



2008-9 H-2A Document 1 © 2003 - 9 (printed 3:56 PM 1/19/2009)

This document is intended to comply with revised H-2A regulations which are effective January 17, 2009.

H-2A PROGRAM OVERVIEW

The H-2A program is the only legal non-immigrant temporary seasonal foreign worker visa program for agricultural employers.

Workers may be employed for seasons extending from six weeks to ten and one-half months each year, depending on individual employer need.

There is no limit to the number of years an employer or worker can participate in the program.

WHO MAY APPLY

Any U.S. agricultural employer or group of employers who can demonstrate a seasonal or temporary recurring labor need may apply for the H-2A program.

Examples of industries and operations which currently use the program to meet some or all of their seasonal labor needs include:

- hay, grain, and wheat growers
- vegetable, tobacco, and other field crop growers
- fruit growers, orchardists, and viticulturalists
- organic and specialty or boutique agricultural businesses
- nurseries and greenhouse growers
- Christmas tree farms
- horse and cattle operations (must prove seasonality)

WHEN TO APPLY

Although emergency applications are possible, the multi-stage H-2A approval process that másLaborWest handles for employers generally takes 60 days. We prefer at least an additional 30 days to define your specific need and how we can best address it, and then to prepare appropriate application materials and supporting documentation. Please give us as much lead time as possible. Except in emergencies, **please contact másLaborWest at least 90 days - - three months - - prior to the date you need workers to begin work.**

Please note in Document 2 that we offer a \$300 "Early Bird Discount" to clients who apply to us 120 days - - four months - - or more in advance of the date workers are needed.

H-2A APPLICATION PROCESS

Steps in the H-2A application coordinated by másLaborWest are summarized as follows:

1<sup>st</sup> Hurdles - - Preparation

- a. Employer submits application to másLaborWest - - see Document 3 in this package.

- b. másLaborWest assigns responsibility for Employer to an experienced Case Manager who phones Employer to confirm our understanding of all relevant details about Employer's labor need and to discuss timing of housing inspection.
- c. Employer schedules and ensures completion of timely H-2A housing inspection.
- d. másLaborWest completes and then submits applications and supporting documentation to U.S. Department of Labor (DOL) and State Workforce Agency (SWA) with intent of specifically addressing Employer's labor need while preserving maximum employer flexibility and minimizing potential liabilities.

2<sup>nd</sup> Hurdles - - Processing U.S. Applicants and Obtaining DOL Foreign Labor Certification

- a. másLaborWest places required "help wanted" ads as specified by DOL. Under revised H-2A regulations the required advertising may include up to three days out-of-state in addition to two days in a local newspaper.
- b. másLaborWest assists Employer in notifying eligible former employees as required by revised H-2A regulations.
- c. másLaborWest processes U.S. job applicants and reports results to employer, DOL and SWA. This is an important step that must be handled correctly if Employer is to obtain maximum benefit from the program. Qualified U.S. workers must be offered employment. másLaborWest handles initial phone interviews to ensure workers are informed about terms and conditions of employment and are screened to the extent possible.
- c. DOL approves H-2A foreign labor certification for number of positions not taken by U.S. job applicants. DOL foreign labor certification fees are paid by másLaborWest as shown in Document 2.

3<sup>rd</sup> Hurdles - - Obtaining H-2A Visas and Processing Foreign Workers

- a. másLaborWest confirms with Employer prior year H-2A workers he wants to return, names and contact information of any other preferred workers, and number of new workers to be recruited.
- b. másLaborWest translates written terms and conditions of employment and gives those as well as detailed recruiting instructions to foreign worker agent.
- c. After obtaining foreign labor certification from DOL, másLaborWest submits H-2A visa petition to U.S. Citizenship and Immigration Service (CIS). CIS approves visa petition for number of foreign workers specified on labor certification and then transmits approved visa petition to foreign consulate specified by másLaborWest. CIS visa approval fees are paid by másLaborWest as shown in Document 2
- d. Foreign worker agent, másLaborWest and Employer agree on the final list of workers for whom to request visas. másLaborWest schedules foreign worker visa appointments at a U.S. State Department Consulate in workers' home country.
- e. Foreign worker agent assists H-2A workers in submitting required documentation at specified time and place to obtain individual H-2A visas for work with Employer and then in making travel arrangements so that they arrive as a group when specified.
- f. Employer complies with all applicable laws in hiring, employing and housing H-2A workers. Employer should contact másLaborWest immediately if any H-2A worker or local referral leaves his employment during course of contract so that we can assist in notifications required by federal law.

