

**U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION**

2015 H-2B Interim Final Rule FAQs

Round 7: Recruitment Procedures and the Recruitment Report

1. Does the 2015 H-2B Interim Final Rule (IFR) require employers to begin recruiting U.S. workers *before* filing an application with the Department?

No. The 2015 H-2B IFR uses a post-filing recruitment model. Thus, all required recruitment will begin after an employer's H-2B *Application for Temporary Employment Certification* is accepted for processing by the Certifying Officer (CO).

2. How long am I required to conduct recruitment under the H-2B 2015 Interim Final Rule (IFR)?

Under the 2015 H-2B IFR, the employer must conduct the recruitment steps outlined in the Notice of Acceptance (NOA) within 14 calendar days from the date of issuance, with the exception of the posting of the job opportunity, if applicable, which must stay posted for a minimum of 15 business days in accordance with 20 CFR 655.45(b).

In addition, the employer must accept referrals and applications of all U.S. applicants until 21 days before the employer's start date of need. During this recruitment period, the employer must consider all U.S. applicants, and must offer employment to each U.S. worker who is qualified and who will be available to perform the services or labor during the employer's period of need.

3. What are my recruitment obligations under the H-2B 2015 Interim Final Rule?

An employer is required to actively recruit U.S. workers during the 14 calendar days following the issuance of a Notice of Acceptance (NOA). Specifically, the employer must:

- Place a print advertisement on 2 separate days, one of which must be a Sunday (unless no Sunday edition exists), in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and workers likely to apply for the job opportunity;
- Contact former U.S. employees employed in the occupation and at the place of employment during the previous year, including those workers laid off within 120

days before the date of need (except those U.S. workers dismissed for cause or who abandoned the worksite), to inform them of the job opportunity and ask if they are interested in returning;

- Notify current employees in the occupation and area of intended employment of the job opportunity:
 - **Where employees have a bargaining representative:** the employer must provide notice of the job opportunity by providing a copy of the *Application for Temporary Employment Certification* and the job order to the bargaining representative
 - **Where there is no bargaining representative:** the employer must post the job opportunity in at least 2 conspicuous locations for at least 15 consecutive business days at the place(s) of anticipated employment or using a means that provides reasonable notification to all employees in the occupation and area of intended employment (e.g., electronic intranet customarily used to post notices about job opportunities)
- Conduct any additional recruitment activities as directed by the CO in the NOA (e.g., provide written notice of the job opportunity to community-based organizations, engage in additional contact with One-Stop Career Centers.)

Please note that the employer must document all recruitment steps and keep appropriate records in accordance with 20 CFR 655.42-.48 and 655.56.

Important Note: The employer is obligated to consider for employment all referrals from the State Workforce Agency and U.S. workers who apply directly throughout the recruitment period (i.e., from the NOA issuance date until 21 days before the employer's start date of need).

4. What are my recruitment responsibilities as a job contractor?

A job contractor's recruitment responsibilities are essentially the same as any other employer submitting an ETA Form 9142, *Application for Temporary Employment Certification*, for H-2B workers. The only differences serve to accommodate the involvement of 2 joint employers and apprise U.S. workers of the job opportunity. Specifically, a job contractor's job order and advertisements must disclose the names of both joint employers (i.e., the job contractor and the employer-client) and the location of work. Additionally, while either the job contractor or the employer-client may place the job order and conduct recruitment activities, both joint employers must sign and date the recruitment report.

5. What content must I include in my print advertisements under the 2015 H-2B Interim Final Rule (IFR)?

Advertising requirements are listed at 20 CFR § 655.41. To assist the filing community in assuring correctly placed advertisements, OFLC has developed a checklist of minimally required advertising disclosures:

- ✓ Employer Information: The employer's name and contact information;
- ✓ Job Location: The area of intended employment with enough specificity to notify applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;
- ✓ Disclosure of Job Opportunity: Description of the job opportunity with sufficient detail to notify applicants of the labor or services to be performed, including the job duties; minimum education and experience requirements; work hours and days, and expected start and end dates of employment;
- ✓ Fulltime: A statement that position is temporary and full time, including the total number of job openings the employer intends to fill;
- ✓ Overtime: If applicable, a statement that overtime will be available and the overtime wage offer;
- ✓ On the Job Training: If applicable, a statement that on-the-job training will be provided;
- ✓ Wage Offer: The wage offer, or if applicable, the range of wage offers;
- ✓ Housing: If applicable, any board, lodging, or other facilities the employer will offer to workers or intends to assist workers in securing;
- ✓ Deductions: All deductions not required by law that the employer will make from the worker's paycheck including, if applicable, reasonable deduction for board, lodging, and other facilities offered to the workers;
- ✓ Transportation and subsistence to the place of employment: A statement that transportation and subsistence from the place where the worker has come to work for the employer to the place of employment and return transportation and subsistence will be provided;

The following statement is an example of a statement on transportation and subsistence that would be sufficient in an employer's advertisement.

Transportation (including meals and, to the extent necessary, lodging) to the place of employment will be provided, or its cost to workers reimbursed, if the worker completes half the employment period. Return transportation will be provided if the worker completes the employment period or is dismissed early by the employer.

- ✓ Tools: If applicable, a statement that work tools, supplies, and equipment required to perform job will be provided to the worker without charge;

The following statement is an example of a statement on tools that would be sufficient in an employer's advertisement: The employer will provide workers at no charge all tools, supplies, and equipment required to perform the job.

