

Introduction to the H-2A Temporary Agricultural Foreign Guest Worker Program

The New York State Department of Labor (NYSDOL) created this document to provide general information and resources about the H-2A program. The H-2A program is sponsored by the United States Department of Labor (USDOL). This program is used to bring nonimmigrant foreign workers into the U.S. for a temporary period of time. To qualify to bring the foreign workers to the U.S., employers must prove there are not enough U.S. workers available to perform the work. For more detailed information, please visit these websites:

- NYSDOL, which is the State Workforce Agency (SWA):
 - <https://dol.ny.gov/division-compliance-and-education>
- NYSDOL, H-2A page:
 - <https://dol.ny.gov/h-2a-employers-and-agents>
- United States Department of Labor (USDOL):
 - <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>
- United States Citizenship & Immigration Services (USCIS):
 - <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>

You must create an account in order to access the FLAG system.

- Both the ETA-790/790A and the ETA 9142A must be submitted through the online Foreign Labor Application Gateway (FLAG) System. You must create an account in order to access the FLAG system:
 - <https://flag.dol.gov/>

Required Forms:

- USDOL Employment and Training Administration (ETA) *Agricultural and Food Processing Clearance Order ETA*, Form 790/790A (instructions):
 - https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/FR_11_Form%20ETA-790A_General%20Instructions_11-30-2025.pdf
- USDOL Employment and Training Administration (ETA) *Agricultural and Food Processing Clearance Order ETA*, Form 790A:
 - https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/FR_07_Form_ETA-790A_11-30-2025.pdf
- USDOL Employment and Training Administration (ETA) *Agricultural and Food Processing Clearance Order ETA*, Form 790:
 - https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/FR_06_ETA-790_11-30-2025.pdf
- USDOL H-2A Application for Temporary Employment Certification, ETA Form 9142A:
 - <https://foreignlaborcert.doleta.gov/pdfs/ETA-9142A-Instructions.pdf>
- Employers may use their own recruitment report or the NY SWA has provided instructions and a template that can be used for recruitment purposes. Employers are not required to use the NY SWA form:
 - <https://dol.ny.gov/referralsapplicants-h-2a-job-orders-instructions-al156>
 - <https://dol.ny.gov/referralsapplicants-h-2a-job-orders-interview-form-al1561>
- Department of Homeland Security, USCIS, Petition for a Nonimmigrant Worker, Form I-129:
 - <http://www.uscis.gov/i-129>

***Note:** The ETA790/790A application must be:

- Filled out for each new timeframe workers will be hired (worker arrival cannot be staggered).
- Submitted no more than 75 days and no fewer than 60 days prior to the employer's date of need.
- Submitted directly to the FLAG system. The NY SWA will access and review the job order in FLAG.

Associated Costs:

- ETA Form 9142A filing fee: \$100 plus \$10 per worker, not to exceed \$1,000
- I-129 Form filing fee: \$460 per application (multiple/all workers can be entered on one application)
- Each worker's visa is approximately \$190, which is also paid for by the employer (either paid directly by the employer prior to arrival, or by reimbursing after arrival)
- Employer provided housing, including all necessary utilities, and daily transportation to and from the worksite(s) must be free to workers
- Transportation and Subsistence (payment of transportation is "most economical and reasonable," not necessarily the full payment for the method the workers use)
- Wages - Adverse Effect Wage Rate (AEWR) or piece rates equaling no less than the AEWR hourly

Employer Responsibilities: These benefits must be provided to all foreign and domestic workers hired under the contract:

- Free housing: must meet the appropriate federal, state, or local housing regulations
- Payment of inbound transportation, including daily subsistence rate
- Payment of outbound transportation, including daily subsistence rate, for those who complete the contract
- 3/4 guarantee: Workers must be guaranteed employment/payment for work hours equal to 3/4 of the workdays of the contract. This begins the first workday after the worker arrives or the advertised start date, whichever is later, and ends on the end date of the contract.

Example: The work contract is 10 weeks and the normal workweek is 6 days and 8 hours per day. The worker must be guaranteed or offered at least 360 hours (10 weeks x 48 hours/week = 480 hours x 75% = 360).

- 50% Rule: The employer must provide employment to any qualified, eligible U.S. domestic worker, including those from Puerto Rico, who applies until 50% of the contract period elapses.
- Non-discriminatory hiring of domestic workers: The job must first be open to all qualified U.S. workers. Rejections of those workers must only be for lawful, job-related reasons and may not include that H-2A workers were already anticipated or hired.
- Payment of wages* (highest of the following):
 - Adverse Effect Wage Rate (AEWR)
 - State or Federal Minimum Wage
 - Prevailing Wage
 - Collective Bargaining Agreement

*Piece Rates may also be paid as long as the wage does not fall below any of the four wages listed above, and are listed on the approved contract.

Experience/Skills Requirements: Depending on the duties described, H-2A job orders may include the following requirements:

- Farm work experience (typically 0-3 months for crop workers; 6 months for equipment operators)
- Lifting requirements (for example “workers must be able to lift up to 40 pounds”)
- Motion related requirements (bending, stooping, standing for long periods, twisting, climbing ladders)
- Driving requirements

Housing Inspections: H-2A employers must provide free housing to all H-2A workers and those domestic workers hired under the contract who are not able to return home each day. The housing must be inspected, and must adhere to the following regulations:

- All housing with an occupancy of one or more migrant workers and/or family members:
 - Part 15 of the State Sanitary Code, Migrant Farmworker Housing, found here: https://www.health.ny.gov/regulations/nycrr/title_10/part_15/
 - Inspection conducted by New York State Department of Health (NYSDOH)/County Health Department

During the H-2A Program Contract Period:

- The NYSDOH will conduct an occupancy inspection during the season. The inspection will be set up between the DOH county/district inspector and the employer.
- If a placement of a domestic worker occurs, NYSDOL staff will conduct an unannounced field check during the season, likely prior to the 50% date. Field checks ensure the following:
 - Work conditions listed on the job order are accurate
 - Housing conditions are as they were during the pre-occupancy inspection
 - Workers receive the correct wages
 - Domestic workers receive the correct wages if they do the same work as the H-2A workers
 - Required posters are found on the premises
 - All questions from the employer and workers are answered
- NYSDOL staff may conduct a standard outreach visit, regardless of whether a placement of a domestic worker has occurred. NYSDOL staff must have access to H-2A workers, per H-2A regulations.