

WE ARE YOUR DOL



Department of Labor

EMPLOYER-PROVIDED FARMWORKER HOUSING IN NEW YORK STATE

What You Need to Know About the Government's Role

OVERVIEW OF FARM WORK

Agricultural labor in NYS includes planting, cultivating, harvesting, processing and preparing crops and animal products for market or storage.

Farmworkers in the U.S. include migrant, seasonal, year-round, and foreign guest H-2A workers.

FARMWORKERS WHO ARE ELIGIBLE FOR EMPLOYER-PROVIDED HOUSING

MIGRANT FARMWORKER (OR FOOD-PROCESSING WORKER)

A person who must be absent from his or her permanent place of residence to look for seasonal paid agricultural work.

SEASONAL FARMWORKER (OR FOOD-PROCESSING WORKER)

A person who works seasonally performing agricultural work.

YEAR-ROUND FARMWORKER:

A person who works year-round at the same farm and may live in housing provided by the employer.

H-2A FARMWORKER:

A worker who temporarily lives and performs agricultural work in the U.S. through the federal H-2A Guest Worker Program. The H-2A program allows U.S. employers to hire workers from other countries to fill temporary agricultural jobs that cannot be filled by domestic workers.

H-2A HOUSING INSPECTIONS IN EMPLOYER-PROVIDED FARMWORKER HOUSING

H-2A employers must provide free housing to all H-2A workers. Domestic, migrant workers hired under the contract may displace foreign guest workers and therefore must be provided free housing as well. After all foreign guest workers have been displaced, the employer would be required to

provide free housing only if it is available. As part of the H-2A process, employers must demonstrate that they will provide suitable housing for their H-2A and domestic farmworkers.

The New York State Department of Labor coordinates required inspections that must take place before an H-2A job order is certified by the United States Department of Labor. All inspections of migrant labor camps in NYS are conducted by the NYS DOH.

Employers seeking to process applications for foreign labor under the H-2A program must submit their initial paperwork to the FLAG system 60-75 days prior to the start of work. They must have an approved housing inspection no less than 32 days prior to the start of work. Properties sourced through well-water must also provide timely potable water test results for the housing inspection process.

Multiple inspections on the same property may occur in one year.

HOUSING ENFORCEMENT IN EMPLOYER-PROVIDED FARMWORKER HOUSING (NOT UNDER THE H-2A PROGRAM)

Year-round farmworker housing must abide by the Uniform Fire Prevention and Building Code, enforced by the New York State Department of State and local Code Enforcement Officials.

HOW TO FILE A COMPLAINT ABOUT HOUSING CONDITIONS

To file a complaint, contact the State or Federal enforcement agency with jurisdiction over the housing.

If you cannot file a complaint directly with the enforcement agency, please reach out to the New York State Department of Labor's Division of Compliance and Education (formerly known as Division of Immigrant Policies and Affairs) at **877-466-9757** or email us at **DOCE@labor.ny.gov**. We will take your complaint and forward it to the correct enforcement agency. See chart on next page.

Employer-Provided Farmworker Housing Enforcement Chart

TYPE OF FARMWORKER HOUSING	HOUSING STANDARDS	ENFORCEMENT AGENCY	ENFORCEMENT AGENCY LOCATOR
Migrant Farmworker Housing and built prior to April 3, 1980 for H-2A Foreign Guest Worker Program	<p>Employment & Training Administration (ETA) Regulations: 20 CFR 654, Part E</p> <p>Inspection conducted by New York State Department of Health (NYSDOH) for the USDOL</p>	United States Department of Labor (USDOL) Wage & Hour	dol.gov/whd/local
Migrant Farmworker Housing and built or substantially renovated after April 3, 1980 for H-2A Foreign Guest Worker Program	<p>Occupational Safety & Health Administration (OSHA) Regulations: 29 CFR 1910.142.</p> <p>Inspection conducted by NYSDOH for the USDOL</p>	USDOL Wage & Hour	dol.gov/whd/local
Migrant Farmworker Housing (1 or more workers and/or family members**) for the Agricultural Recruitment System Local, Intrastate, Interstate job orders and the H-2A Foreign Guest Worker Program	<p>Part 15 of the State Sanitary Code, Migrant Farmworker Housing, Public Health Law, section 225.</p> <p>Inspection conducted by New York State Department of Health (NYSDOH)/County Health Department</p>	New York State Department of Health or Local County Health Department	<p>NYS Health Department District Offices and Local County Health Departments</p> <p>health.ny.gov/contact</p>
Year-Round Farmworker Housing (not under H-2A program or DOH jurisdiction)	Uniform Fire Prevention and Building Code	New York State Department of State (DOS)	dos.ny.gov/dcea/

** The NYSDOL and NYSDOH have overlapping jurisdiction over H-2A farmworker housing. The two agencies entered into an MOA where DOH housing inspections will be conducted for the H-2A job order process. If the DOH is unable to inspect, DOCE staff will conduct the inspection for H-2A purposes only.