

ALLIANCE ABROAD

Navigating the Visa Landscape

FOR SKILLED PROFESSIONALS & SEASONAL STAFF



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TN Visa Program

FOR SKILLED PROFESSIONALS



TN Professionals

USMCA – United States Mexico Canada Agreement

- Based on the trilateral trade agreement between the U.S., Canada and Mexico that replaced the North American Free Trade Agreement (NAFTA)
- Went into effect on July 1st, 2020.
- Supports mutually beneficial trade leading to freer markets, fairer trade and economic growth in North America
- Allows for temporary entry of TN Professionals



TN Professions & Requirements

Hotel Manager

Bachelor's Degree in Hotel Management or Restaurant Management

or

Post-Secondary Certificate in Hotel Management or Restaurant Management and three years of experience in Hotel Management or Restaurant Management

Accountant

Bachelor's Degree, or C.P.A., C.A., C.G.A., or C.M.A

Graphic Designer

Bachelor's Degree or Post-Secondary Diploma and three years of experience

Management Consultant

Bachelor's Degree or five years of experience as Management Consultant



TN Professionals Visa

- Valid for up to 4 years
- No annual cap on the number of visas
- No prescribed wage levels set by the Department of Labor
- No requirement to advertise for the position or attempt to hire US workers first
- Can only work for the employer who sponsors them
- Eligible for unlimited extensions of stay
- Spouses and minor dependents can obtain a TD visa
 - Spouses and dependents don't need to be citizens of Canada/Mexico
 - Spouses and dependents may not work



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Qualifying Criteria for a TN Professionals Visa

Individuals may be eligible for TN nonimmigrant status if:

- They have a profession that qualifies under the regulations
- A part time or full-time job has been arranged with a US employer
- The individual has the qualifications required to practice in the chosen profession
- There is no intent to immigrate in the US

Canadian citizens are eligible for admission as nonimmigrants to the US without a visa

Mexican citizens typically need a visa



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TN Professionals Document Checklist

USMCA – United States Mexico Canada Agreement



- Diploma
- Transcript
- Resume or CV
- Education Evaluation (if educated outside of Mexico, Canada or the US)
- Proof of Citizenship (Passport)
- Experience letters from past employers
- Dependent identification documents
- Offer of Employment Letter
- Support Letter



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J-1 Visa Program

FOR SKILLED EMPLOYEES & SEASONAL STAFF



J-1 Interns & Trainees

Cultural Exchange Program



Purpose

To enhance the skills and expertise of exchange visitors by exposing them to American techniques, methodology and technology and to enhance knowledge on foreign cultures within the US

Duration

Interns: up to 12 months

Trainees: up to 18 months (12 months max for hospitality)

Best Practice

Apply at least 4-6 months prior to the start date

J-1 Interns & Trainees

Interns	Trainees
Currently enrolled in a post-secondary degree or certificate program	Have a degree from a foreign post-secondary institution and at least one year of prior work experience
or	or
Graduated from a post-secondary degree program no longer than 12 months prior to the program start date	Have five years of work experience in the occupational field
12 months maximum duration	18 months maximum duration (12 months maximum duration for hospitality)



FOR SKILLED EMPLOYEES



J-1 Interns & Trainees

Program Exclusions

- No unskilled or casual labor positions (i.e.: housekeeping, bussing, bartending)
- No cooperating, contracting or being involved in any way with Staffing/Employment Agencies
- No positions that include childcare or elder care, clinical or any kind of work that involves patient care or contact
- No more than 20% of clerical work
- No less than 3 training phases for Hospitality and Culinary programs of more than 6 months



J-1 Interns & Trainees

Training Plan

- Rotation
- Define role and tasks
- No duplication of prior work experience or training
- Expose participants to American techniques, methodologies, and technology
- Expand upon the participants' existing knowledge and skills. Details “training”, not “work”.
- Hospitality and culinary training plans must be 12 month maximum

