

## The Basics of H2A Temporary Agricultural Workers®

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### CURRENT SITUATION

There is currently a shortage of workers in the U.S.A. who are willing to work in agriculture. If you have used local migrant labor, you may have received a letter from the Social Security Administration that says that the social security number that you have submitted does not match the name with which you submitted it. As of now, how to handle a mismatch letter is in our court system. You have probably also heard or read that the Border Patrol is stepping up enforcement, not only along the borders, but also locally. With U.S.A. workers unwilling to perform manual labor and the potential to lose migrant workers whose Social Security numbers do not match, the agricultural workforce is very unstable. You have probably seen the stories predicting vegetables and fruit will rot in the field because there is no one to pick it.

### RULES FOR LOCAL WORKERS

Many of the same rules that apply to H2A workers also apply to any workers that are local. If you provide housing, it must meet minimum criteria. You have to provide safe transportation from one work location to another. You must provide field sanitation. This covers things like potable drinking water, safety equipment such as eye wash stations, and restrooms within a quarter of a mile. You must maintain payroll records for each of your employees. You must maintain accurate records for time worked. You must pay minimum wage. You do not have to pay overtime in agriculture. Child labor laws apply.

### RULES FOR H2A GUESTWORKERS

You are probably already meeting more of the requirements for H2A labor than you realize. You must pay the adverse effect wage for your H2A workers. That rate is set by the Federal government. It is currently \$8.01 for Arkansas, Louisiana, and Mississippi; \$8.51 for Alabama, Georgia, and South Carolina; and \$8.56, \$9.95, \$9.02, \$8.65, or \$8.66 for Florida, Missouri, North Carolina, Tennessee, and Texas, respectively.

You must pay at least three quarters of the wages or hours that you agreed to when you signed your labor contract. You must provide free housing. You cannot charge rent to your H2A workers. You must also provide basic necessities like electricity, heat, and water. You do not have to provide telephone service or television. You must also provide free transportation at least once per week for your H2A workers to obtain supplies such as food. If none of your H2A workers has a valid U.S.A. driver's licenses, you must provide a driver for them. You either have to provide meals or a place for them to prepare their own. You may charge them for meals that you prepare. You must use accurate accounting when charging for meals.

Guestworkers may only work for the employer that they entered into a contract with. You do not pay payroll taxes for these employees. You also do not have to pay Social Security taxes for these employees.

You must hire all eligible employees that apply for the jobs that you use H2A labor for. This means that if an American comes into your office and applies for the same job that you are using a guestworker for, you must hire them and provide housing if they live farther than 50 miles from your nursery. You must hire them regardless of whether they are late for their interview or other criteria that might otherwise disqualify them from working for you. Finally, you must have Worker's Compensation insurance for all your employees.

## THE PROCESS

The process is the same regardless of whether or not you are a grower or farm labor contractor. It takes a minimum of 45 days for the process to occur, but allow for more than 45 days. You must apply to both the U.S. and State Department of Labor. You must also run newspaper and radio ads to make sure that there is not an adequate labor pool with the H2A workers.

You must hire local workers up to the 50% level of the contract. This means that if you have a local person come in and apply for a job before half of your H2A contract is over, you must hire them. You do not have to hire local labor for the same job your H2A workers are doing if more than 50% of the contract has been fulfilled.

The housing that you provide for your H2A workers must be inspected each year before your workers arrive. You must also apply to the Department of Homeland Security and State Department. This helps make sure you are not hiring anyone that might be a terrorist. You also must make appointments for your H2A workers with the consulate at the border crossing. After our worker's conclude their meeting with the consulate, they usually arrive within 24 to 48 h.

## OUR EXPERIENCE

GreenForest Nursery, Inc. is a 140 acre nursery located in south Mississippi. It is a family-owned operation that focuses on large container trees and magnolia liners. The product line ranges from #15 to #65 cans. GreenForest Nursery, Inc. has used H2A labor for the past 8 years.

There is no local workforce willing to perform the manual labor associated with large container tree production. A #15 container weighs 36 kg (80 lbs), while a #30 can weigh 68 kg (150 lbs) pounds and a #45 container weighs more than 91 kg (200 lbs). Planting, spacing, and loading these containers takes a lot of physical effort. There are migrant workers that are willing to do this physical labor, but I have already mentioned the Social Security mismatch letters that can go with this solution. If you are paid a visit by the Border Patrol, you might lose the majority of your workforce. Can your nursery handle losing most of its workers during your busiest season? We decided we could not take that risk.

