



Filing Tips and Best Practices for H-2B Labor Certification Applications

October 25, 2017

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H-2B Filing Tips and Best Practices

Topics

- ❖ Refresher and overview of H-2B filing procedures
- ❖ Filing tips and best practices
- ❖ iCERT updates

Preparing the H-2B Application

STEP 1: Obtain Prevailing Wage

- Employer obtains prevailing wage from OFLC NPWC (Form ETA – 9141)
 - Employer begins preparing a job order and the H-2B application package
 - **DO NOT WAIT!** Please file your request for a prevailing wage determination as soon as practically possible
- As of July 1, 2017, the validity period for prevailing wage determinations will be issued to June 30, 2018

Recommended Timeframe: Between 150 and 135 days before work start date

Preparing the H-2B Application

STEP 2: Submit Job Order to State Workforce Agency

- Employer submits job order and informs SWA that a concurrent application for H-2B workers has been filed
- If the anticipated worksites are located in more than one state within the area of intended employment, the employer may submit the job order to any one of the SWAs having jurisdiction over the those worksites
- The job order must meet the content requirements at 20 CFR 655.18 and any state-specific requirements
- The SWA reviews job order and notifies the *OFLC Chicago NPC* of any deficiencies within 6 business days

Regulatory Timeframe: *Between 90 and 75 days before work start date*

Preparing the H-2B Application

- Many SWAs maintain job order systems that permit employers to place job orders using “self-service”, while others require “staff-assistance” and use a standard job order form
- Regardless of the method, the employer **must** apprise the SWA or otherwise provide notification that the job order is being placed in connection with an H-2B application
- If the SWA form does not have a dedicated field to indicate “H-2B”, then provide notification using an “open text field” or when transmitting (e.g., email) the job order

Best Practice Tip: Contact the SWA early in the process to understand how to submit a job order and/or obtain a copy of the SWA’s standard job order form. Make sure the SWA has the capability to make modifications on your behalf, in the event certain job order content is not compliant.

Preparing the H-2B Application

Tips for Preparing the Job Order

- Many SWA job order systems/forms do not have dedicated fields for the required content (*e.g., start/end dates of work, can only enter up to 25 openings*)
 - Use a free text field (*e.g., job description*) or contact the SWA for assistance on how to complete the job order form
- Be aware of any character size limitations that may exist in some SWA job order systems/forms, prohibiting inclusion of the necessary assurances
 - Contact the SWA immediately and inquire as to what minimum language can be entered
- Job orders for employers of a mobile workforce (i.e., forestry, carnivals) must include language that optional housing will be offered at no cost to the worker.

Preparing the H-2B Application

Tips for Preparing the Job Order

- Make sure the job order contains the minimum content requirements under 20 CFR 655.18

Job Order Content Requirements	Regulatory Citation
State the employer's name and contact information	655.18 (b)(1)
Indicate job is temporary, full-time, and number of openings	655.18 (b)(2)
Description of job duties, requirements, and qualifications	655.18 (b)(3)
Geographic area of employment	655.18 (b)(4)
Wage offer or range of applicable wage offers	655.18 (b)(5)
Availability of overtime and wage offer <i>(if applicable)</i>	655.18 (b)(6)
Provision of on-the-job training <i>(if applicable)</i>	655.18 (b)(7)
State a single workweek will be used in computing wages due	655.18 (b)(8)
Specify the frequency of pay	655.18 (b)(9)

Preparing the H-2B Application

Tips for Preparing the Job Order

Job Order Content Requirements	Regulatory Citation
Provision of board, lodging, or other facilities <i>(if applicable)</i>	655.18 (b)(10)
State all deductions from the worker's paycheck	655.18 (b)(11)
Inbound transportation/daily subsistence <i>(if applicable, lodging)</i>	655.18 (b)(12)
Outbound transportation/daily subsistence <i>(if applicable, lodging)</i>	655.18 (b)(13)
Provision of daily transportation <i>(if applicable)</i>	655.18 (b)(14)
State reimbursement of visa, border, and related fees	655.18 (b)(15)
Provision of any tools, supplies, and equipment at no cost	655.18 (b)(16)
Three-fourths guarantee <u>(not required due to 2017 Omnibus Act)</u>	655.18 (b)(17)
Instruct applicants to contact nearest office of the SWA	655.18 (b)(18)

A job order checklist with sample language is available at https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Job_Order_Checklist.pdf

Preparing the H-2B Application

Best Practice Example Job Order

Employer's name

655.18 (b)(1)

Job Description

██████████ is looking to fill Advanced Housekeeper positions in ██████████ County ██████████), Colorado. This is a temporary, full-time peak load position & we are looking to fill 100 job openings for employment from November 23, 2016 to April 10, 2017.

