

# Recordkeeping Self-Audit for H-2A Employers

Do you have these documents or copies of these documents for the past **three years** available if an investigator asked for them?

## For H-2A Employees

**Note:** keep the same documentation for U.S. Workers that work in “corresponding employment” as you would for H-2A Workers where applicable.

### i. H-2A Workers

1. Excel listing of H-2A workers, arrival and departure dates, hourly pay rates, type of work performed, residing addresses in U.S. on a per year basis

### ii. Advertising and Recruitment

1. All Advertisements
  - a. Newspaper advertisements
  - b. Internet advertisements
2. Recruitment reports

### iii. Charges

1. List of charges or deposits made by the H-2A workers during their employment
  - a. Including evidence of any fees paid to a recruiter or agent by the H-2A workers

### iv. Contracts/Job Orders

1. All H-2A Work Contracts
  - a. Work Contracts, including any and all Appendices (should be clear and in a language understandable to the worker).<sup>1</sup>
    - i. Proof that the work contracts were given to the H-2A workers
  - b. Agent contracts, if applicable
  - c. Recruiter contracts, if applicable
    - i. Include evidence of any fees paid recruiters or agents by the H-2A workers
2. All H-2A Job Orders
  - a. Final Job Orders submitted and accepted by the State Workforce Authority (SWA)
  - b. Proof that the job order was given to the H-2A workers

### v. Housing Information

1. Address of H-2A housing
2. Owner of H-2A housing

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<sup>1</sup> [https://dlr.sd.gov/workforce\\_services/foreign\\_labor/documents/h2a\\_compliance\\_checklist.pdf](https://dlr.sd.gov/workforce_services/foreign_labor/documents/h2a_compliance_checklist.pdf)

3. Housing leases, if applicable
4. Copies of letters received from the Employment & Training Administration (ETA)
  - a. Including any certifications, determinations, etc.
5. Housing terms and conditions (USDOL Form WH-521 Housing Terms and Conditions).<sup>2</sup>
6. All State Workforce Agency (SWA) inspections of H-2A housing (ETA 338)

#### **vi. Immigration Forms**

1. Form I-94s: a form required by US Customs and Border Control.<sup>3</sup>
2. Form I-129s: the Petition for a Nonimmigrant Worker, with the H supplement for H-2A workers.<sup>4</sup>
3. Form I-797s<sup>5</sup>

#### **vii. Insurance**

1. Worker's compensation insurance certificates
2. Insurance policies for vehicles used to transport workers

#### **viii. Payroll and Time Records**

1. Payroll for each pay period ending with the most current completed payroll with the following:
  - a. Worker's home address
  - b. Rate of pay
  - c. Amount of and reasons for all deductions
  - d. Records reflecting the determination of the applicable Adverse Effect Wage Rate (AEWR).
2. List of all deductions from payroll.
3. List of all additions to payroll.
4. Records reflecting the determination of the applicable Adverse Effect Wage Rate (AEWR).<sup>6</sup>
5. Corresponding time records for each day (**including the time the worker began and ended each workday**) and pay period ending with the most current completed payroll.

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<sup>2</sup> <https://www.dol.gov/whd/forms/wh521.pdf>

<sup>3</sup> An I-94 form is required for all persons visiting or in transit, unless they are U.S. Citizens, returning resident aliens, aliens with immigrant visas, and most Canadian citizens. *See*, <https://i94.cbp.dhs.gov/i94/#/home>

<sup>4</sup> <https://www.uscis.gov/i-129>

<sup>5</sup> USCIS uses numerous types of Form I-797 to communicate with applicants or petitioners, or to convey and immigration benefit. Form I-797s will be a "Notice of Action", and will be issued by USCIS. It may be used to indicate that USCIS approved some sort of applicant action or petition, to request evidence, to communicate receipt of payments, rejection of applications, transfer of files, interviews or rescheduled appointments, or to re-open cases. It may also accompany benefits cards or may be issued overseas to allow applicants to travel. *See*, <https://www.uscis.gov/i-797-info>

<sup>6</sup> The AEWR is the regional weighted average hourly wage for field and livestock workers. The AEWR for Maryland in 2020 is \$13.34. *See*, <https://www.foreignlaborcert.doleta.gov/adverse.cfm>. *See also* <https://www.farmworkerjustice.org/sites/default/files/AEWR%20Fact%20Sheet.pdf>.