When we decided to go the H2A route, we did research to find out what the requirements were. We made sure that our housing met the minimum requirements. We decided to go with a contract company that handles all the details. There are several companies that handle contracts. You can also handle everything yourself. We made specific requests to the contract company concerning the workers that we wanted. These names came via recommendations. Using this procedure has resulted in very little turnover and very few problems. When one of our workers chooses not to return, he almost always recommends a replacement.

GreenForest Nursery, Inc., brought in workers specific to our nursery during the first year, and we have gone back to that system. In the years in between, we used a co-operative. A group of nurseries got together and brought over labor collectively. This allowed greater flexibility. If you are under a co-operative and suddenly find yourself with not enough work for the H2A workers you have, you may be able to find work for them at another nursery in the co-operative. They can then return to you. You can trade additional 10-month contract employees if you have 10-month employees or another nursery can utilize your 10-month employees if they have 10-month employees. There are some other stipulations. You cannot use another nursery's 10-month employees if your nursery only requested 6-month employees. The co-operative system also reduces costs associated with the paperwork to obtain H2A workers. The workers were paid by the individual nursery for which they did work.

We fill out paperwork in October for the workers that we want to arrive in late January or early February. Our workers return to Mexico in November. Always allow for delays at the border crossing. Workers that have previously worked for you may be delayed or even turned away. Depending on your proximity to a border crossing and the number of workers you have requested, you will need to arrange transportation for your workers from the bus stop to the nursery. You may also need to arrange a grocery stop if you are expecting them to prepare their own meals immediately.

We provide vehicles that have passed inspection. If they do not have a driver among them with a U.S.A. license, you must provide a driver to make sure their shopping needs are met at least once per week. There is a benefit of bringing the same workers back every year. They are familiar with U.S.A. regulations and will usually pursue a driver's license and purchase their own vehicle.

### **HOW MUCH DO H2A WORKERS COST?**

It costs \$2,000 per 20 workers as a processing fee to the company that we use. Our contractor does not charge the worker anything. If you do not go through a contractor, it would still cost you \$150 for attorney fees, \$320 for Citizenship and Immigration Service processing fee, \$100 plus \$10 per worker for U.S.A. Department of Labor H2A fee, and \$1.50 to \$4.50 for appointment scheduling fees per applicant. You will also incur costs for advertising. We also paid \$10,000 for a used, 15-passenger van and \$4,000 for a used Suburban. You must provide pots, pans, sheets, beds, towels, and other necessities. Housing cost \$40 per ft<sup>2</sup> for the house, and furnishings added another \$10 per ft<sup>2</sup>.

### **HOUSING**

The site must not collect standing water. It must be large enough to prevent overcrowding and not contain debris. Waste must be collected twice weekly. The site must not be within 152 m (500 ft) of where livestock are kept. All electrical and gas fixtures must be properly grounded, vented, and operational. You must provide electrical service with adequate lighting and one outlet per room. Any paths and walkways must be illuminated at night. You cannot have any exposed wires or missing switch-plates or receptacle covers. Any extension cords must be of adequate gauge to handle the application.

The shelter itself must protect residents from the elements, bugs, and rodents. You must provide 50 ft<sup>2</sup> per person in sleeping rooms or 100 ft<sup>2</sup> per person in combination rooms with at least 7-ft ceilings. The beds must be off the floor at least 12 inches to allow for ventilation and placed so that overcrowding does not occur. Floors, walls, and ceilings must be in good repair and free from mildew. Windows must operate correctly and be at least 10% of the floor area. No other hazards should be present.

If you have more than 25 residents, water must be tested by the state every month. If you have fewer than 25 residents, water must be tested once during residency. No tests are required if public water is used. You must provide adequate hot water. All sinks, commodes, faucets, and drains must work correctly. You must have one shower per 10 people, one toilet per each sex of 15 people, one sink per every 6 people, one laundry tub for every 30 occupants, and clothes drying facilities. The septic system must be correctly connected.

The kitchen and dining area must be clean and of adequate size. You must provide a stove for every 10 people. You must have adequate refrigerator space to handle the shopping routine. You must have a clean, nonporous food preparation area and adequate cabinet space for items purchased during weekly shopping. You must provide fire extinguishers, smoke detectors, and first aid kits for each building in which workers sleep, eat, or bathe. No flammable materials should be stored in the housing area.

### **PROS AND CONS**

For GreenForest Nursery, Inc., H2A labor has provided a stable and happy workforce. We do not have to pay Social Security taxes. Our workers are legal and dependable. Because we have been able to retain the same workers each year, they are knowledgeable and experienced. However, we do have to provide housing. We do have to pay a higher wage as determined by the government. We do not have year-round employees through this program. We also have to hire anyone that walks through the door and applies for the same jobs that we use H2A workers for. Finally, we must have Worker's Compensation insurance. For GreenForest Nursery, Inc., the benefits have outweighed the cons.