Geographic location of employment

655.18 (b)(4)

Indication position is temporary, full-time, number of openings, and expected start and end dates of work

655.18 (b)(2)

Duties: Clean & maintain guest accommodations. Make beds & change linens; clean bathrooms; dust furniture, pictures, window ledges & shelves; vacuum carpeted areas & remove trash. Stock guest rooms with amenities such as bottled water, towels & tissues. Clean common areas such as lobbies, hallways, bathrooms & recreation areas. Report damage to guest rooms. Report lost items. Maintain carts, linen rooms & housekeeping equipment & supplies in a neat & orderly fashion. May also help with turndown service. Comply with all resort policies, procedures & standards of operation. Comply with OSHA standards for chemical handling.

Detailed job description, duties and requirements

655.18 (b)(3)

Requirements: Must be able to lift 50 lbs. Must be able to stand for extended periods of time. Must have a minimum of 1 year of housekeeping experience.

Wage offers, including overtime, and full-time hours

655.18 (b)(5) and (b)(6)

Terms & Conditions of Employment: \$12.65/hr, at least 35hrs/wk, Mon-Sun, 8:00 A.M to 5:00 P.M. (schedule varies). Overtime is available as needed. Overtime rate of pay is at least \$18.98 per hour.

Preparing the H-2B Application

Best Practice Example Job Order

Inbound transportation

655.18 (b)(12)

Transportation: From the place from which the worker has come to work, whether in the U.S. or abroad, to the place of employment, if the worker completes 50% of the work contract period, the employer will provide advance payment for transportation and subsistence (including meals and, to the extent necessary, lodging) from the place of recruitment to the place of

Outbound transportation

655.18 (b)(13)

Upon completion of the work contract or where the worker is dismissed earlier, employer will provide or pay for worker's reasonable costs of return transportation and subsistence back home or to the place the worker originally departed to work, except where the worker will not return due to subsequent employment with another employer. The amount of transportation payment or reimbursement will be equal to the most economical and reasonable common carrier for the distances involved. Daily subsistence will be provided at a rate of \$12.09 per day during travel to a maximum of \$51.00 per day with receipts.

Disclosure of daily subsistence amount

655.18 (b)(12) and (b)(13)

Three-fourths guarantee: The employer guarantees to offer work for hours equal to at least three fourths of the workdays in each 12-week period of the total employment period.

3/4th Guarantee

(not required due to 2017 Omnibus)

655.18 (b)(17)

Tools, equipment & supplies: The employer will provide workers at no charge all tools, supplies, & equipment required to perform the job.

Provision of tools, equipment, and supplies

655.18 (b)(16)

Preparing the H-2B Application

Best Practice Example Job Order

Single workweek guarantee and frequency of pay

655.18 (b)(8) and (b)(9)

Statement of deductions from worker's pay

655.18 (b)(11)

Reimbursement of border, visa, and related fees

655.18 (b)(15)

Provision of board, lodging, or other facilities

655.18 (b)(10)

Employer contact information

655.18 (b)(1)

Instructions on how to apply

655.18 (b)(18)

Miscellaneous: The employer will use a single workweek as its standard for computing wages due; The pay period is every two weeks; The employer will make all payroll deductions required by law and will not make any deductions, which are not required by law; The employer will reimburse an H-2B worker in the first work week for all visa, visa processing, border crossing, and other related fees, including those mandated by the government, incurred by the H-2B worker. Subsidized housing is available at a cost of \$372.00 to \$641.00 depending on the unit type (i.e., number of beds in the unit and the number of people living in the unit). The worker is responsible for paying the subsidized housing cost each month. Monthly rent is not deducted from the workers' pay.

Employer Contact Information [REDACTED] Corporation; Attn: HR, [REDACTED].

How To Apply: Inquiries, applications, indications of availability, and/or resumes may be sent to the Colorado State Workforce Agency's Edwards Workforce Center, which serves Eagle County, Colorado at: 0069 Edwards Access Rd., #11B, Edwards, CO 81632 and reference job #6659555 or submit an application online at: <https://www.connectingcolorado.com> charge all tools, supplies, & equipment required to perform the job.

