

## H-2B Application for Temporary Employment Certification

Form ETA-9142B – APPENDIX B

U.S. Department of Labor



### For Use in Filing Applications Under the H-2B Non-Agricultural Program ONLY<sup>1</sup>

#### A. Attorney or Agent Declaration

*I hereby declare under penalty of perjury that I am an attorney for the employer, or that I am an employee of, or hired by, the employer listed in Section C of the Form ETA-9142B, and that I have been designated by that employer in accordance with 20 CFR 655.8 to act on its behalf in connection with this application, as evidenced by the attached agency agreement. I also certify that to the best of my knowledge the information contained herein is true and accurate, including the employer's declaration regarding activities I have undertaken on the employer's behalf in connection with this application. 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** my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:*

1. The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek), the qualifications and requirements for which are consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same or comparable occupations and area of intended employment. The employer has listed all qualifications and requirements in the job order.
2. There is no strike or lockout at any of the employer's worksites within the area of intended employment for which the employer is requesting an H-2B certification.
3. The job opportunity was/is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. U.S. workers who apply for the job will be rejected only for lawful, job-related reasons, and the employer will retain records of all rejections.
4. The employer has not/will not offer terms, wages, and working conditions to U.S. workers that are less favorable than those offered or will be offered to H-2B workers or impose restrictions or obligations on U.S. workers that are not imposed on H-2B workers. This does not relieve the employer from providing H-2B workers with at least the minimum benefits, wages, and working conditions that must be offered to U.S. workers under 20 CFR 655.18, except for those required by 20 CFR 655.18(b) (17).
5. The offered wage equals or exceeds the highest of the most recent prevailing wage for the occupation that is or will be issued by the Department to the employer for the time period the work is performed, or the applicable Federal, State, or local minimum wage, and the employer will pay at least the offered wage, free and clear, either in cash or in a negotiable instrument payable at par, during the entire period of this application. The employer guarantees to supplement a piece rate wage if at the end of the workweek, the piece rate does not result in average hourly piece rate earnings during the workweek at least equal to the offered wage.
6. The offered wage is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.

<sup>1</sup> The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 ("2016 DOL Appropriations Act"), provides that the Department of Labor ("Department") may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. See Sec. 113. Therefore, in order to comply with the 2016 DOL Appropriations Act, the Department has removed references to these provisions from the Form ETA-9142B – Appendix B. However, the 2016 DOL Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department will not use any Fiscal Year 2016 funds to enforce them.



