

Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers
Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116-260,
And Public Laws 117-43 and 117-70
Form ETA-9142-B-CAA-5
U.S. Department of Labor



As an appendix to the approved Form ETA-9142B, *Application for Temporary Employment Certification*, and attached Form I-129, *Petition for a Nonimmigrant Worker*, and by virtue of my signature below, **I hereby certify that the following is true and correct:**

- (A) I am an employer with an approved temporary labor certification from the U.S. Department of Labor (DOL) seeking permission to employ H-2B nonimmigrant workers for temporary employment in the United States.
- (B) I was granted temporary labor certification from DOL for my business's job opportunity, which required that the worker(s) **begin employment during the first half of this fiscal year (October 1, 2021 through March 31, 2022)**, and is currently valid.
- (C) I attest that my business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B nonimmigrant workers requested on my Form I-129 petition filed pursuant to 8 CFR 214.2(h)(6)(xi) in the job opportunity certified by DOL, which is justified based on one or more of the following applicable types of evidence that I have retained and am prepared to submit, upon request from U.S. Department of Homeland Security (DHS) or DOL, beginning on the date the I-129 petition is filed:
 - Executed work contracts requiring the services or labor in the job opportunity certified by DOL to commence during the first half of fiscal year 2022
 - Client or customer work orders, reservations, or other business arrangements requiring the services or labor in the job opportunity certified by DOL to commence during the first half of fiscal year 2022
 - Financial records (e.g., profit-loss statements, bank statements, tax returns)
 - Payroll records or earnings statements
 - Evidence of reliance on a certain number of workers to operate, based on the nature and size of the business
 - Other types of evidence demonstrating irreparable harm (briefly describe in the space below):

- (D) I attest that my business has a bona fide temporary need for all the H-2B nonimmigrant workers requested on the Form I-129 petition, consistent with 8 CFR 214.2(h)(6)(ii).
- (E) If I submit the Form ETA-9142B-CAA-5 and I-129 petition to DHS 45 or more days after the start date of work, as

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shown on my approved temporary labor certification from DOL, I will complete a new assessment of the United States labor market, as follows:

- F.1. Not later than the next business day after submitting the I-129 petition for H-2B worker(s), I will place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment, following all applicable SWA instructions for posting job orders, with the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment. Additionally, I will provide the SWA with the unique identification number shown on my approved Form ETA-9142B as evidence that the job order is being placed in connection with my previously approved temporary labor certification, ensure the job order remains posted for at least 15 calendar days, and agree to receive applications in all forms allowed by the SWA, including online applications;
- F.2. During the period of time the SWA is actively circulating the job order for intrastate clearance, I will contact, by email or other available electronic means, the nearest comprehensive American Job Center (AJC) serving the area of intended employment where work will commence or, if a comprehensive AJC is not available, the nearest affiliate AJC serving the area of intended employment where work will commence, request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and provide to the AJC the unique identification number associated with the job order placed with the SWA or, if unavailable, a copy of the job order;
- F.3. During the period of time the SWA is actively circulating the job order for intrastate clearance, I will contact, by mail or other effective means my former U.S. workers, including those workers who were furloughed or laid off, during the period beginning January 1, 2020, until the date the I-129 petition is submitted to DHS, who were employed in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite). I will disclose the terms of the job order to these workers, and I will solicit all workers described above to return to the job. I will make this contact and provide the disclosures required by this paragraph in a language understood by the worker, as necessary or reasonable;
- F.4. During the period of time the SWA is actively circulating the job order for intrastate clearance, I will provide a copy of the job order to the bargaining representative of my employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, I will post the job order in the places and manner specified in 20 CFR 655.45(b). I will make this contact and provide the disclosures required by this paragraph in a language understood by the worker, as necessary or reasonable; and
- F.5. I will hire any qualified and available U.S. worker who applies or is referred for the job opportunity until the date on which the last H-2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, whichever is later. I understand that consistent with 20 CFR 655.40(a), applicants can be rejected only for lawful job-related reasons.
 - (F) I attest that my business will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID-19 worker protections, any right to time off or paid time off for COVID-19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site, and will notify any H-2B workers approved under the supplemental cap, in a language the workers understand as necessary and reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID-19 vaccines and vaccine distribution sites.
 - (G) I attest that each of the workers I request and/or instruct to apply for a visa under this petition, whether currently named or unnamed, have been issued an H-2B visa or were otherwise granted H-2B status during one of the last three (3) fiscal years (Fiscal Years 2019, 2020, or 2021), unless this petition, as indicated in Box #5 below, requests a national(s) of El Salvador, Guatemala, Honduras, or Haiti who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xi)(A)(2).

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- (H) I agree to retain, for a period of 3 years from the date of certification, a copy of this signed attestation form, evidence establishing that my business meets the standard described in paragraphs (C) and (D) of this attestation, and, if applicable, proof of recruitment efforts set forth in 20 CFR 655.64(a)(5)(i)-(iv) and a recruitment report that meets the requirements set forth in 20 CFR 655.48(a)(1)-(4), and (7), consistent with the document retention requirements under 20 CFR 655.69, 20 CFR 655.56, and 29 CFR 503.17. Further, I agree to provide this documentation to a DHS or DOL official upon request.
- (I) I agree to retain documentary evidence establishing that each of the workers I am requesting on this H-2B petition, whether named or unnamed, are only workers who have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (Fiscal Years, 2019, 2020, or 2021), unless this petition, as indicated in Box #5 below, requests a national(s) of El Salvador, Guatemala, Honduras, or Haiti who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xi)(A)(2).
- (J) I agree to comply with all assurances, obligations, and conditions of employment set forth in the *Application for Temporary Employment Certification* (Form ETA-9142B and all applicable appendices) certified by the DOL for my business's job opportunity.
- (K) I agree to fully cooperate with any compliance review, evaluation, verification or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in paragraph 8 CFR 214.2(h)(6)(xi)(B), as a condition for the approval of the H-2B petition.
- (L) I agree to fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in paragraphs 20 CFR 655.64(a) and 655.69(a), as a condition for the approval of the H-2B petition. Pursuant to 20 CFR Part 655, Subpart A and 29 CFR 503.25, I agree not to impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. Name of hiring or designated official of the employer (<i>Last Name, First Name</i>) *		2. DOL Case Number *	
3. Signature *		4. Date signed *	
<input type="checkbox"/>	5. With the petition supported by this Form ETA-9142-B-CAA-5, I am requesting a national(s) of El Salvador, Guatemala, Honduras, or Haiti who is not subject to a returning worker requirement under 8 CFR 214.2(h)(6)(xi)(A)(2), and I understand that the H-2B petition may only request nationals of these countries.		

NOTE: For Public Burden Statement, see the Instructions for Form ETA-9142-B-CAA-5.