Preparing the H-2B Application

Note re: Provision of Board/Lodging or Other Facilities – If an employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, this must be listed in the job order, including the associated cost of such provision. **Employers of mobile workforces (i.e., tree planting, carnival workers) must cover the cost of lodging to the extent such costs would reduce pay below the offered wage for the area of intended employment.**

Examples:

If lodging is primarily for the employer's benefit and convenience (always in the cases of mobile workforces): "The employer will pay the cost of lodging to the extent such costs would reduce pay below the offered wage rate for the area of intended employment."

If lodging is not primarily for the employer's benefit and convenience: "Dormitory-style shared lodging is available in employer-owned housing at a rate of \$25 per person per week."

Preparing the H-2B Application

STEP 3: Submit Application to DOL-OFLC, Chicago National Processing Center

- Form ETA-9142B and signed Appendix B
- Copy of job order placed with State Agency
- Valid PWD, Form ETA-9141 issued by OFLC-NPWC (or PWD case #)
- Agreements with agents/foreign recruiters AND lists of names/locations of foreign recruiters. If none, statement so saying.
- Additional documentation for job contractors and employers requiring farm labor contractor license (*e.g., reforestation employers*)

Tip

- *FLC and FLCE certificates must be valid through the entire period of need. Where one will expire before the end date of need, the employer **must submit a statement** that it will renew the certificate(s) before it/they expire.*

Regulatory Timeframe: Between 90 and 75 days before work start date

Preparing the H-2B Application

General Filing Tips

- ✓ Ensure all required fields on Form ETA-9142B are completed prior to submission
- ✓ Ensure all data is internally consistent – no conflicting statements between fields and documents.
- ✓ Make sure all applicable data (the dates of need, # of workers requested, worksite locations) match between the job order and Form ETA-9142B
- ✓ Review your application package carefully and ensure all required documents are included or uploaded electronically
- ✓ For more efficient processing, upload separate electronic documents for each document type (e.g., job order, agent agreement) rather than one large file

Preparing the H-2B Application

General Filing Tips

- ✓ If using a template to submit applications and the CO issues a Notice of Deficiency (NOD) impacting your template, remember to *amend the template* to avoid a continuation of the same NOD for each application
- ✓ Start the Statement of Temporary Need in Section B.9 of the ETA-9142B. Start with an explanation of the temporary need, *not* company background information. If/when out of room, use “see attached” and complete statement on a separate sheet, properly named and uploaded.
- ✓ For itinerant occupations (Special Procedures), include *exact itinerary locations* in Section F.c.7a of ETA-9142B, not merely BLS areas.
- ✓ Don't name a specific foreign worker in the Statement of Temporary Need or in the application. You will be asked to remove these in a Notice of Deficiency.
- ✓ Employer must have a valid prevailing wage determination issued by the NPWC; otherwise application cannot be filed

Preparing the H-2B Application

General Filing Tips

- ✓ Ensure number of workers and period of employment requested represent a bona fide business need
 - Requesting a start date of based on “expected government delays” is not acceptable
 - Requesting a start date of need on additional ‘cushion time’ is not acceptable
 - A start date of need that is influenced by H-2B cap considerations is acceptable so long as there is a bona fide business need for workers and available work to do during the dates requested
 - ❖ Example, start date of need has historically been September 1. Employer is now seeking a start date of need of October 1 due to the cap. It is fine and should be disclosed in the application.
- ✓ Changes to the period of employment (start or end dates), especially more than 2 weeks, must be accompanied with an explanation and the CO may request supporting documents

Preparing the H-2B Application

Employer will submit the following documents:

- ETA 9142B
- Appendix B - signed and dated copy of original (most current form version)
- Copy of the job order concurrently submitted to the SWA
- Copy of Form ETA-9141 Prevailing Wage Determination or ETA-9141 case number clearly indicated in body of ETA-9142B (*NEW*: iCERT will prompt the user for this; will be further discussed in this session.)
- Agent agreement/documentation demonstrating authority to represent the employer (if applicable)
- Copies of all contracts/agreements with any recruiter (or agent) to be engaged in the recruitment of H-2B workers
- **Both** – If not using a foreign labor recruiter, employer must still provide a statement indicating that at the time of filing or will receive a NOD.
- Contact information of all persons and entities hired by or working for the recruiter or agent, including any “sub” agents or employees of such persons and entities (if applicable)

Preparing the H-2B Application



Required documents (continued)

- Occupations involving special procedures must submit other required documents (e.g., itineraries)



Additional documents for job contractors

- A completed ETA-9142B Sections C & D identifying the one employer-client associated with the job opportunity
- Appendix B - signed and dated copy of original for employer-client
- A separate statement of temporary need for the employer-client in the ETA-9142B Section B.9
- Copy of an executed contract between the job contractor and employer-client

