



## **The H-2A Temporary Agricultural Guestworker Program**

### **What is the H-2A program?**

The H-2A program, formerly known as the H-2 program, allows agricultural employers to bring in foreign workers for temporary or seasonal agricultural work when they can demonstrate that they have tried and are unable to find domestic workers to fill their labor needs.

Through a Department of Labor certification process, employers must show that

- (1) There are not enough U.S. workers who are “able, willing, qualified and available to perform work at the place and time needed” and
- (2) The wages and working conditions of workers in the United States will not be “adversely affected” by the importation of guest workers

The H-2A program is primarily overseen by the U.S. Department of Labor (DOL). The U.S. Department of Homeland Security (DHS) and the State Department also play a role. USCIS must approve the employer’s petition for nonimmigrant workers and workers must apply for their visas with the U.S. Department of State at a U.S. embassy or consulate abroad. Finally, U.S. Customs and Border Protection must admit the workers to the United States.

*H-2A guestworkers are temporary non-immigrant workers* – they are allowed in the U.S. only for a limited period of time and can only work for the employer who requested their visa. Their status in the United States is tied to their employer. Once their work season has ended, they must return home.

### **H-2A program vs. H-2B program**

The Immigration Reform and Control Act (IRCA) of 1986 separated the H-2 guestworker program into two temporary worker programs: H-2A for agricultural workers and H-2B for all other non-agricultural workers (both skilled and unskilled).

### **Who are H-2A guestworkers?**

Most H-2A guestworkers are young men between the ages of 18 and 35.<sup>1</sup> In 2010, 93.6% of H-2A visas were issued to Mexican citizens, though there are a number of H-2A guestworkers from the Caribbean and other countries.<sup>2</sup> H-2A guestworkers only make up a small percentage of the U.S agricultural workforce (approx. 80,000 of an estimated 2-2.5 million agricultural workers).<sup>3</sup>

## Where are H-2A guestworkers?

The largest number of certified H-2A guestworkers is in North Carolina. Other states with large numbers of H-2A guestworkers are Florida, Georgia and Louisiana.<sup>4</sup>

## What protections are available to workers under the H-2A program?

- Wages – Must be at least the highest of either (a) the local labor market’s “prevailing wage” as determined by DOL and state agencies; (b) the state or federal minimum wage, or (c) the “adverse effect wage rate” (AEWR) – an hourly wage determined by the DOL for each state. In most cases, the AEWR is the highest rate.
- Recruitment – Requires employers to use the Interstate Employment Service system (a joint system of the federal government and state workforce agencies) and other private-market methods to recruit U.S. workers. There are specific rules governing job qualifications and requirements that are intended to protect U.S. workers by prohibiting H-2A employers from requiring unusual job qualifications.
- “Fifty Percent Rule” – Requires employers to hire any qualified U.S. worker who applies until one-half of the season has ended.
- Housing and subsistence – Housing must be provided at no cost to all guestworkers and to U.S. workers who are not within commuting distance and must meet federal and state safety standards. Employers must also either provide three meals a day (at a cost to the worker) or convenient cooking and kitchen facilities.
- Transportation – Workers who complete half the season must be reimbursed for transportation costs associated to traveling to their place of employment. Those workers who complete the full season must also be paid for their transportation costs of returning home
- Workers Compensation – Must be provided by the employer for all occupation-related injuries. Health insurance for non-work related illness is not required
- “Three-Fourths Work Guarantee Rule” – H-2A employers must offer workers at least three-fourths of the number of working hours outlined in the guestworker contract or pay wages for any shortfall.

For more information on the H-2A provisions see, <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>

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<sup>1</sup> FJ analysis of data from Global Workers Justice Alliance, “FY 2010 H-2A Visa Issuances,” data provided on request by U.S. Department of State, online at: [http://www.globalworkers.org/PDF/dos\\_niv\\_fy2010\\_h2a.pdf](http://www.globalworkers.org/PDF/dos_niv_fy2010_h2a.pdf)

<sup>2</sup> FJ analysis of data from U.S. Department of State, FY 2010 Non-Immigrant Visa Table, online at: <http://www.travel.state.gov/xls/FY10NIVDetailTable.xls>

<sup>3</sup> “Fact Sheet: The H-2A Agricultural Guestworker Program,” Farmworker Justice (2 September 2011), online at <http://www.farmworkerjustice.org/guestworker-programs/h-2a/81-resources-on-the-h-2a-guestworker-program>

<sup>4</sup> “H-2A Temporary Agricultural Visa Program: FY 2011 Statistics”, U.S. Department of Labor, [http://www.foreignlaborcert.doleta.gov/pdf/h\\_2a\\_selected\\_statistics.pdf](http://www.foreignlaborcert.doleta.gov/pdf/h_2a_selected_statistics.pdf)