

Guide to the H-2B Temporary Work Visa Program

in the United States

The H-2B program is a temporary work visa program for foreign workers in nonfarm jobs.

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

Do I need any special qualifications to apply for this program?

No. This program is for both skilled and unskilled workers and has no formal educational requirements.

Do I need a job to apply for the H-2B visa?

Yes. You cannot apply without first proving you have a job waiting for you. Your employer must go through a two-step process.

1. He or she must apply for a temporary labor certification from the Department of Labor for your job.
2. He or she must apply for an H-2B visa for you through the Bureau of Citizenship and Immigration Services (BCIS).

How long can I work in the United States with the H-2B visa?

- You can stay in the U.S. for a period of one year. After one year you can apply for a one-year extension. The maximum time you can stay in the U.S., including extensions, is three years.
- After your visa expires, you must either leave the U.S. or apply for an extension. If you have made an extension application, you may stay in the U.S. until your application is approved or denied.



Can I change employers?

No. Employers go through a long application process. If you do not wish to work for the employer who first hired you, you must file a new application.

Can my family come with me?

Yes. Your family members will be able to obtain H-4 visas, with which they can come with you to the U.S. Members of your family may not work with the H-4 visa but are allowed to study in the U.S.



What does temporary work mean for H-2B purposes?

There are four instances where work is seen to be temporary.

- 1. A one-time event:** Your employer will not again need to and has not before needed to hire workers for this job.
- 2. Peakload need:** Your employer must prove that he or she must hire you in addition to the permanent workers he or she hires. This need is due to the time of year or an increase in demand.
- 3. Seasonal need:** Your employer must prove that your services are needed for a traditionally busy time of year.
- 4. Intermittent need:** Your employer must prove that he or she does not hire permanent staff for this task but occasionally needs to hire temporary workers.



Tree planters

- If you are a tree planter, you are able to come to the U.S. using the H-2B program.
- As a tree planter you may also be protected by the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA).
- MSAWPA protects your rights regarding your housing, your wages, when and how you are paid, and other rights.
- For more information, see [Guide to the Law Protecting Migrant and Seasonal Farm Workers in the United States](#).
- You are also entitled to all other applicable worker protections.
- If you believe that any of these rights has been violated, contact the Department of Labor at 1-866-487-9243.

Can I apply for a green card?

A “green card” is a visa that allows you to live and work in the United States as a legal permanent resident.

It is not a good idea to apply for a green card while you are on an H-2B visa or are hoping for an extension of your visa. The H-2B visa is a temporary visa. If you are seen to have an intention to stay permanently, then you will be denied an extension or in some cases have your H-2B visa taken away.

How much will I be paid?

Your employer determines your salary. H-2B regulations require that you be paid at least the minimum wage. You may be paid by piece rates, but are still entitled to the state or federal minimum hourly wage, whichever is higher.

Am I entitled to be paid for overtime?

Yes. You must be paid at least one and one-half (1.5) times your wage for every hour above 40 hours worked per week. If you are being paid by piece rate, you may be paid one and one-half times the piece rate.

What do I do if my employer does not pay me the minimum wage or violates my other rights?

You are entitled to the same labor and employment protections as other workers in the United States.

- If your employer does not pay you the minimum wage, or if your rights are violated, you can complain to the state or federal labor department.
- The Wage and Hour Division of the Department of Labor will ensure that an investigator looks into your complaint.
- For information on your rights or to make a complaint, contact the Department of Labor at 1-800-959-3652.

For more information, see *Guide to Minimum Employment Standards, Pay Deductions and Unemployment Compensation in the United States*.

I work on a farm. Does this mean I am a farm worker under the law?

Not necessarily.

This may sound strange to you, but working on a farm does not always mean you are considered a “farm worker” under U.S. law. This is important to know, because a farm worker has different rights than other workers. Sometimes you might be a farm worker under one law and not under another law.

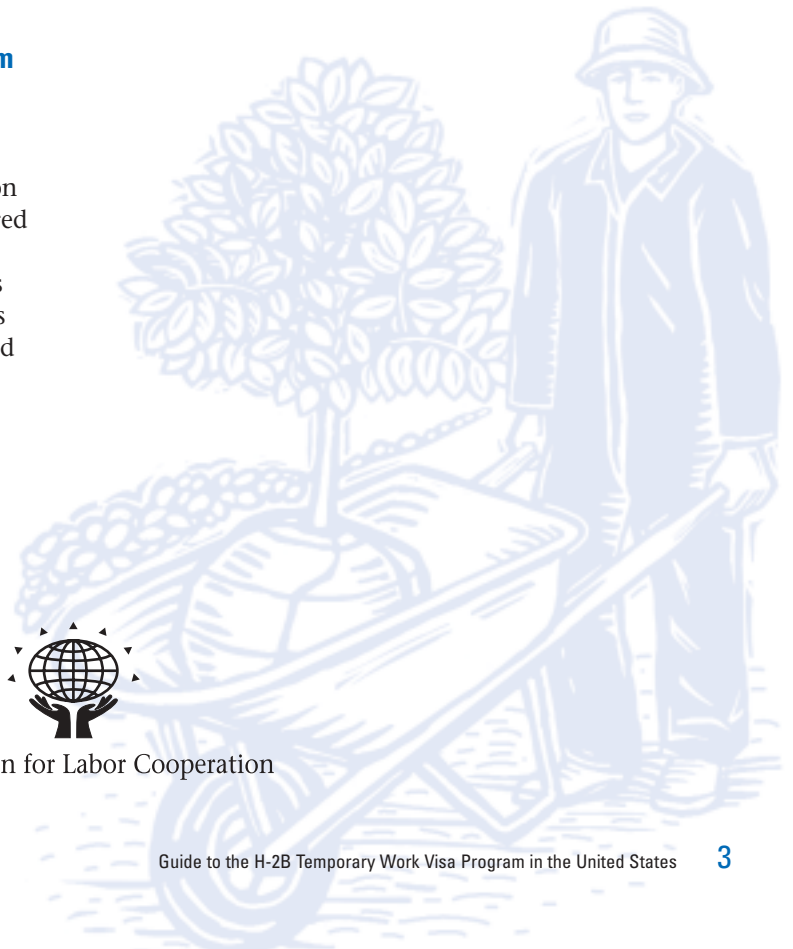
To find out more, contact the Department of Labor or the nearest legal aid office.

What if I get hurt on the job?

- If you are hurt on the job, you are entitled to workers’ compensation in most states.
- In a few states, farm workers are excluded or are entitled only to optional coverage.
- In a few states, nonresidents receive limited benefits.
- For more information see *Guide to On-the-Job Injuries in the United States*.

Know your rights

- You have the right to be paid at least the minimum wage.
- You have a right to be paid overtime, if you work over 40 hours a week.
- You have the right to a safe working environment in accordance with the Occupational Safety and Health Act (OSHA).
- You may be protected by the Fair Labor Standards Act.
- Your employer cannot retaliate against you if you file a complaint.
- If your employment ends before your contract expires, your employer must pay for your transportation back to your home city.



Commission for Labor Cooperation