Strongly encourage electronic filing of applications

Important Reminder: Employers should provide certified translations of any contracts or agreements which are not in English to ensure timely processing

H-2B Program

Important Reminders about DOL-OFLC Processing

- OFLC uses email to communicate with employers and their representatives. Only certifications are sent by hard copy.
 - Be sure to check your spam folders and email settings so that you receive the Department's official communications
 - Send inquiries to TLC.Chicago@dol.gov – *provide case number*
- Please *check the OFLC website* for processing times. Status inquiries on applications that are pending normally draw resources away from case processing so *please* only submit an inquiry if an application is beyond the published processing time.
- Employers can electronically upload required documentation at the time of filing, in response to a Notice of Deficiency, or with recruitment results following Notice of Acceptance
 - Upload documents separately and title them as specifically as possible.
 - Do NOT submit documents both via email to TLC and by direct upload to the case in iCERT. This may slow processing.
 - Take care that you are uploading documents to a pending application and not submitting a new application in error.

H-2B Program

iCERT System: Helpful Tips for Using Document Upload

Upload Documents

Upload Documents
Case Number: H-300-16160-843295
Employer Name: MAIN AG ASSOCIATION

Select Browse to search for files. Click upload to complete uploading files. Only Adobe Acrobat (.pdf), Text (.txt) and MS Word (.doc/.docx) files can be uploaded.
Maximum size limit 30MB per File

Browse...

Select Document Type

- Response to OFLC Email
- NOD Response
- NOA Recruitment Documentation
- NOA Other Supporting Documentation
- Documentation Requesting Amendments

File name Document Type

Delete Selected Attachments

Available Actions: Reuse Delete Withdraw **Upload Documents** Begin New

Case Number	Date Initiater	Date Submitt	Stat		
<input type="checkbox"/> H-300-14309-867878	11/05/2014	11/06/2014	Void		
<input type="checkbox"/> T-300-14310-869872	11/06/2014		Initia		
<input type="checkbox"/> H-300-14310-402609	11/06/2014	11/06/2014	Void		
<input type="checkbox"/> H-300-14310-586702	11/06/2014	12/14/2015	In Proces...	MAIN AG ASSOCIA...	Farmer
<input type="checkbox"/> H-300-15218-155857	08/06/2015	08/06/2015	In Proces...	MAIN AG ASSOCIA...	farmer
<input type="checkbox"/> H-300-15258-390726	09/15/2015	09/15/2015	Withdrawn	MAIN AG ASSOCIA...	farmer
<input type="checkbox"/> H-300-15258-231831	09/15/2015	09/15/2015	Withdrawn	MAIN AG ASSOCIA...	farmer
<input type="checkbox"/> H-300-15265-528280	09/22/2015	12/16/2015	Certified	MAIN AG ASSOCIA...	Peach picker
<input type="checkbox"/> T-300-15265-950067	09/22/2015		Initiated	MAIN AG ASSOCIA...	
<input type="checkbox"/> H-300-15265-744417	09/22/2015	12/17/2015	Withdrawn		

Best Practice Tips:

- Avoid uploading one large file for multiple documents
- If multiple documents are uploaded for a single document type, use a sequence number to order them
- Filenames should clearly describes the document and include a case number or employer name and a date in the filename (e.g., EmployerName_RR_09102016.PDF)
- **DO NOT** upload electronic documents and then send a duplicate copy via email, fax, or US mail

H-2B Program

STEP 4: DOL-OFLC Processing of Application

Employer-Conducted Recruitment – once Notice of Acceptance has been issued:

- Place two print advertisements in local area - one on a Sunday
- Contact employees from prior year
- Contact bargaining representative or post notice of filing for 15 consecutive business days
- Additional recruitment can be ordered at the discretion of the Certifying Officer (*e.g., unions, CBOs, areas of substantial unemployment*)
- Recruitment report can be submitted once all advertising steps are completed

H-2B Program

Recruitment Tips

- Two print advertisements in local area – Print advertisements **MUST** be placed (and run) within 14 calendar days from the date the Notice of Acceptance was issued
- Contact bargaining representative or post availability of the job opportunity for 15 consecutive business days - Make sure the posting contains all the *required content* – see 20 CFR 655.41.
- Additional recruitment can be ordered at the discretion of the Certifying Officer (*e.g., unions, CBOs, areas of substantial unemployment*)

H-2B Program

Recruitment Tips cont'd.

