

Guide to the H-2A Visa Program

in the United States

What is the H-2A visa program?

The H-2A visa program allows foreign workers to do farm work in the U.S.

Foreign workers enter into contracts with employers, and then come to work in the U.S.

Workers go back to their home country when the contract is over.

Both women and men may participate in the H-2A visa program.

Can I earn less than the minimum wage?

No. Workers must not be paid less than the federal or state minimum wage, whichever is higher.

Can I earn more than the minimum wage?

Workers in the H-2A program may be paid a higher wage rate called the adverse effect wage rate (AEWR).

The Labor Department calculates this rate based on how much other farm workers in the area are paid. For example, if the minimum wage is \$5.15/hour but local farm workers earn \$7.00/hour, H-2A workers must be paid \$7.00/hour.

To find out what the AEWR is, contact the Wage and Hour Division (see box) or the nearest state labor office.

Is housing provided to H-2A workers?

Yes. Employers must provide free housing that meets safety and health standards established by law.



However, workers may have to pay for any damage they cause to the property.

What do H-2A workers do for meals?

The employer must give each worker three low-cost meals per day and disclose the cost in the worker contract, or give free cooking facilities.



What happens if I get hurt on the job?

Workers can collect workers' compensation.

Employers must provide workers' compensation insurance to workers at no cost to the worker.

For more information on workers' compensation, see *Guide to On-the-Job Injuries in the United States*.

How much should I be paid?

H-2A workers must not be paid less than their contract rate.

For information on wages, see *Guide to Minimum Employment Standards, Pay Deductions and Unemployment Compensation in the United States*, or contact the Wage and Hour Division at 1-866-487-9243.

Wage and Hour Division
Employment Standards Administration
200 Constitution Ave. N.W.
Washington, DC 20210

What should be in a worker contract?

The law requires that employers put certain terms in H-2A contracts.

These terms are meant to protect workers.

The worker contract must state:

- the start and end dates of the contract;
- all significant conditions of employment (transportation, housing, meals, etc.);
- the days that workers are not required to work (Sundays, federal holidays, etc.);
- the hours per day and the days per week a worker is expected to work during the contract period;
- the crop and area to be worked;
- the rate of pay for each job;
- that the employer will provide all required tools and that the employer will pay for all required tools;
- that the employer will provide workers' compensation insurance for workers.

Every worker must be given a copy of the worker contract (or official job order form) no later than the first day of work.

If your contract does not have the information listed above, call the Wage and Hour Division at 1-866-487-9243.

What is a wage statement?

A wage statement is a record of the wages paid to workers.

A wage statement lists:

- the hours worked;
- the hours refused;
- the pay for each type of crop;
- the pay (per hour, piece rate, etc.);
- the total earnings for the pay period;
- all deductions from wages (with explanations for each deduction).

Employers must give every worker a wage statement.

Can workers on H-2A visas work for a different employer than the employer in their contract?

No. Workers must work only for the employer contracted.

Workers must also work:

- at the location contracted;
- only for the period of time contracted;
- on the crop activity contracted;
- at the rate of pay contracted.

Wage deductions for H-2A workers

Your employer will deduct expenses and taxes from your check.

Expenses and taxes are different.

Taxes are:

- State income tax
- City or local income tax (if any)

Expenses are the costs of:

- Meals
- Merchandise
- Utilities

Your employer must provide meals or merchandise before their cost can be deducted from your check.

Your employer cannot deduct expenses from your check if it will lower your wage below the minimum wage.

For more information, see *Guide to Minimum Employment Standards, Pay Deductions and Unemployment Compensation in the United States* or call 1-866-487-9243.

Do I have to work all of the hours in my contract?

No. Workers can refuse hours.

Is my employer required to offer me hours?

Yes. The employer is required to offer you a certain number of hours in your contract.

The employer must offer three-fourths (3/4) of the total work hours listed in the contract.

What happens if my employer does not offer the required hours?

Even your employer does not offer the required hours, the employer must pay you for the required hours.

What happens if something prevents the contract from being fulfilled?

If it is impossible to fulfill the remainder of the contract and it is not the employer's fault, the employer must pay the worker three-fourths (3/4) of the total hours stated in the contract. The employer must also pay the worker for inbound as well as return transportation.