SECTION 4: TRAINING/INTERNSHIP PLACEMENT PLAN			
Each Training/Internship Placement Plan should cover a definite period of time and should consist of definite phases of training or tasks performed with a specific objective for each phase. The plan must also contain information on how the trainees/interns will accomplish those objectives (e.g. classes, individual instruction, shadowing, etc.). Each phase must build upon the previous phase to show a progression in the training/internship. A separate copy of pages 2 and 3 must be completed for each phase if applicable (e.g.; if the trainee/intern is rotating through different departments).			
Trainee/Intern Name (Family Name, First Name, Middle Name)			Field of Training/Internship
Name of Phase			Phase _____ of _____
Start Date for this Phase (mm-dd-yyyy)		End Date for this Phase (mm-dd-yyyy)	
Brief Description of Trainee/Intern's Role for this Phase			
Specific Goals and Objectives for this Phase			
Knowledge, Skills, or Techniques to be Imparted During this Phase.			
1.) What specific knowledge, skills or techniques will be learned?			
2.) What plans are in place for the trainee/intern to participate in American cultural activities?			
How, specifically, will these knowledge, skills or techniques be taught? Include the Specific Tasks and Activities to be Completed for this Phase (Interns) or Methodology of training and Chronology/Syllabus for this Phase (Trainees).			
Methods of Supervision. Who will provide daily supervision of the trainee or intern and what are their qualifications to impart the planned learning during this phase?			
Methods of Performance Evaluation. How will the trainee or intern's acquisition of new skills and competencies be measured during this phase?			

DS-7002

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FOR SKILLED EMPLOYEES



J-1 Interns & Trainees

Visa Sponsor Obligations



- Health, safety & welfare of the participant
- Participants selection and monitoring
- Employer and placement vetting
- Issue of DS 2019 forms and DS 7002 forms (training plan)
- Health insurance
- Pre-arrival orientation
- Offer or make available cross-cultural activities
- Suitable, affordable housing and reliable, affordable, and convenient transportation
- 24/7 support to employer and participant
- Ensure to educate & uphold Department of State regulations



J-1 Interns & Trainees

Employer Obligations

- Respect visa start & end dates
- Current workman's compensation insurance policy
- Site visit (if fewer than 25 employees and/or less than 3 million in annual revenue)
- Min. 32 hours per week
- Do not displace full-, part-time, temporary or permanent American workers
- Provide on-site supervision – be a mentor
- Cultural activities
- Evaluations
- Involve/report to the sponsor
- No change of visa status
- Assist with housing, transportation & monitoring



FOR SKILLED EMPLOYEES

J-1 Summer Work Travel

Cultural Exchange Program



Purpose

To provide foreign students with opportunities to interact with US citizens and experience US culture while working in jobs that are of seasonal nature and require minimal training

Duration

Up to 4 months

Spring, summer & winter seasons

Best Practice

Apply a year prior to the start date



J-1 Summer Work Travel

Students may not be placed in jobs:

- That displace domestic US workers
- That are on the program exclusion list
- With host employers who have experienced layoffs in the past 120 days or currently have workers on lockout or on strike

Employers should:

- Be able to prove their **seasonal staffing need**
- Organize at least **one cultural activity every month**
- Pay at the higher of: (i) The applicable Federal, State, or Local **Minimum Wage** (including overtime); or (ii) Pay and benefits commensurate with those offered to their similarly situated US counterparts
- Provide opportunities for **regular communication and interaction with US citizens**



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H-2B Visa Program

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H-2B Visa Program

Employer Requirements

The H-2B program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs.

Seasonal need –traditionally tied to a season of the year by an event or pattern; and of a recurring nature.

Peakload need –regularly employs permanent workers but needs to temporarily supplement its permanent staff due to a short-term demand

Government looks to see increase in:

- Revenue
- Expenses
- Staffing (contract labor and overtime hours count)



H-2B Visa Program

Program Benefits

- Up to 10 months
- **Summer season** April 1st - September 30th start dates
- **Winter season** October 1st - March 31st start dates
- Workers for the entire season
- Workers can only work for you
- Workers may come back year after year
- Fill positions not allowed on the J-1 visa program (housekeeping, bussing, bartending)



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H-2B Visa Program

Process

Step 1 30–60-day process, should be initiated **at least 120 days prior to date of need**.

Employers must obtain a **Prevailing Wage Determination** from the National Prevailing Wage Center to establish the wage which must be offered to H-2B and US corresponding workers.

Step 2 Can be filed 90-75 days prior to date of need, but due to the insufficient number of visas, the majority of applications are filed immediately after the **90-day** filing window opens.

Employers file a **Job Order** with a State Workforce Agency (SWA) and submit the H-2B application to the Chicago National Processing Center (CNPC).

Step 3 Time frame varies depending on DOL's timeliness

The SWA and CNPC review the application and the job order for completeness and compliance with program requirements. DOL is obligated to tell employers if their application has been accepted for processing within seven business days "**Notice of Acceptance**", otherwise it issues a **Notice of Deficiency (NOD)**.



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H-2B Visa Program

Process

Step 4 Recruitment activities begin with the Notice of Acceptance and continues **until 21 days** prior to the date of need.