- The recruitment report can be submitted once all advertising steps are completed
- The employer must prepare the recruitment report
 - Must not be on attorney/agent letterhead and not signed by attorney/agent
- Ensure all required content for recruitment reports are included, particularly the source(s) of recruitment and final disposition of each U.S. worker who applied
- If the employer has self-reduced the number of H-2B workers sought due to earlier hiring of returning workers, clearly state so on the Recruitment Report.

H-2B Program

General Filing Tips & Issues

Re: H2B: H-400- [REDACTED] Recruitment Report

Dear Certifying Officer,

As requested, we are presenting the US workers recruitment activities and results, as follows:

Recruitment Activities:

- **Job Order # [REDACTED]** posted with the Florida Department of Economic Opportunity
- **Newspaper advertisements** published in **The Palm Beach Post** (a newspaper of general circulation in our area) on **August 14, 2016 (Sunday) & August 15, 2016 (Monday)**
- **Notice of Job Opportunity** posted from **August 9, 2016** and until and including **August 24, 2016** in 2 conspicuous places accessible to all employees (Location 1 - in the employee break room; Location 2 – in the kitchen)). **NOTE:** We are open every day of the week, therefore **our regular business days are Monday through Sunday.**
- We have **no former US workers** eligible for solicitation to return to the job

Recruitment results as of August 31, 2016:

- **4 (four) local job seekers** contacted as a result of application / referral and the recruitment summaries are enclosed

Clearly identifies each positive recruitment step and the date(s) that each was conducted

Provides aggregate summary of recruitment results

H-2B Program

General Filing Tips & Issues

Supporting details of the recruitment effort clearly shows each U.S. worker who applied and disposition

Applicant Name	[REDACTED]
Application date	7/31/2016
Applicant contact information	[REDACTED]
Disposition	Not Hired
Employer's lawful job-related reasons for not hiring the applicant	Candidate did not acknowledge or respond to our contact (phone & email) attempts
Applicant Name	[REDACTED]
Application date	8/30/2016
Applicant contact information	[REDACTED]
Disposition	TBD - Candidate's application is very recent, and as of this date there has been no response to our contact attempts. Should the candidate respond, an interview will be conducted.
Employer's lawful job-related reasons for not hiring the applicant	

Notice disposition of U.S. applicant still pending, so a partial certification would occur in this instance

H-2B Program

STEP 5: Issuance of Final Determination

- Grant or deny labor certification after receiving and reviewing the report of employer's recruitment efforts
 - **Timeframe:** *None required by statute or regulation*
 - Certified Form ETA-9142B issued on “blue security paper”
 - Employer submits a signed and dated copy of Appendix B to USCIS
 - Appendix B will not be part of certification on blue security paper. Employer will complete the footer section itself, mirroring what is on the blue security paper
 - Employer must continue to consider U.S. worker applicants until 21 days before start date of work

H-2B Program

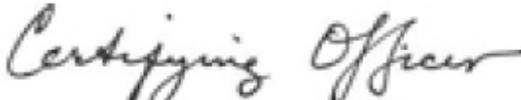
General Filing Tips & Issues

- Employer or authorized attorney/agent will receive a certified Form ETA-9142B printed on “blue security paper”
- Please verify that Section K and the “footer” on each page of the Form ETA-9142B is complete and accurate
 - Notify TLC.Chicago@dol.gov of any errors spotted – mark it Urgent & for CO

K. U.S. Government Agency Use (ONLY)

Pursuant to the provisions of Section 101 (a)(15)(h)(ii) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 08/12/2015 to 12/30/2015.



Department of Labor, Office of Foreign Labor Certification

07/30/2015

Determination Date (date signed)



Case number

Full Certification

Case Status

H-2B Program

Post Certification Issues

- H-2B regulations prohibit any amendments post-certification. Be sure your filing is accurate and does not contain errors before you submit it!
- If a change to an application that was requested while the application was pending does not appear on the certification, notify the CNPC immediately, marked urgent and for the attention of the Certifying Officer.
- If you need to make a new filing due to an earlier certification being impacted by the H-2B cap, you must return the prior certification to the Chicago NPC or, if submitted to USCIS, then submit proof of filing with USCIS, accompanied by correspondence from USCIS that petition will not be processed.

iCert Enhancement

- iCERT VISA PORTAL SYSTEM QUICK START GUIDE FOR H-2B MANDATORY DOCUMENTS UPLOAD can be found on our website at:

https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Quick_Start_Guide.pdf