

H-2A Decision-Making Guide



The H-2A program establishes a means for agricultural employers to bring nonimmigrant foreign workers to the United States for short-term agricultural work. This federal program can be a great benefit for farmers, but it's important to understand the responsibilities and requirements that accompany it.

Note: This document is designed to help farmers think through the pros and cons of participation in the H-2A program. It is not an exhaustive guide to the application process or a complete list of requirements.

Why participate in H-2A?

- This program can be of great use to employers that require reliable labor for a set period of time. H-2A employees have a contract with their host farm and are required to fulfill their responsibilities.
- There is one process through which all of your H-2A employees will be hired. This reduces the need to advertise, interview, negotiate, and hire for each individual position.

What are the challenges?

- The application process is onerous.
 - The application process, start to finish, takes approximately four months and involves many steps and precise attention to detail.
 - The employer must prove that there is a lack of domestic workers available for the job. This involves advertising through normal outlets that you would use to find workers, which can be expensive and time-consuming.
- The employer is responsible for providing transportation for H-2A workers from their home to the farm, which usually includes international airfare.

- If a farm employs H-2A and non-H-2A workers, the rate of pay must be the same for everyone doing the same work. Currently, the rate for H-2A workers is \$10.16 per hour, and this is updated annually.
- The employer must provide housing for H2A workers, and the housing must comply with the appropriate ETA (Employment and Training Administration) or OSHA (Occupational Safety and Health Administration) standards. Both ETA and OSHA are federal agencies and part of the US Department of Labor.
- The employer must provide three meals per day to workers in exchange for a small fee, or provide kitchen facilities.



- Employees are vetted by the H-2A program rather than their particular employer, so the farmer has no control over which individuals are sent to them.
- Because the purpose of the program is to bring in unskilled workers to fill basic labor needs, farmers may not request the same workers from year to year, or attempt to circumvent the hiring of domestic workers by requesting specialized H-2A workers.

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- The employer is responsible for providing work for H-2A employees for at least three-fourths of the workdays specified in the contract period.
- If any qualified domestic workers apply for a job during the first half of the H-2A contract, the employer must hire them. This is because the H-2A program is designed to not supplant US workers, but to fill a need should domestic workers be unavailable.
- There is a fee associated with participation in the program.

Simply put, the H-2A program exists to provide the agricultural sector with an additional labor source, but only if those workers are not hired at the expense of domestic workers. The program requires a lengthy and paperwork-heavy application process and the provision of transportation, meals and housing for your workers. In exchange, farmer participants can rely on a group of employees for a predetermined contract period.



The information on this sheets is based on a workshop series on Farm Labor, organized by CISA in 2010-2011. Speakers included Adam Prizio of Law For Food and representatives from the Office of the Massachusetts Attorney General, The US Department of Labor Wage and Hour Division, and the Massachusetts Department of Workforce Development.

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