What happens if I am fired without cause?

Workers who are fired without sufficient cause must be paid their return transportation and the full three-fourths guarantee (see box).

Who pays for travel?

You must pay for your travel costs to the place of work, but your employer must repay you for all travel costs when you have met certain conditions.

The employer must pay for travel:

- from the place of origin to the place of work, but only when half of the contract period is completed;
- to the place of recruitment, but not until the contract period is completed.

Your employer must provide free transportation between local housing and the work place for all workers receiving housing.

If you agree to your employer's request that you resign from a job, you may lose the right to have your trip home paid for.

How do I add up the three-fourths guarantee?

For example, say your H-2A work contract says you will work:

- six (6) days per week;
- eight (8) hours per day;
- for ten (10) weeks.

Step 1 - Multiply the days you will work per week (6) by the hours you will work every day (8) by the weeks you will work (10) to get the contract hours.

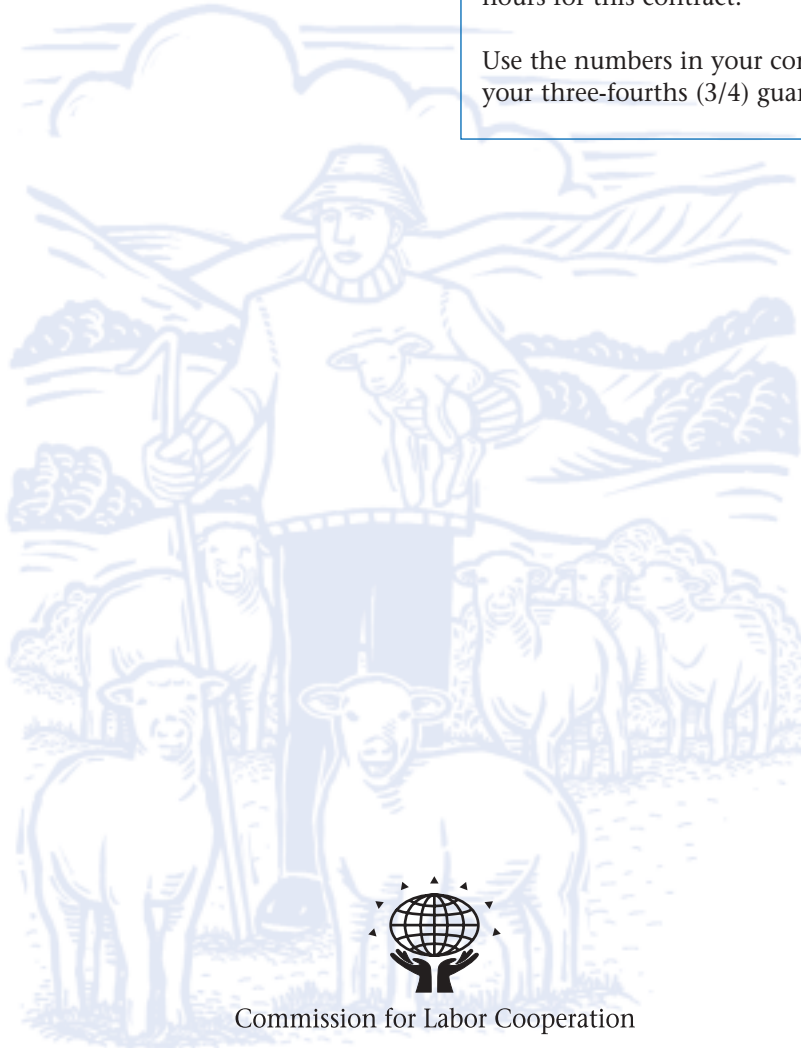
Example: $6 \times 8 \times 10 = 480$.

Step 2 - Multiply the contract hours (480) by the three-fourths guarantee ($3/4$) to get the guaranteed hours.

Example: $480 \times 3/4 = 360$.

The three-fourths ($3/4$) guarantee equals 360 hours for this contract.

Use the numbers in your contract to figure out your three-fourths ($3/4$) guarantee.



Commission for Labor Cooperation