

● **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:* In addition to paying prescribed wage rates, employers who utilize or seek to utilize the services of temporary foreign agricultural workers under the H-2A program must also observe certain procedural requirements in making wage payments to their U.S. and non-U.S. workers employed under an H-2A work contract.

*SPECIFIC TERMS AND CONDITIONS*

**FREQUENCY OF WAGE PAYMENTS** — Employers who use temporary foreign agricultural workers must pay both their foreign and U.S. workers at least twice a month, or more often if such is the prevailing practice in the area of employment. The wage payment schedule must appear in the contract.

**WAGE DEDUCTIONS** — Employers are permitted to withhold from a worker's pay only those deductions that are required by law or are otherwise reasonable, provided the non-mandatory deductions are spelled out in the contract. An employer may deduct the cost of providing the worker's transportation and daily subsistence expenses to the place of employment, but the full amount of the deduction must be refunded to the worker upon the worker's completion of 50 percent of the contract period.

**HOURS AND EARNINGS STATEMENT** — On or before each payday, the employer must provide each worker with written documentation showing (1) the worker's total earnings for the pay period, (2) the hourly wage or piece rate, (3) the hours of employment offered to the worker and the hours actually worked, (4) each deduction from the worker's pay and its purpose, and (5) the worker's daily piecework production if paid on a piecework basis.

*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 pay provisions and all other elements of 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 payment terms offered to the workers and other aspects of the associated job offers comply with statutory requirements.