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7. During the period of employment that is the subject of this application, the employer will comply with applicable Federal, State and local employment-related laws and regulations, including, but not limited to, employment-related health and safety laws, 20 CFR part 655, Subpart A, 29 CFR Part 503. In addition, the employer and its agents and attorneys are prohibited from holding or confiscating workers' passports, visas, or other immigration documents pursuant to 18 U.S.C. 1592(a).
8. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation and area of intended employment within the period beginning 120 days before the date of need through the end of the period of certification, unless the layoff is for lawful, job-related reasons and all H-2B workers are laid off first.
9. The employer and its agents, attorneys, and/or employees have not sought or received, and will not seek to receive, payment of any kind from the worker for any activity related to obtaining certification or employment, including but not limited to payment of the employer's attorney or agent fees, application or petition fees, or recruitment costs. 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.
10. Upon the separation from employment of any H-2B or U.S. worker(s) employed under this application, if such separation occurs prior to the end date of the employment specified in this application, the employer will notify the Department in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. The employer will also notify DHS in writing (or any other manner specified by DHS) of such separation of an H-2B worker.
11. The employer will not place any H-2B workers employed pursuant to this application outside the area of intended employment or in a job classification not listed on the approved application unless the employer has obtained a new approved Form ETA-9142B.
12. The employer has demonstrated that it has a temporary need, as defined in 8 CFR 214.2(h)(6)(ii)(B), on Form ETA-9142B or an H-2B Registration, as applicable, and been granted the H-2B Registration, when applicable.
13. The employer will make all deductions from workers' paychecks required by law and only those additional authorized and reasonable deductions disclosed in the job order. Deductions not disclosed will be prohibited. Reasonableness of authorized deductions is determined under the principles stated in 29 CFR part 531. The wage payment requirement in condition 5 of this Declaration will not be met where unauthorized or unreasonable deductions, deposits, rebates, or refunds reduce the wage payment below the offered wage or where the worker "kicks back" any part of the wages to the employer or another person for the employer's benefit.
14. The employer has specified in the job order any applicable minimum productivity standard which the workers must meet in order to retain the job. With respect to any applicable productivity standard, the employer is able to demonstrate that such standard is normal and usual for non-H-2B employers for the same occupation in the area of intended employment.
15. If, before the expiration date specified in the job order, the services of a worker are no longer required for reasons beyond the control of the employer due to fire, weather, other Act of God, or similar, unforeseeable man-made catastrophic event, the employer may terminate the job order with written approval of the Certifying Officer, and will make efforts to transfer the workers to comparable employment, or if transfer is not effected, provide return transportation for the worker as specified in the regulations.
16. The employer will keep a record of workers' earnings and provide the workers with the required earnings statements on or before each payday, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent.
17. The employer has disclosed how it will provide transportation and subsistence costs in the job order. The employer will either advance all visa, visa-related, border crossing, subsistence, and transportation expenses to workers traveling to the employer's worksite, pay for them directly, or reimburse such expenses, other than travel and subsistence, in the first workweek and reimburse the remainder of the expenses no later than the time workers complete 50 percent of the period covered by the job order. (Advancement of transportation and subsistence costs to U.S. workers employed under this application is required when it is the prevailing practice of non H-2B employers in the occupation in the area of intended employment or when the employer extends such benefits to similarly situated H-2B workers). Provided that workers work until the end of the certified period of employment or are dismissed from employment for any reason before the end of that period, the employer will pay for such workers' return transportation and daily subsistence if the workers have no immediate subsequent H-2B employment. All employer-provided transportation must comply with all applicable Federal, State, or local laws and regulations.
18. The employer will provide to workers, without charge or deposit, all tools, supplies, and equipment required to perform the duties assigned.
19. The employer will provide a copy of the job order to all H-2B workers no later than when the worker applies for a visa if located abroad, no later than the time of the job offer if the H-2B worker is changing employment from one H-2B employer to a subsequent H-2B employer, and to U.S. workers employed under this application no later than on the day work commences. The disclosure must be in a language understood by the workers, as necessary and reasonable.



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20. The employer has posted a Department-provided poster detailing H-2B and U.S. workers' rights and protections in a conspicuous location at the place of employment. The employer will request and post additional posters in languages common to a significant portion of the workers if they are not fluent in English.
21. The employer has not and will not (and has not and will not cause another person to) intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any person who, with respect to 8 U.S.C. 1184(c), 20 CFR Part 655, Subpart A, 29 CFR Part 503, or any other Department regulation promulgated thereunder; has filed a complaint; instituted or caused to be instituted any proceeding; testified or is about to testify; consulted with a worker's center, community organization, labor union, legal assistance program, or attorney; or exercised or asserted on behalf of himself/herself or others any right or protection.
22. The employer has and will contractually forbid in writing any agent or recruiter (or any employee of such agent or recruiter) whom the employer engages, directly or indirectly, in international recruitment of H-2B workers to seek or receive payments or other compensation from prospective workers. The employer and its attorney and/or agent has provided with this application to the Department a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the international recruitment of H-2B workers, as well as the identity and location of all persons or entities hired by or working for the agent or recruiter, and any of their agents or employees, to recruit prospective foreign workers for the H-2B job opportunities offered by the employer.
23. The employer will conduct all required recruitment activities pursuant to 20 CFR 655.40 through 655.46 including but not limited to: additional recruitment if required by the Certifying Officer and contacting all of its former U.S. workers employed in the occupation at the place of employment during the previous year, disclosing the terms of the job order, and soliciting their return, unless they were dismissed for cause or abandoned the worksite.
24. The employer has and will continue to cooperate with the SWA by accepting referrals and will hire all qualified and eligible U.S. workers who apply for the job opportunity until 21 days before the date of need.
25. The employer will cooperate with any agent of the Secretary of Labor who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.
26. The employer will retain all documents pertaining to this application and registration, the recruitment-related documents, the payroll records, and related documents for 3 years as required by the regulations at 20 CFR 655.56 and 29 CFR 503.17.

**I hereby designate** the agent or attorney identified in section D (if any) of the Form ETA -9142B to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 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

**Public Burden Statement (1205-0509)**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification • U.S. Department of Labor • Suite 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210. **Please do not send the completed application to this address.**