

● **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 Part 655, Subpts. B and N

*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 sooner than 75 days and no later than 60 calendar 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 worker transportation.

*SPECIFIC TERMS AND CONDITIONS*

**TRANSPORTATION TO THE PLACE OF EMPLOYMENT** — Each foreign or domestic worker who completes 50 percent of the work contract period is entitled to payment by the employer for costs incurred by the worker for transportation and meals between the place from which the worker has come to work for the employer, and the place of employment. Transportation and meal costs must be advanced to the worker prior to the trip whenever it is common practice for non-users of foreign labor in the same occupation and the same area to do so.

**DAILY TRANSPORTATION TO THE WORKSITE** — During the course of the contract, the employer must provide transportation between the worker's living quarters and the worksite, without cost, but only to the extent that the worker is unable to return to his or her own home within the same day.

**TRANSPORTATION BACK TO THE POINT OF ORIGIN** — Provided that the worker completes the contract period, the employer is obligated to furnish or pay for the worker's transportation and daily subsistence back to the place of origin or to the next place of employment, if such travel costs are not covered by the next employer.

**TRANSPORTATION STANDARDS** — Employer-provided transportation must comply with all applicable federal, state and local laws or regulations. At a minimum, the transportation provided to H-2A workers must meet the driver and vehicle safety and insurance standards required under the Migrant and Seasonal Agricultural Worker Protection Act, summarized in the previous entry.

*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 required work contract between H-2A employers and their foreign and U.S. workers, including the obligation to provide employee transportation. Any person may report a suspected violation of H-2A contract provisions by contacting the nearest Wage and Hour office. 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 provision of transportation to the workers.