

Navigating H-2A and H-2B Visa Programs: Key Insights and Information



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Overview



What is the H-2A Program?

What is the process?

What are the regulations?

What are the costs?

Why choose USA Farm Labor, Inc.?

Who are the workers?

Best Practices

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The Problem: Scarcity of US Workers



According to a survey conducted in 2023, the difficulty of finding U.S. workers is an 8/10, with 10 being “totally impossible”.



Over 52% of clients said they were not able to hire any American workers, in spite of recruiting.

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A Solution



The H-2A Program allows qualifying employers to hire foreign workers legally on H-2A visas.



DOL acceptance based on:

No U.S. workers available

Work is agricultural

Work is temporary/seasonal (maximum of 10 months)

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2-Step Process









The first step is to obtain Labor Certification.

The second step is to get approval from the USCIS.

Labor Certification Phase



-  Time Frame: 6 to 8 weeks
-  Submit paperwork to SWA & DOL
-  Perform required recruitment activities
-  Housing Inspection
-  Worker's compensation
-  Recruitment Report

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USCIS Phase



Time

Time Frame: Varies, but usually 2-3 weeks



Submit

Submit I-129 petition



Submit

Submit Temporary Labor Certification

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Regulations: Time Limits



The period of need must be less than 10 months



Visa is valid for duration of job, but can be extended for subsequent jobs for up to 3 years total



Must return to home country for at least three months before getting a new visa if they are nearing 3 year limit

Regulations: Taxes



Workers are exempt from some taxes (e.g., Social Security, Medicare).



Workers are responsible for Federal Tax.



Workers are responsible for State Tax in some states.



W2 forms are crucial.

Regulations: Wages



AEWR set by the DOL

Changes around January every year

Pay weekly, bi-weekly, or semi-monthly

Time sheet & pay stubs (must contain all required information)

Time-and-a-half overtime not required in most states

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Regulations: Meals/Food



3 Options:

Prepare and supply meals
Arrange with take-out
Workers buy and prepare



If employer-provided: Deduct \$15.46/day



Amount changes every year

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Regulations: Housing



Free housing, utilities, utensils, bedding



House/apartment/hotel



Compliance with OSHA regulations

Must include fire extinguisher, smoke detector, first-aid kit, actual beds, etc.



Inspected by a government agency



Must be approved to house the number of workers requested.

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Regulations: Transportation



Full reimbursement of plane ticket

Most reasonable carrier cost
Must be reimbursed in first pay period
Insurance not required



Free daily transportation to worksite



Free transportation into town once/week

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Regulations: Workers' Comp



Submit proof
for Labor
Certification

Liability
Insurance is
NOT acceptable

Regulations: $\frac{3}{4}$ Guarantee



Guarantee $\frac{3}{4}$ of work hours
in contract period

100 days - 75 days of work guaranteed
100 days - worked only 65 - 10 days to
pay



Provision for fluctuations



Overtime, Sabbath, and holiday hours worked count
towards fulfilling the guarantee

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Regulations: Work Hours



Make estimate of work hours needed



Must be at least 35 hours/week



Workers cannot be required to work on Sabbaths or Federal Holidays, but you may ask them. They must be able to refuse without consequences.

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Regulations: General Rules



Explain any house rules to workers



Make copies (for your records and ours):

CDL
I-94
Passport
Visa
Social Sec Card



DO NOT keep originals longer than needed to make copies.

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When to Start?



Make your best estimate as to when you will need workers to arrive.



Since the process usually takes 75 days to complete, contact us at least 90 days before you will need the workers to arrive.



Paperwork must be submitted to the government (60-75 days) before workers are needed.