After their application is accepted, employers **recruit American workers** for the job, including posting online with the State Workforce Agency and on USDOL's Public Job Registry, through internal job postings at the place of employment as well as contacting former employees.

Step 5 DOL certifies cases at least **30 days** before the start date, but it depends on when the Notice of Acceptance is issued, since recruitment activities must be completed prior to certification.

If American workers are hired, DOL reduces the number of H-2B workers an employer can petition for equal to the number of American workers hired. The Department of Labor then issues an **approved ETA 9142 labor certification** attesting that no willing, qualified or able American workers could be found for the remaining H-2B positions. The employer then may proceed to file an **I-129 non-immigrant visa application** with U.S. Citizenship and Immigration Services (USCIS).



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H-2B Visa Program

Process

Step 6 With premium processing, USCIS action must occur within **15 calendar days**. CIS can issue a Request For Evidence which results in a delay. USCIS has up to 15 additional days to approve or deny upon receipt of an RFE response. If a case is denied, an appeal must be filed within 30 days.

USCIS reviews the petition to confirm the temporary nature of the employment opportunity and other details of employment validity. Once the **petition is approved**, USCIS notifies the U.S. embassies and consulates in the countries from which the employer seeks to hire H-2B workers.

Step 7

Worker applies for H-2B visa at US Embassy abroad or if already in the US, worker travels to worksite to commence employment on the start date of the program.

