THE H-2B FEDERAL VISA PROGRAM IN NEW YORK STATE

The New York State Department of Labor's Foreign Labor Certification Unit processes job order applications for employers seeking H-2B foreign guest workers.

We work with employers, agents and the United States Department of Labor to ensure compliance with state and federal regulations.

PROGRAM FACTS

The H-2B program allows foreign guest workers to come to the U.S. to do temporary, non-agricultural work. After the contract ends, they must return to their home countries or can be transferred to another certified job order.

H-2B workers must only work:

- For the employer listed
- At the location(s) stated
- Only during the dates of need listed
- On the job duties stated
- At the pay rate(s) stated

The H-2B visa program is Congressionally capped. Annually, there are two allotments of visas distributed:

- October 1 = 33,000
- April 1 = 33,000
- For an annual total of 66,000

Please note Congress has, for the past few fiscal years, authorized the Department of Homeland Security to release additional allotments of visas.

INBOUND AND OUTBOUND TRANSPORTATION

The employer must provide or pay for inbound transportation and daily meals to the place of employment or reimburse workers for the reasonable costs (the most economic, common carrier) when 50% of the work contract is complete. When the work contract is complete or if the contract cannot be fulfilled by the employer, the employer must provide or pay for the workers' transportation and daily meals to the next job, or to the home country.

HOUSING AND DAILY TRANSPORTATION

H-2B employers are not required to provide housing and/or daily transportation to and from work sites. Employers may not charge for transportation they choose to provide. Many H-2B employers, especially in the landscaping industry, provide free daily transportation to and from work sites.

H-2B employers may choose to provide housing/utilities at no cost to workers, or the allowable weekly amount (from the applicable New York State Wage Order) may be deducted from workers' pay.

DISCLOSURES TO WORKERS

Upon hire, workers must be given a copy of the certified H-2B work contract which states:

- The start and end dates of employment
- The conditions of employment
- The expected hours/day and days/week
- The rate(s) of pay
- The employer will provide and pay for all required tools

Additionally, the employer must prepare and sign a Notice and Acknowledgement of Pay Rate and Payday. This notice must be signed by both the employer and the worker. The worker must get a fully executed, signed copy and the employer must keep the original for six years.

DEDUCTIONS

Workers must be notified in writing of all deductions not already required by law. This includes health insurance premiums or other benefits the employer may offer/provide.

An employer is prohibited from deducting for the cost of new or broken tools, spoiled products, cleaning, transportation, laundry or any other expense not permitted by the applicable New York State Wage Order.

WAGES

Workers must be paid for all hours worked. If applicable, they must be paid 1.5 times the regular rate of pay for all hours over 40 in a work week (overtime).

Most manual workers in New York State are paid weekly. The pay period should be regular (ex: Sun-Sat) and payday should be on the same day each week (ex: Sun). Manual workers may only be paid bi-weekly when the pay is up to date and includes the 14th day (no lag in pay is permissible when paying bi-weekly).

WAGE STATEMENTS

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

- The employer's name, address, telephone number and FEIN
- The dates of the pay period
- The hours offered, and the hours actually worked
- The pay rate(s) for the hours worked
- The total earnings for the pay period
- Line item amounts for all deductions

WORKERS' COMPENSATION

The employer must provide Workers' Compensation Insurance coverage to H-2B workers. A Workers' Compensation Insurance certificate, showing the name of the insurance company, policy number and coverage period must be clearly displayed in a visible area, accessible to workers.

MEAL PERIODS

If the work shift is more than six hours, workers must receive at least one, uninterrupted 30-minute meal period. This meal period does not have to be paid, but it must be provided. When a shift begins before 11 am and goes past 7 pm, the employer must provide an additional, uninterrupted 20-minute meal period for dinner, between the hours of 5-7 pm. This additional 20-minute meal period must be paid.

OTHER PROTECTIONS

The employer may not require workers to pay, either directly or indirectly, for any employer-related costs to obtain the H-2B certified job order, including, but not limited to the employer's attorney or agent fees, the application fees, visa fees, transportation costs or other recruitment costs.

GUIDANCE FOR EMPLOYERS

Employers should request a Prevailing Wage Determination (PWD) as the first step in the application process (recommended to file the request no less than 60 calendar days before it is needed). The PWD must be received before the employer can submit the H-2B job order application.

Employers should submit the federal paperwork 75-90 calendar days prior to the date of need; although they may submit the New York State job order application prior to the 90 days.

The application should represent the accurate terms and conditions of employment. This includes disclosing work sites, job duties, rates of pay, including overtime and/or bonuses and the availability of housing or other benefits, such as health insurance.

Employers must not charge workers for tools, equipment, or breakage. Only those deductions detailed in the applicable New York State Wage Order, and subsequently authorized by the worker, are permissible.

CONTACT

New York State Department of Labor

Foreign Labor Certification Unit
Call: **877-466-9757**
Email: **h2b@labor.ny.gov**

H-2B website: **www.labor.ny.gov/immigrants/foreign-labor-certification-unit/h-2b.shtm**

New York State Department of Labor templates for the Notices and Acknowledgment of Pay Rate and Payday: **www.labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm**

The New York State Department of Labor is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.