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Employer's Costs: Authorities



DOL Fee: One time \$100 + \$10/person



USCIS fee: One time \$1,160

Employer's Costs: Workers



Plane Ticket: \$1800



Travel & subsistence expenses



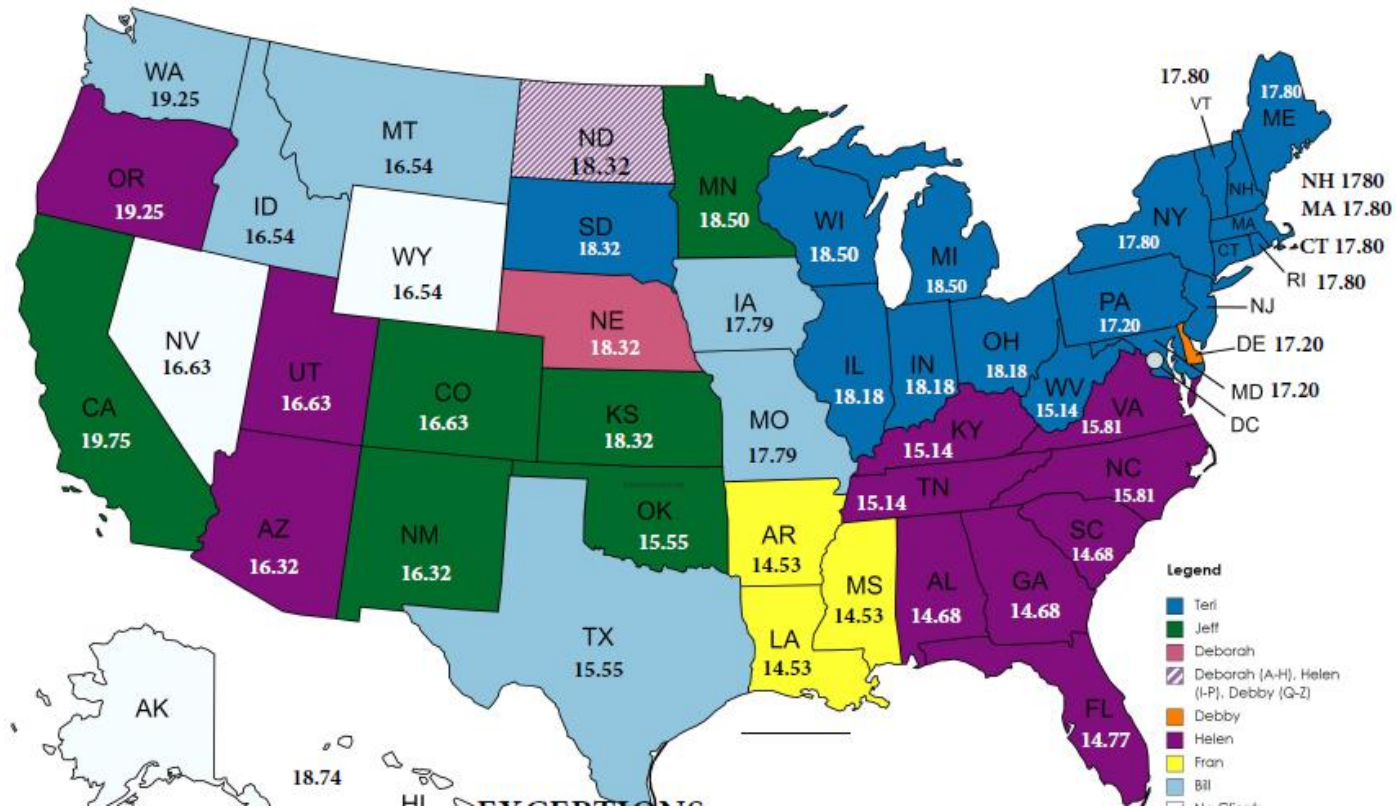
Housing, Utilities, and Insurance



Workers' Compensation

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Employer's Costs: Workers



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Employer's Costs: USAFL



ADMINISTRATION FEE

One time per season, \$695 (+ \$100 for new clients)



Placement Fee

Variable fee to pay recruiters



MONTHLY FEE

\$40-\$85 Per person, per month
Discount scale (10%)

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Why choose USA Farm Labor, Inc.?



Over 20 years of experience (started in 2003)



An industry leader in helping farmers find and hire semi-skilled workers



Believe in treating workers and clients as we would want to be treated



Reputation for excellent customer service



Cutting-edge innovations

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Why choose USA Farm Labor, Inc.?