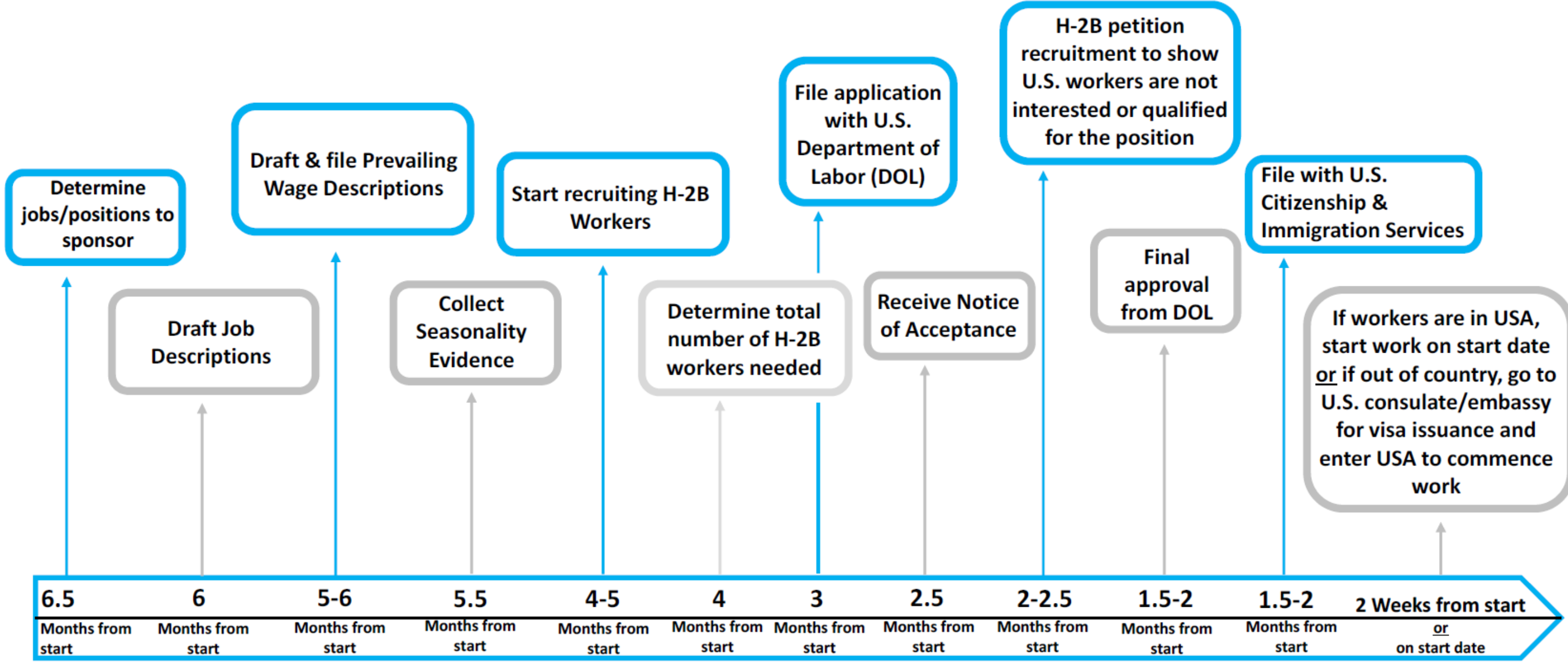


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H-2B Visa Program

Process Timeline



H-2B Visa Program

Investment

- Attorney Fees
- USCIS Filing Fees per Petition:
 - In-Country Workers** \$1,080 for employers with more than 25 full-time employees
\$540 for employers with fewer than 25 full-time employees
 - Out-of-Country Workers** \$540 for employers with more than 25 full-time employees
\$460 for employers with fewer than 25 full-time employees
- Premium Processing** \$1,685
- Fraud Prevention & Detection** \$150
- Recruitment
- Travel
- Visa Fees



H-2B Visa Program

Transportation Cost & Visa Fees

Inbound transportation

The employer must provide or pay for transportation and daily subsistence to the place of employment or reimburse workers when 50% of the job order has elapsed.

Outbound transportation

The employer must provide or pay for return transportation and subsistence if the worker completes the job order period or is dismissed early with or without cause.

The inbound and outbound transportation is only required to be the most economical, common carrier available. Subsistence rates change annually.

Visa fees

The employer is always liable for visa fees & related expenses in or before the first workweek.



H-2B Visa Program

In-Country Workers

versus

Out-of-Country Workers

- ✓ Exempt from the cap
- ✓ Travel reimbursement may be cheaper
- ✓ No embassy process
- ✓ More limited recruitment pool = high competition
- ✓ Must have matching end / start dates
- ✓ Low loyalty, risk of cancellations even after you file with USCIS

- ✓ “Endless” recruitment pool
- ✓ Jamaica, South Africa, Dominican Republic, Poland, Spain, Mexico, El Salvador, Guatemala, Colombia, Ecuador.
- ✓ Very motivated
- ✓ Subject to H-2B visa cap
- ✓ Embassy process
- ✓ Visa fees
- ✓ Visa denied workers can be replaced



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H-2B Visa Program

Employer Requirements

Print Fact Sheet



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

EMPLOYEE RIGHTS UNDER THE H-2B PROGRAM

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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. This appropriations rider has been included in the continuing resolutions that have passed throughout FY2017 and FY2018, and the Department remains prohibited from enforcing these provisions, or any reference thereto. However, the 2016 DOL Appropriations Act and continuing resolutions 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 funds to enforce them until such time as the rider may be lifted.

The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in nonagricultural labor or services (H-2B WORKERS). Department of Homeland Security (DHS) regulations allow for the employment of H-2B WORKERS only if the wages and working conditions of U.S. workers would not be adversely affected.

Two types of workers have rights under this program:

- H-2B WORKERS and
- OTHER WORKERS performing substantially the same work included in the H-2B job order or substantially the same work as that performed by the H-2B workers, except for certain long-term existing employees and certain employees under a collective bargaining agreement or individual employment contract.

DISCLOSURE

- To receive accurate, **WRITTEN INFORMATION** about the wages, hours, working conditions, and benefits of the employment being offered
- To receive this information before getting a visa (in the case of H-2B workers outside the U.S.) but no later than the first day of work (for other workers)
- To receive this information in a language understood by the worker

WAGES

- To be **PAID** at least every two weeks at the rate indicated in the job order for all hours worked
- To be informed in writing of all **DEDUCTIONS** (not otherwise required by law) that will be made from the worker's paycheck
- To receive an itemized, written **STATEMENT OF EARNINGS** (pay stub) for each pay period
- To be guaranteed employment or payment for at least **THREE-FOURTHS** (75%) of the hours promised in the job order every 12-week period (or 6-week period for job orders under 120 days)

TRANSPORTATION AND VISA EXPENSES

- To be provided or, upon completion of 50 percent of the job order period, reimbursed for reasonable costs incurred for transportation and subsistence (including lodging incurred on the employer's behalf and meals) from the worker's home to the place of employment
- H-2B workers must be provided or reimbursed for all visa, border-crossing, and visa-related fees in the first workweek of employment
- Upon completion of the job order or if dismissed early for any reason, to be provided or paid for return transportation and subsistence
- All employer-provided transportation must meet applicable safety standards

