved by SWA/DOL
- Housing continues to meet standards during contract period
- Housing is offered to all eligible (non-local) workers at no cost to worker
- One bed per worker



## Avoid the Program Pitfalls - Reimbursement

- Workers are reimbursed for travel expenses to and from place of employment
  - Bus tickets/Airline tickets
  - Land border fees
  - Meals while traveling
  - Lodging while traveling
  - Taxi to and from appointment
- Employer pays for or reimburses visa and visa related fees



## Avoid the Program Pitfalls - Disclosure

- Terms and Conditions must be given to worker in a language understood by worker
- Changes in terms and conditions
  - Housing
  - Wages
  - Dates (extension/delay)



## Avoid the Program Pitfalls – Prohibited Fees

- Employers must contractually prohibit charging of prohibited fees
- Employers must disclose any third parties involved in the recruitment process to DHS on the I-129
- Employers must report instances where fees were charged to DHS within 48 hours
- Pay your foreign worker recruiter for their services – nothing is free.
- Ask workers on arrival if anyone has charged them any fees and what for.



## Avoid the Program Pitfalls – Reporting

- Employers must report workers that don't show up for work
  - Employers must report workers that quit with or without notice
  - Employers must report workers that complete the contract early
  - Employers must report workers that are terminated
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- $\frac{3}{4}$  Guarantee
  - DHS Fine
  - Make whole relief



## Avoid the Program Pitfalls – Field Sanitation

- Potable water (available to all workers)
  - Cups (single use)
  - Covered and clean
- Toilet facilities (1 per 20 workers)
  - Ventilated, screened, self-closing doors with inside latch for privacy
  - Located within  $\frac{1}{4}$  mile walk
  - Clean and sanitary
- Hand washing facilities (1 per 20)
  - Located within  $\frac{1}{4}$  mile walk
  - Close to toilet facility
  - Clean and sanitary



## Avoid the Program Pitfalls – Terms and Conditions

- Hours listed must be within 20% of what is offered/worked
- Terms and Conditions must be reasonable based on prevailing practices
- Only minimum requirements needed to do the job allowed
- Changes must be approved and disclosed
- No discouragement of US applicants



## Useful Links

- Review the instructions for the ETA Form 790 at the following link:  
<https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA-790-790A%20General%20Instructions.pdf>
- Review the Agricultural Employment Practice Survey Library at:  
[https://www.foreignlaborcert.doleta.gov/aowl\\_survey\\_pdf.cfm](https://www.foreignlaborcert.doleta.gov/aowl_survey_pdf.cfm)
- Review the OSHA Housing standards at:  
<https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142>
- Review the Agricultural Online Wage Library at:  
<https://www.foreignlaborcert.doleta.gov/aowl.cfm>
- Review the instructions for the ETA Form 9142 at the following link:  
[https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA\\_Form\\_9142A\\_General\\_Instructions\\_7369.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA_Form_9142A_General_Instructions_7369.pdf)
- Review the instructions for the I-129 Form at:  
<https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf>
- Review the optional checklist for H-2A I-129 Filings at:  
<https://www.uscis.gov/sites/default/files/document/forms/m-1097.pdf>
- Review the form details for the I-129 form including the edition date, where to file, filing fee, checklist of required initial evidence, and special instructions at:  
<https://www.uscis.gov/i-129>
- AEWR  
<https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/AEWR-webpage-instructions.pdf>
- Seasonal Jobs  
<https://seasonaljobs.dol.gov/>
- Proposed USCIS Form Update  
<https://www.federalregister.gov/documents/2021/08/18/2021-17724/agency-information-collection-activities-new-collection-petition-for-a-nonimmigrant-worker-h-1>





Thank you!  
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