We handle most of the paperwork



We minimize the hassle of hunting for workers



We thoroughly screen workers



Workers in our network speak English



We mediate in the event of disputes

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Worker Information



Last year, we helped over 3,500 workers find jobs in America.

Most of the workers in our network come from South Africa.

About 90% of placements are successful.

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Communication Skills



Most employers (82%) felt that the workers understood their instructions all the time.

Most employers (79%) confirmed that communication with workers was satisfactory.

Problem-Solving Skills



Nearly all the employers (96%) felt that the workers had at least average problem-solving skills

- Excellent (31%)
- Good (34%),
- Average (31%)

Best Practices: Avoiding Violations



Treat all workers—U.S. & H-2A—equally

Pay according to the Job Order

Keep records & pay slips for at least 3 years

Do not make deductions except as required by law and specified on job order

Reimburse travel expenses in first pay period

Ensure housing meets applicable standards

Do not let workers work outside of Job Duties

What is the H-2B Program?



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H-2B Program Overview



The H-2B temporary non-agricultural program permits U.S. employers to hire non-immigrant workers to temporarily come to the U.S. and perform non-agricultural services based on the employer's temporary (seasonal, peak-load, intermittent, one-time occurrence) need.

- **Annual Cap:** 66,000 total, divided between Oct 1 (33K) and April 1 (33K) start dates
- **Employment:** Full-time and temporary (nine months or less)
- **Employer obligations:** Wages, hours, transportation, etc.
- **Enforcement:** Department of Labor, Dept of Homeland Security, and U.S. Citizenship and Immigration Services (USCIS)

H-2B Program Overview



- Employers must demonstrate a legitimate, temporary need
- Must meet specific requirements regarding wages, working conditions, and recruitment efforts to ensure U.S. workers are not displaced.
- Program is commonly used in **non-agricultural** industries such as landscaping, hospitality, construction, and others that experience seasonal needs.

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H-2B Process



STEP 1: DOL

- **File Prevailing Wage determination with DOL** – about 30 days to issue (Level III wage)
- **Submit ETA 9142B Temporary Labor Certificate and post ad on the State Workforce Agency Job Order:** Timing of submission of ETA 9142 & SWA Job order within 75–90-day window before the requested start date of need
- **Initial Review and Acceptance of ETA 9142B Temporary Labor Certification and SWA Job Order:** the DOL will conduct an initial review to determine if the ETA 9142B and SWA Job Order meets all the regulatory requirements. DOL will issue a Notice of Acceptance (NOA) or a Notice of Deficiency (NOD) to request additional information.

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H-2B Process



STEP 1: DOL

- **Complete Required Recruitment and Submit Recruitment Report:**
In the NOA, the DOL will provide the employer with a list of recruitment steps which must be completed within 14 days from the date the NOA is issued. After the recruitment steps are complete, the H-2B employer will need to submit a recruitment report to the DOL.
 - Employer must contact U.S. worker employees about the H-2B position; and
 - Employers must display a printed posting notice at the worksite notifying employees of the company's intended hiring of H-2B workers

- **Certification of ETA 9142B:** After the recruitment efforts are completed and the recruitment report is submitted, the DOL will determine whether to certify or deny the application.

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H-2B Process



- **Step 2: Prepare and submit an H-2B petition with USCIS**
- **Step 3: H-2B Visas, Admissions to U.S.:** After the H-2B petition is approved by USCIS, the worker applies for an H-2B visa in their passport at a U.S. Embassy/Consulate outside of the U.S. The H-2B worker will need to attend an interview and demonstrate their temporary intent to remain in the U.S.