6. Records of time "offered" to workers but which workers "refused" to work.
7. Records concerning any worker who was terminated and the reason for such termination or resigned and all written notification (email) given to the following agencies of said exit (notice should be given within 2 working days):
  - a. Worker's Consulate
  - b. Homeland Security
  - c. DOL (Employment and Training Administration National Processing Center (NPC)- Chicago
  - d. Local Job Service (mwejobs.maryland.gov)
  - e. ETA/USCIS

#### **ix. Wage Statements**

1. Employers must provide workers the following, in writing, before or on each pay day:
  - a. Beginning and end dates of the pay period;
  - b. The worker's total earnings for that pay period;
  - c. The worker's hourly rate and/or their piece rate of pay;
  - d. If piece rates of pay are used, employer must also provide the units produced daily<sup>7</sup>
  - e. The hours offered to the worker;
  - f. The hours *actually worked* by the worker;
  - g. An itemized list of any and all deductions from the worker's wages;
  - h. The employer's name, address, and Federal Employer Identification Number

#### **x. Posters**

1. Evidence of H-2A poster
  - a. [https://www.dol.gov/whd/posters/pdf/WHD1491Eng\\_H2A.pdf](https://www.dol.gov/whd/posters/pdf/WHD1491Eng_H2A.pdf).
2. Evidence of other federal and state labor information posters ([FLSA](#), [state minimum wage](#), [EEO](#), [workers' compensation](#), [OSHA\(or state equivalent\)](#), [farm workers rights](#), [MSPA](#) (applicable to non-H-2A workers)).

#### **xi. Transportation**

1. Evidence of payments for all H-2A related expenses: visa fees, border crossings, etc.
2. Evidence of payments for inbound transportation to farm from point of recruitment
3. Evidence of payments for outbound transportation from farm to point of recruitment

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<sup>7</sup> 22 CFR 655.122(k)(6).

4. Vehicle registrations for vehicles used to transport any worker

## **xii. Travel**

1. Copies of worker visas and passports
2. Border crossing reports
3. Evidence of daily [subsistence payment](#) for inbound and outbound workers (the reasonable cost of food and lodging incurred during the worker's inbound trip from the point of recruitment to the employer's worksite, notwithstanding any unauthorized detours, and during the worker's outbound trip from the employer's worksite to the worker's home or subsequent employment, notwithstanding any unauthorized detours, whichever is applicable)
4. Arrival and departure dates of H-2A workers for each year
5. List of H-2A workers that did not stay until end of contract period
6. Notification to ETA/USCIS for any H-2A workers that did not stay to end of contract period.

## **For Non-H-2A Employees**

### **i. Business Information**

- a. General information to have available:
  - i. The year your business started,
  - ii. The date and state of incorporation,
  - iii. The legal name of your entity, and
  - iv. Your Federal Tax Identification number.
- b. Handbook or Manual: keep a copy of your company handbook available if you have one
- c. Customers and Wholesalers:
  - i. Purchases: Keep a list of wholesalers or customers that you buy product from
    1. Include address of the wholesalers
  - ii. Sales: Keep a list of customers or wholesalers you sell product to
    1. Include the addresses of the customers or wholesalers
- d. Trade Associations: keep a list of any trade associations you are involved in
- e. Annual dollar volume: Keep documents that reflect the annual dollar volume of business done by your business for the past three years.

### **ii. Non-H-2A Employment history**

- a. Officers: Keep a list of all officers, directors and principal managing officials for your business.
- b. Employees: Keep a list of all current and former Non-H-2A employees over the past three years
  - i. Include:
    1. Names
    2. Addresses
    3. Social security numbers
    4. Occupation

5. Telephone numbers
  6. Method of compensation (hourly rate/salary)
  7. Dates of hire and termination
- c. Minor employees: Keep a list of all non-H-2A employees under the age of 18 during the last three years.
- i. Include:
    1. Names
    2. Addresses
    3. Social security numbers
    4. Occupation
    5. Telephone numbers
    6. Method of compensation (hourly rate/salary)
    7. Dates of hire and termination
  - d. Overtime: keep a list of Non-H-2A employees you consider to be exempt from overtime

**iii. Payroll**

- a. Evidence of what comprises a 7 day work week for payroll purposes
- b. Payroll and corresponding time records per pay period for all Non-H-2A employees