In addition to describing the H-2A application process, we intend that this document help employers understand the value of our services. We believe it

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is important that employers recognize the following:

- ☑ There are multiple governmental agencies involved with the H-2A program. Every year there are new intricacies in the filing process, new people in key regulatory positions, and new potential pitfalls for individual employers. Moreover, there are proposals pending which could significantly change H-2A regulations. Whatever choice you make for H-2A representation, do it with the knowledge that neither the H-2A approval process nor H-2A program participation after approval is easy or routine.
- ☑ We would like to be thought of as problem solvers. Our ongoing contact with regulators and knowledge of potential issues is such that most problems are anticipated and dealt with in advance.
- ☑ We do not guarantee approval at any stage of the regulatory process.
- ☑ We are not attorneys. Separate from the services we provide, we believe that most employers benefit from their own legal counsel.
- ☑ We are an experienced, knowledgeable, capable, comprehensive and cost-effective resource for H-2A employers, and employers only. We avoid conflicts by representing only employers, not workers.

WHAT IS REQUIRED OF H-2A EMPLOYERS

Coordination with másLaborWest

Although our objective is to carry as much of the load for our clients as possible, the H-2A approval process requires extensive employer involvement, particularly at the start.

Recruiting

Initial recruiting of U.S. workers and foreign workers is covered above in the description of the H-2A application process on page 1. Under the newly revised H-2A regulations, U.S. workers continue to have hiring preference over foreign workers until thirty days after the employer's initial date of need. Until that time, H-2A employers must hire all U.S. job applicants who are ready, willing and able to perform the required job duties.

Wages

The DOL establishes the applicable H-2A wage rate, called the Adverse Effect Wage Rate (AEWR). The employer pays the higher of either the AEWR or the state prevailing wage rate to both U.S. and H-2A workers. másLaborWest will provide you with the exact wage currently required in your area.

Under the "Three Quarter Guarantee", the employer guarantees that workers will have the opportunity to work at least three-fourths of the total hours in the contract period. This guarantee is not figured daily, weekly, or monthly but is calculated as a percentage of all the working hours in the season specified by the employer.

Workers' Compensation Insurance

The employer must provide workers' compensation insurance for all workers. Proof of coverage should be included when you return the initial application for workers and must cover at least a portion of the certification period.

Housing

The employer must provide free housing to all workers who are not local workers. Non-local workers are those who are not reasonably able to return to their place of residence each day of employment.

The housing must include kitchen facilities. Alternatively, the employer can provide workers three meals a day and be reimbursed by workers for the cost up to federally specified limits per day.

The capacity of the worker housing determines the maximum number of foreign workers the employer will be approved to hire. For example, a foreign labor certification will be granted for no more than 10 workers if an employer applies for 15 workers but only has housing capacity for 10 workers.

The housing must meet federal and state regulations for migrant labor camps, which require a county health permit covering well and septic systems and an inspection by the state agency designated for federal housing standards compliance. You should schedule your farm labor camp inspection as soon as possible, but no later than when you return the H-2A application packet to us.

Transportation

The employer pays for both the workers' inbound and outbound transportation. The revised H-2A regulations specify that reimbursed transportation shall be from the U.S. consulate or point of entry. Transportation in this context includes a daily subsistence allowance for meals while traveling.

Inbound transportation must be reimbursed when the season is half complete. Outbound transportation is paid at the completion of the contract.

The employer must provide daily transportation to and from job sites. The employer must also provide transportation to town (grocery, bank, etc.) at least once a week.

Tools and Supplies

The employer must furnish all tools and supplies necessary to perform the work at no cost to the worker.

**CLIENT ACKNOWLEDGEMENT OF H-2A PROGRAM OVERVIEW, pages 1 and 2**

Company Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_