



H2-A, Immigration and Enforcement Issues

OSB Agriculture Law Section Round Up
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Overview

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- II. H-2A Program Policy
- III. H-2A Process Overview
- IV. Key Entities Involved
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Oregon Ag Labor Background

I. Ag Labor

- 1986 IRCA Reform

II. Traditional Labor Force

III. East Coast/West Coast

- East Coast - H-2A use
- West Coast - Not heavily used

IV. Labor Supply Shock

- 10 year increased use of H-2A program

H-2A Program Policy

I. Labor Shortages

II. Protection for Domestic Workers

III. Protection for Foreign Workers

H-2A Process Overview

- I. Obtain Temporary Labor Certification
- II. Recruitment of Domestic Workers
- III. Petition for Nonimmigrant Worker
- IV. Foreign Workers Application for Nonimmigrant Visa

Key Entities Involved

- I. U.S. Department of Labor
- II. State Workforce Agency (SWA) / Bureau of Labor and Industries (BOLI)
- III. Oregon Law Center, Legal Aid Services of Oregon, Northwest Workers' Justice Project
- IV. U.S. Department of Justice

Compliance Issues: Date of Need

I. Late Arrivals

- Inform DOL Processing Center (Chicago) of change or AEW rate must be paid for covered job duties

II. Three-Fourths Guarantee

- Must offer workers at least 75% of the hours specified in the contract

III. Fifty Percent Guarantee

- Hire qualified domestic workers for up to 50% of period of need (through July 1 for May 1-Aug. 31 contract period)

Compliance Issues: Job Description

I. Corresponding Employment

- Cannot disadvantage domestic workers
- ETA-790 Job Description
- Most workers must be paid AEWR

II. Previous Work Experience

- If required of domestic workers, must also be required of foreign workers
- ETA Form 790 Job Qualifications

III. Effect of Work Outside Job Description

- Domestic workers performing the same work are subject to AEWR

Compliance Issues: Field Visits

I. Field Visit (Scheduled)

II. Field Check (Unannounced)

III. Good Agriculture Practice (GAP) / Food Safety
Modernization Act (FSMA)

IV. Informal Resolution

Compliance Issues: Recruitment of Domestic Workers

I. Contact Former U.S. Workers

- Offer job to former qualified domestic workers
- Document contact

II. Advertise position

III. Offer Work on the Same or Better Terms as Foreign Workers

- AEWR
- Housing
- Transportation to/from job site

Compliance Issues: Housing and Transportation

I. Housing

- OR – OSHA
- Pre-Occupancy Inspection

II. Transportation

- Licensing, Vehicle Safety Inspection, Health Certificates
- 29 CFR 500 Safety Provisions

Enforcement Issues

A wide, green agricultural field with rows of crops stretching towards a bright horizon under a cloudy sky. The sun is low on the horizon, creating a soft, golden glow. The field is filled with rows of green crops, likely corn, and the perspective is from a low angle, looking down the rows.

- Consensual Questioning
- Detention
- Arrest
- Searches of Housing
- Farm Operations

Questions/Wrap Up



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