LAWS – Agricultural Workplace Standards

Responsibilities under the federal H-2A program

November 16, 2017

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H-2A: Federal role

- H-2A allows U.S. employers to hire foreign workers for temporary or seasonal agricultural labor.
- U.S. Dept. of Labor (DOL) administers H-2A with help from state workforce agencies (ESD in Washington) and enforces worker contracts.
- To approve an employer application, DOL must determine:
  - There aren’t enough U.S. workers able, willing, qualified and available when and where needed; and
  - It won’t harm wages and working conditions of similarly employed U.S. workers.
H-2A: Employer responsibilities

- **Independently recruit** U.S. workers.
- **Hire** all able, willing, qualified workers who apply for a job up to half-way through the work contract.
- **Pay** highest of: state prevailing wage; federal adverse-effect wage rate (AEWR); or state minimum wage. (2017 AEWR for Washington is $13.38 per hour.)
  - **AEWR** is based on the US Dept. of Agriculture survey that calculates the annual weighted average hourly rate for field and livestock workers (combined) for specific regions.
- **Provide free housing** that meets federal standards for all workers who can’t return to their residences.

Continued…
H-2A: Employer responsibilities

- **Meals** ~ Provide free, convenient cooking facilities or three meals a day, at maximum charge of $12.07 per day (2017 rate) for employees occupying housing.

- **Travel** ~ Cover transportation, food and lodging costs for non-local employees who complete at least half the work contract. Pay return costs if contract is completed.

- **Tools and supplies** ~ Provide tools and necessary equipment.

- **Worker’s compensation insurance** ~ Provide worker’s compensation insurance for all workers.

- **75 percent rule** ~ Guarantee at least three-fourths of the contract wages.
H-2A: ESD responsibilities

- Employer must apply 60-75 days before work is scheduled to begin.

- ESD must:
  - Conduct initial H-2A contract compliance reviews.
  - Coordinate housing inspections with departments of Health or Labor & Industries; reports outcomes to DOL.
  - Refer qualified U.S. workers for the positions up until the half-way point of the work period.
  - Survey fruit growers and submits data to DOL. DOL uses the data to establish H-2A prevailing-wage rates for major crop activities.
ESD H-2A Oversight

- ESD’s State Monitor Advocate is responsible for overseeing the handling of H-2A complaints.
  - The Monitor Advocate conducts compliance field checks on H-2A employment sites.
- ESD may discontinue services to H-2A employers that refuse to hire qualified workers.
- Local WorkSource staff visit H-2A employment sites and offer technical assistance to employers and workers.
- ESD refers complaints to enforcement agencies, including DOL’s Wage & Hour Division.
Washington H-2A stats, 2008-17

Number of H-2A workers requested

* As of November 14, 2017
Washington H-2A stats, 2008-17

Number of H-2A Applications Filed

* As of November 14, 2017
Questions?

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