

● **IMMIGRATION AND NATIONALITY ACT (*TEMPORARY AGRICULTURAL WORKERS*)**

STATUTORY CITATION: 8 USC § 1101(a)(15)(H)(ii)(a) and 8 USC § 1188

RELATED REGULATIONS: 20 CFR §§ 655.100 – 655.185 and 29 CFR Part 501

GENERAL SUMMARY: Any farming establishment seeking certification to employ temporary foreign agricultural labor under the so-called "H-2A" program is required to circulate a formal job offer for U.S. workers starting no earlier than 75 days and no later than 60 days before the work is expected to begin. If the employer's H-2A application is later approved, the U.S. and foreign workers hired by the employer pursuant to the job offer must receive a written work contract specifying the benefits and conditions of employment. Both the job offer and the work contract must contain certain minimum standards and guarantees, including requirements related to housing.

SPECIFIC TERMS AND CONDITIONS

ASSURANCE OF COST-FREE HOUSING — Every employer applying for the use of foreign agricultural workers must assure the availability of housing for any worker who is not reasonably able to return to his or her own residence each day, at no charge to the worker. The employer's obligation to provide cost-free housing extends not only to the foreign workers admitted to the U.S. under the H-2A application (if approved), but also to those domestic workers recruited prior to approval of the application, and to any U.S. workers hired by the employer thereafter to perform the same services in the same area. Furthermore, when it is prevailing local practice to provide domestic farmworkers with family-type housing, family housing must be provided to those U.S. workers recruited in connection with an H-2A job offer who request such housing for themselves and their families.

HOUSING STANDARDS AND INSPECTION — Housing facilities owned or operated by the employer must be inspected and found in full compliance with applicable ETA or OSHA farmworker housing standards prior to occupancy, or the employer's H-2A application will be denied. At the employer's option, the employer may arrange to house the workers in rental units or public housing which meets local, state or federal standards, but any charges for the use of such facilities must be paid by the employer. Deposits on bedding or similar incidentals related to housing may not be assessed against the workers, and only under certain conditions may the employer require reimbursement from workers found responsible for damages to housing or facilities.

SPECIAL NOTES OR ADVISORIES

RETALIATION — A person may not discharge, discipline or discriminate in any manner against a worker because the worker has consulted with an attorney or legal services program personnel, filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions. Reports of unlawful retaliation should be filed with the Wage and Hour Division.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072)*. It is the duty of the Wage and Hour Division to enforce compliance with the mandatory work contract between H-2A employers and their foreign and U.S. workers, including the requirement to provide free worker housing. Any person may report a suspected violation of H-2A contract provisions by contacting the nearest Wage and Hour office. In general, each violation of the work contract committed against a worker carries a maximum civil penalty of \$1,500.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20210 (202-693-3010)*. It is OFLC's role to assure that prospective H-2A employers have fulfilled their obligation to recruit and hire eligible domestic farmworkers prior to certifying the need for foreign labor, and that the associated job offers comply with statutory requirements, including the offer of cost-free housing for the workers.