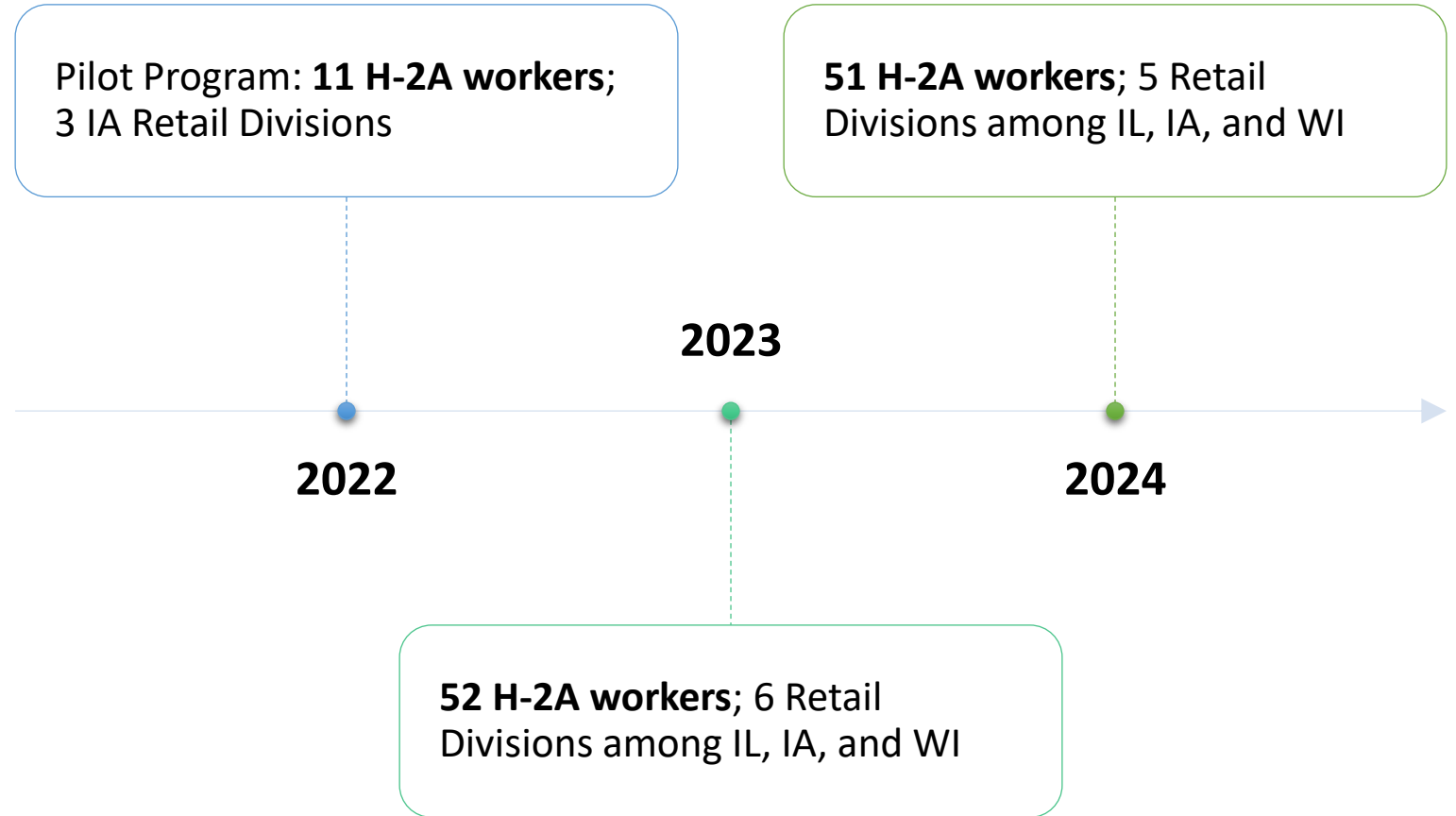
H-2B Cap



- Numerical Cap: 66,000 total available H-2B visas per year
- Demand far exceeds supply, especially in the 2nd half of the fiscal year
- Given the limited number of H-2B visas compared to the demand, USCIS allocates visas based on a randomly generated lottery system
- Application filing windows:
 - July 3-5 (for an Oct 1 start date) – lower demand
 - Jan 1-3 (for an Apr 1 start date) – higher demand



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Program Challenges

REGULATORY
HURDLES

WAGE
REQUIREMENTS

UNCERTAINTY

LACK OF
FLEXIBILITY

Program Benefits

- Able to meet operational needs
- Able to deliver an unsurpassed customer experience
- Peace of mind
- Skilled, reliable, and hard-working help
- Allows for work-life balance



Questions?

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