

# WE ARE YOUR DOL



Department  
of Labor

## YOUR RIGHTS AS A H-2A WORKER

If you know your rights under the federal Labor Law and the New York State Labor Law, you can protect yourself in the workplace. Here are some facts and tips to keep in mind for H-2A workers and other workers employed on the H-2A job order.

### H-2A WORKERS

The H-2A visa program allows foreign workers to enter into contracts with employers and come to the US to do farm work. After the contract is over, H-2A workers must go back to their home country or they can be moved to another, approved H-2A job order. Also, H-2A workers must only work:

- For the employer listed on the contract
- At the location(s) stated on the contract
- For the specific period of time contracted
- On the crop activity stated on the contract
- At the rates of pay stated on the contract (hourly, piece rate, etc.)

### DISCLOSURE

Every year upon hire, you must be given a copy of your work contract, the ETA790, which states:

- The start and end dates of the contract
- The significant conditions of employment (transportation, housing, meals, etc.)
- The days that workers are not required to work (Sundays, federal holidays, etc.)
- The hours per day and the days per week a worker is expected to work
- The crop and area to be worked
- The rate of pay for each job, including overtime rate
- That the employer will provide and pay for all required tools
- That the employer will provide disability and workers' compensation insurance for workers

### DEDUCTIONS

You must also be notified in writing of all deductions that are not already required by law, such as health insurance premiums, or any other benefits that your employer may provide. An employer is prohibited from deducting money from your wages for the cost of new or broken tools, spoiled products, cleaning, transportation, laundry, or any other expense that goes with running a business.

### WAGES AND OVERTIME

You must be paid for all of the hours you work. If you earn a piece rate, you must earn the correct amount per unit produced, as long as your rate of pay does not go below the hourly rate listed on the work contract. You must also be paid on the same day every week (or every two weeks as long as the employer pays up to the same day as pay day) at the rate stated in your work contract.

Effective January 1, 2024, you must be paid 1 1/2 times your contract rate or the state minimum wage (whichever is higher) for any hours worked over 56 in a calendar week.

### DAY OF REST

Effective January 1, 2020, you must receive at least one day (24 consecutive hours) of rest in every calendar week.

You may agree to voluntarily work during the day of rest provided that your employer pays you at the overtime rate.

### WAGE STATEMENTS

With each paycheck, employers must give every worker a wage statement that shows:

- The employer's name, address, and telephone number
- The hours worked
- The hours offered
- The pay for each type of crop
- The pay rate (per hour, piece rate, overtime rate, etc.)
- The total earnings for the pay period
- All deductions from wages (with each deduction labeled separately)

## **GUARANTEE**

In the ETA790 work contract, the employer must offer a certain number of work hours. Even if the employer does not offer the required hours, or if it is impossible to fulfill the remainder of the contract and it is not the employer's fault, the employer is obligated to pay up to three fourths (3/4 or 75%) of the total hours reflected in the contract.

## **TRANSPORTATION**

Your employer must either provide or reimburse you for reasonable inbound transportation to the place of employment and daily meals while you are travelling or reimburse you for reasonable costs once you complete 50% of the work contract. Once you complete the work contract or if the contract cannot be fulfilled by the employer, your employer must provide or pay for your return transportation to your home country or to your next job and daily meals while you are travelling.

## **HOUSING AND DAILY TRANSPORTATION**

If you cannot return to your permanent residence within the same day, your employer must provide safe housing at no cost and daily transportation to and from the worksite at no cost.

## **DRINKING WATER**

Employers must provide workers with safe, clean, cool drinking water in portable containers, at the worksite and at no cost to the workers.

## **TOILETS AND HAND WASHING**

If the workers will be in the fields for more than three hours (including travel time to and from the fields), employers must provide one toilet and one hand washing station for every 20 workers. If there are 21 workers or more, they must provide two toilets and two hand washing stations. Toilets must be close to where the employees work. They must be clean, free of pests, and have self-closing doors that lock from the inside. There must be enough toilet paper for all workers for the entire day. Hand washing stations must be near the toilets. They must be stocked with clean water and enough soap and clean towels for every use, and provide a place to dispose of used towels. Employers must tell employees where they can get drinking water, use the toilet, and wash their hands.

## **WORKERS' COMPENSATION**

Your employer must provide Workers' Compensation insurance at no cost to you. Employers are also required to have a Worker's Compensation poster, in English and Spanish, showing the name of their insurance company, policy number, and coverage period, clearly displayed in an area visible to workers.

Your employer cannot discriminate against you for requesting Worker's Compensation claim forms.

## **DISABILITY AND PAID FAMILY LEAVE**

Farm employers, owners and operators are required to provide New York's disability benefits (DB) and Paid Family Leave (PFL) insurance coverage to all workers. See [PaidFamilyLeave.ny.gov](http://PaidFamilyLeave.ny.gov) for information on PFL employee eligibility and opt out waivers that employers must give to those who qualify. All employers are prohibited from discriminating against employees who request Disability or Paid Family Leave claim forms.

## **MEAL PERIODS**

If your work day or shift is more than six hours, you must receive at least one 30-minute meal period. These meal periods do not have to be paid but must be provided. If you work a long shift that begins before 11am and goes past 7pm, your employer must provide an additional 20-minute meal period for dinner, between 5-7pm, in addition to the 30-minute lunch period that must be provided between 11am and 2pm. The 20 minute dinner must be paid time.

## **OTHER PROTECTIONS**

Your employer may not require you to pay, either directly or indirectly, for any required tools, supplies and equipment necessary to conduct your work. Likewise, you may not be required to pay employer costs related to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, or the recruitment costs.

**FOR QUESTIONS, ASSISTANCE OR TO CONTACT  
BILINGUAL FIELD STAFF IN YOUR AREA, CALL:  
877-466-9757**