

## Application for Temporary Employment Certification

ETA Form 9142 – APPENDIX A.2

U.S. Department of Labor



### For Use in Filing Applications Under the H-2A Agricultural Program ONLY

#### A. Attorney or Agent Declaration

I hereby certify that I am an employee of, or hired by, the employer listed in Section C of the ETA Form 9142, and that I have been designated by that employer to act on its behalf in connection with this application. I also certify that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in a Federal penitentiary or both (18 U.S.C. 1001).

1. Attorney or Agent's last (family) name	2. First (given) name	3. Middle initial
4. Firm/Business name		
5. E-Mail address		
6. Signature		7. Date signed

#### B. Employer Declaration

By virtue of my signature below, I **HEREBY CERTIFY** the following conditions of employment:

- The job opportunity is a full-time temporary position, the qualifications for which are consistent with the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.
- The job opportunity is not vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage.
- The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted and will continue to conduct the required recruitment, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which certification is sought. Any U.S. workers who applied or apply for the job were or will be rejected only for lawful, job-related reasons, and the employer must retain records of all rejections as required by § 655.119.
- The offered terms and working conditions of the job opportunity are normal to workers similarly employed in the area(s) of intended employment and are not less favorable than those offered to the foreign worker(s) and are not less than the minimum terms and conditions required by Federal regulation at 20 CFR 655, Subpart B.
- The offered wage rate is the highest of the adverse effect wage rate in effect at the time the work is performed; the prevailing hourly or piece rate, or the Federal or State minimum wage, and the employer will pay the offered wage during the entire period of the approved labor certification
- The offered wage is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the adverse effect wage rate, prevailing wage rate, which may be a prevailing wage piece rate, or the legal Federal or State minimum wage, whichever is greatest.
- There are no U.S. workers available in the area(s) capable of performing the temporary services or labor in the job opportunity, and the employer will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until the date that, for the first 5 years after the effective date of this rule, is 30 days after the first date the employer requires the services of the H-2A worker, and thereafter until the employer's date of need, unless prior to the expiration of the 5 years period the Department conducts a study that determines that the benefits of the role outweighs its costs and publishes a notice in the Federal Register to that effect.
- All fees associated with processing the temporary labor certification will be paid in a timely manner.



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9. During the period of employment that is the subject of the labor certification application, the employer will:
- (i) Comply with applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws;
  - (ii) Provide for or secure housing that complies with the applicable local, State, or Federal standards and guidelines for housing without charge to the worker;
  - (iii) Where required, has timely requested a preoccupancy inspection of the housing and, if one has been conducted, received certification;
  - (iv) Provide insurance, without charge to the worker, under a State workers' compensation law or otherwise, that meets the requirements of § 655.104(e).
  - (v) Provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under § 655.104(d)) and the employer's worksite without cost to the worker.
10. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for Temporary Employment Certification in the area of intended employment within the period beginning 60 days before the date of need, except where the employer also attests that it offered the job opportunity that is the subject of the application to those laid-off U.S. worker(s) and the U.S. worker(s) either refused the job opportunity or was rejected for the job opportunity for lawful, job-related reasons.
11. The employer **and its agents** have not sought or received payment of any kind from the employee for any activity related to obtaining labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
12. The employer has and will contractually forbid any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A workers to seek or receive payments from prospective employees.
13. The employer **has not and will not** intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has with just cause:
- (i) Filed a complaint under or related to Sec. 218 of the INA (8 U.S.C. 1188), or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
  - (ii) Instituted or caused to be instituted any proceeding under or related to Sec. 218 of the INA, or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
  - (iii) Testified or is about to testify in any proceeding under or related to Sec. 218 of the INA or this subpart or any other Department regulation promulgated under Sec. 218 of the INA;
  - (iv) Consulted with an employee of a legal assistance program or an attorney on matters related to Sec. 218 of the INA or this subpart or any other Department regulation promulgated under Sec. 218 of the INA; or
  - (v) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by Sec. 218 of the INA, or this subpart or any other Department regulation promulgated under Sec. 218 of the INA.
14. The employer **has not and will** not discharge any person for the sole reason of that person's taking any action listed in paragraph 14(i) through (v) listed above.
15. The employer will inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under § 655.111, unless the H-2A worker is being sponsored by another subsequent employer.
16. Upon the separation from employment of any foreign worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing or any other method specified of the separation from employment not later than forty-eight (48) hours after such separation is effective.
17. If the employer is providing housing through the use of a housing voucher, the following attestations and obligations apply:
- (i) The housing meets the applicable local, State or Federal standards and the owner/lessor of such housing agrees to provide DOL and SWA staff access to the housing for the purpose of conducting housing safety and health inspections;
  - (ii) The monetary amount of the voucher is sufficient to fully cover the cost of the room rental rate plus any taxes, deposits, utilities or other costs required by the owner/operator of the facility and the owner/operator of the facility has agreed that workers will not be charged additional fees or costs related to the housing; and
  - (iii) The employer will furnish housing through employer provided housing, rental or public accommodations or other substantially similar class of housing to any worker who is unable to obtain housing meeting the applicable safety and health standards with the voucher.



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18. If the application is being filed as an H-2A Labor Contractor (identified as "Farm Labor or Job Contractor" under Section C.14 of the ETA Form 9142), the following additional attestations and obligations apply under § 655.106:
- (i) The H-2A Labor Contractor will provide the MSPA Farm Labor Contractor (FLC) certificate of registration number and expiration date if required under MSPA, 1801 U.S.C. et seq., to have such a certificate;
  - (ii) The H-2A Labor Contractor will identify the farm labor contracting activities it is authorized to perform as an FLC under MSPA as shown on the FLC certificate of registration, if required under MSPA, 1801 U.S.C. et seq., to have such a certificate of registration;
  - (iii) The H-2A Labor Contractor will provide a list of the name and location of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers, the approximate beginning and ending dates when the H-2A Labor Contractor will be providing the workers to each fixed site, and a description of the crops and activities the workers are expected to perform at such fixed site;
  - (iv) The H-2A Labor Contractor is able to provide proof of its ability to discharge financial obligations under the H-2A program by agreeing to present a surety bond as required by 29 CFR 501.8, stating on the application the name, address, phone number, and contact person for the surety, and providing the amount of the bond (as calculated pursuant to 29 CFR 501.8) and any identifying designation utilized by the surety for the bond;
  - (v) The H-2A Labor Contractor has engaged in, or will engage in within the timeframes required by § 655.102, recruitment efforts in each area of intended employment in which it has listed a fixed-site agricultural business; and
  - (vi) The H-2A Labor Contractor has obtained from each fixed-site agricultural business that will provide housing or transportation to the workers a written statement stating that:
    - a. All housing used by workers and owned and/or operated by the fixed-site agricultural business complies with the applicable local, State or Federal standards and guidelines for such housing; and
    - b. All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and will provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR part 500.

I hereby designate the agent or attorney identified in section E (if any) of the ETA Form 9142 and section A above to represent me for the purpose of labor certification and, by virtue of my signature in Block 5 below, I take full responsibility for the accuracy of any representations made by my agent or attorney.

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).

1. Last (family) name	2. First (given) name	3. Middle initial
4. Title		
5. Signature		6. Date signed

### OMB Paperwork Reduction Act

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101 (a)(15)(H)(ii)). Public reporting burden for this collection of information is estimated to average 2 hours 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW \* Washington, DC \* 20210. **Do NOT send the completed application to this address.**