ADDITIONAL PROVISIONS

- To be provided, at no cost, all **TOOLS, SUPPLIES, and EQUIPMENT** required to perform the assigned duties
- To be **FREE FROM DISCRIMINATION or DISCHARGE** for filing a complaint, testifying, or exercising your rights in any way or helping others to do so
- Employers and their agents **MUST NOT** request or receive payment from any worker for any costs related to obtaining the H-2B certification (such as application and recruitment fees)
- Employers **MUST NOT** have sought H-2B workers during a strike or lockout at any of the employer's worksites within the geographic area listed in the job order
- Employers **MUST NOT** place H-2B workers outside the geographic area(s) or the occupation listed in the job order
- Employers **MUST** display this poster where employees can readily see it
- Employer **MUST NOT** lay off or displace similarly employed U.S. workers within 120 days before the job order through the end of the job order
- Employers **MUST** hire any eligible U.S. worker who applies until 21 days before the start of the job order
- Employers **MUST** comply with all other applicable Federal, State, and local laws (including the prohibition against holding workers' passports or other immigration documents)

Workers who believe their rights under the program have been violated may file confidential complaints.



For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627
www.dol.gov/whd
U.S. Department of Labor | Wage and Hour Division



WH0202 FY2018

Fact Sheet #78: General Requirements for Employers Participating in the H-2B Program

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The H-2B provisions of the Immigration and Nationality Act (INA) provide for the admission of nonimmigrants to the U.S. to perform temporary non-agricultural labor or services. 8 U.S.C. 1101(a)(15)(H)(ii)(b). This fact sheet provides general information concerning employer requirements under the H-2B program for H-2B applications submitted on or after April 29, 2015. Other topic-specific Fact Sheets are available from the Wage and Hour Division website, <http://www.dol.gov/agencies/whd/fact-sheets-index>. The Interim Final Rule published by the Department of Labor governing these and other requirements may also be found on the Wage and



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H-2B Visa Program

Insurance & Housing

Insurance

H-2B workers can (should but we can't obligate them) enroll for low-cost health insurance under the ACA (Affordable Care Act).

- If they stay in the US for more than three months (which is their case), they are required to enroll in a health insurance program. When they arrive in the US, they have **60 days** to start the enrollment process - though it is recommended that they begin as soon as possible. If they do not enroll, they could pay a fine when they file their tax returns. These fines can be more expensive than insurance itself.
- There are organizations that can help them with the enrollment process: community clinics and health centers exist around the country that can help them enroll in insurance and provide health care services. They can also call 1-800-318-2596 to speak with a specialist or visit <http://healthcare.gov>.

Housing

- Deposit
- All details on job orders
- US workers applying for the same job



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H-2B Visa Program

Deductions

- Employers must make all deductions required by law.
- Deductions not required by law must be disclosed in the job order and must be reasonable.
- Deductions for expenses that are for the primary benefit of the employer are not reasonable and therefore may not bring an employee's wages below the H-2B required wage rate.
- The employer must provide workers all tools, supplies, and equipment required to perform the assigned duties at no cost to the worker.



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H-2B Visa Program

Employer Obligations

- The employer **must hire qualified US applicants** and may not refuse to hire US applicants for discriminatory reasons.
- Employers **must not impose any restrictions or obligations on US workers** that will not also be imposed on H-2B workers. Each job qualification and requirement must be listed in the job order.
- An employer **must offer US workers terms and working conditions at least as favorable** as those offered or provided to H-2B workers.
- The offered wage must equal or exceed the highest of the **prevailing wage** obtained from ETA, or federal, state, or local **minimum wage** or the actual wage the employer pays for the job.
- Employers may pay based on commissions, bonuses, piece rates, or other incentives, as long as the employer guarantees that **wages equal the offered wage rate** calculated in every workweek and has accurately advertised the pay rates in all required recruiting.



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H-2B Visa Program

Other Obligations

- The job must be a bona-fide, full-time temporary position, with **full time defined as 35 or more hours per week**
- There must be **no strike or lockout** at any of the employer's worksites in the same geographic area
- Display workers' rights poster: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/H2B-eng.pdf>
- Provide an earnings statement to each worker on or before each payday.
- Retain required documents for 3 years.
- Notify ETA and DHS in writing within two days if a worker separates prior to the end date of employment certified in the Application.
- Comply with other applicable laws : i.e., FLSA overtime



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H-2B Visa Program

Place of Employment & Job Classification

- The employer must not place an H-2B worker outside the area of intended employment listed on the job order.
- The employer is also prohibited from placing H-2B workers outside the certified occupation listed on the job order.



Resources

The strategic advantage of international talent

Vanessa Noel, Alliance Abroad · Apr 12, 2024 8:00am

International employees

H-2B Visa Program

J-1 visa

TN visa




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GLOBAL YOUTH TRAVEL
AWARDS 2023

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