

● **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: To protect the well-being of foreign agricultural workers admitted into the U.S. under the so-called "H-2A" program authorized by the Immigration and Nationality Act, and to assure that the importation of temporary labor does not erode job opportunities and working conditions for domestic farmworkers, the U.S. Department of Labor has adopted special wage standards applicable to agricultural establishments that employ U.S. or non-U.S. workers to perform services pursuant to a formal H-2A job offer.

SPECIFIC TERMS AND CONDITIONS

HOURLY WORKERS — Each H-2A worker, and any U.S. worker engaged in comparable employment, who is paid by the hour must be compensated at a rate not less than (1) the federal minimum wage, (2) the state minimum wage, (3) the prevailing hourly wage rate, or (4) the federally prescribed "adverse effect wage rate" for H-2A employment in the state, whichever of the four figures is highest. The adverse effect wage rate is an annually updated hourly wage floor intended to discourage domestic agricultural wage deflation which could otherwise result from the use of foreign labor. As computed for all states except Alaska, the following are the AEWRs established for calendar year 2017:

Alabama—\$10.62, Arizona—\$10.95, Arkansas—\$10.38, California—\$12.57, Colorado—\$11.00, Connecticut—\$12.38, Delaware—\$ 12.19, Florida—\$11.12, Georgia—\$10.62, Hawaii—\$13.14, Idaho—\$11.66, Illinois—\$13.01, Indiana—\$13.01, Iowa—\$13.12, Kansas—\$13.79, Kentucky—\$10.92, Louisiana—\$10.38, Maine—\$12.38, Maryland—\$12.19, Massachusetts—\$12.38, Michigan—\$12.75, Minnesota—\$12.75, Mississippi—\$10.38, Missouri—\$13.12, Montana—\$11.66, Nebraska—\$13.79, Nevada—\$11.00, New Hampshire—\$12.38, New Jersey—\$12.19, New Mexico—\$10.95, New York—\$12.38, North Carolina—\$11.27, North Dakota—\$13.79, Ohio—\$13.01, Oklahoma—\$11.59, Oregon—\$13.38, Pennsylvania—\$12.19, Rhode Island—\$12.38, South Carolina—\$10.62, South Dakota—\$13.79, Tennessee—\$10.92, Texas—\$11.59, Utah—\$11.00, Vermont—\$12.38, Virginia—\$11.27, Washington—\$13.38, West Virginia—\$10.92, Wisconsin—\$12.75, Wyoming—\$11.66.

PIECE-RATE WORKERS — Workers who are paid on a piece-rate basis and whose piecework earnings at the end of the pay period are below what they would have been had the workers been paid at the appropriate hourly rate for each hour worked, must be given supplemental pay at that time to make up the difference. In no instance may an H-2A employer pay a piece rate for a given crop operation that is less than the prevailing piece rate in the local area for the same operation. Minimum productivity standards used by employers as a condition for job retention by piece-rate workers are subject to certain regulatory restrictions.

GUARANTEED PAID WORKDAYS — In general, each U.S. and foreign worker hired under an H-2A work contract is guaranteed employment for at least 3/4 of the workdays in all periods during which the contract is in effect. If work is not available for the minimum number of guaranteed days, and for the full number of hours of daily work time defined in the contract, the employer must pay the worker the amount that would have been earned had the individual actually worked the guaranteed number of defined workdays. In computing the amount due under the guarantee for a worker paid by the hour, the employer must use the worker's regular hourly pay rate; in the case of a pieceworker, the guarantee is figured using the worker's average hourly piece-rate earnings or the adverse effect wage rate, whichever is higher.

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 wage standards and all other elements in the required work contract between H-2A employers and their foreign and U.S. workers. 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 wage rate offered to the workers and other aspects of the associated job offers comply with statutory requirements.