- ✓ Daily Transportation: If applicable, a statement that the employer will provide daily transportation to and from the worksite;
- ✓ Three-fourth Guarantee: A statement explaining the three-fourths guarantee;

Depending on the length of your job opportunity, one of the following two statements in an employer's advertisement is permitted:

For certified periods of employment lasting fewer than 120 days: The employer guarantees to offer work for hours equal to at least three-fourths of the workdays in each 6-week period of the total employment period.

OR

For certified periods of employment lasting 120 days or more: 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.

- ✓ SWA: A statement directing applicants to apply for the job opportunity at the nearest office of the SWA in the State in which the advertisement appeared, the SWA contact information, and, if applicable, the job order number.

Important Note: The wage offer must comply with the requirements of 20 CFR 655.10, and 655.20(a).

6. What are the employer's recruitment obligations with respect to contacting unions?

If there is a bargaining representative for any of the employer's employees in the occupation and area of intended employment, the employer must deliver written notice of the job opportunity to the bargaining representative by providing a copy of the *Application for Temporary Employment Certification* and job order. The employer must provide this notice to the bargaining representative by U.S. mail or other effective means of written communication within 14 calendar days from the issuance date of the Notice of Acceptance.

Other than providing notice to the bargaining representative, the employer is not required to contact any labor organizations. However, if the occupation or industry in which the employer seeks to hire H-2B workers is traditionally or customarily unionized, the State Workforce Agency will share the job order with the central office of the State Federation of Labor in the State(s) in which work will be performed and the office(s) of the local union(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will

be performed. The SWA's contact with the local union may generate referrals for the job opportunity.

Important Note: The employer must consider for employment all U.S. workers who apply to the job opportunity, including those referred by the labor organizations the SWA contacted, until 21 days before the employer's date of need.

7. Where there is no bargaining representative, may the employer post the job opportunity at company headquarters, even if the employer's affected employees are located at other worksites?

An employer may post the availability of the job opportunity in at least 2 conspicuous locations at the place(s) of anticipated employment or using another method of posting that provides reasonable notification to all employees in the job classification and area in which the work will be performed by the H-2B workers. The posting may originate at the employer's headquarters as long as it is made available through a medium customarily used to communicate job-related postings at each location where the employer will employ H-2B workers. The job posting must be accessible to all employees at the location(s) where work is expected to be performed. For example, the employer may electronically post the notice of job opportunities prominently to its internal or external Web site if it customarily uses the Web site to notify employees about terms and conditions of employment.

8. What types of additional recruitment activities might the Certifying Officer (CO) require the employer to conduct?

Where the CO determines that employer-conducted recruitment set forth in the 2015 H-2B IFR at 20 CFR § 655.42 (newspaper advertisements), § 655.43 (contact with former U.S. employees), and § 655.45 (contact with bargaining representative, posting, and other contact requirements) is not sufficient to attract qualified U.S. workers who are likely to be available to work (e.g., the job opportunity is located in an Area of Substantial Unemployment), the CO may instruct the employer to conduct additional reasonable recruitment activity in order to generate a greater response from available and qualified U.S. workers. The CO will determine the nature of the additional recruitment required on a case-by case basis depending on a variety of factors. The additional recruitment efforts may include but are not limited to: placing additional newspaper advertisements; advertising on the employer's Web site or another Web site; making additional contact with labor unions; and contacting faith-based organizations, other community based organizations, and/or the local one-stop career centers.

9. Am I required to conduct all of the recruitment activities in the Notice of Acceptance (NOA)?

Yes. The employer must conduct all recruitment activities listed in the NOA, including any additional employer-conducted recruitment activities, as directed by the CO in the NOA.

10. How are the State Workforce Agency (SWA) and the Certifying Officer (CO) involved in placing and circulating the job order?

Under the 2015 H-2B Interim Final Rule, the SWA will play a significant role in the employer's test of the labor market. After the CO issues a Notice of Acceptance (NOA), the SWA will place the approved H-2B job order into intra and interstate clearance and ensure that the job order remains in active status throughout the recruitment period (i.e., from the date of NOA issuance until 21 days before the employer's start date of need).

Also, where the occupation or industry is traditionally unionized, the CO will direct the SWA to circulate the approved job order to the following labor organizations:

1. The central office of the State Federation of Labor in the State(s) in which work will be performed; and
2. The office(s) of local union(s) representing workers in the same or substantially equivalent job classification in the area(s) in which work will be performed.

In addition, for H-2B applications with start dates of need on or after October 1, 2015, the CO will place the approved H-2B job order on the Department's Electronic Job Registry, thus making it available to prospective applicants nationwide. The Electronic Job Registry is available on the iCERT System (<http://icert.doleta.gov/>).

11. Must all recruitment be completed within 14 calendar days from the date on which the Notice of Acceptance (NOA) was issued?

The 2015 H-2B Interim Final Rule (IFR) requires the employer to complete employer-conducted recruitment activities directed in the NOA within the 14-calendar days from the date the NOA is issued, unless otherwise instructed by the CO.

If there is no applicable bargaining representative, the IFR requires the employer to post the availability of the job opportunity for at least 15 consecutive business days

at the place(s) of intended employment. This posting must be started, but not need not be completed, within the 14-day period after NOA is issued.

Please Note: All recruitment steps must be completed before the employer submits the initial recruitment report on the date specified by the CO in the NOA.

Important Reminder: The employer must continue to accept referrals to the job opportunity until 21 days before the employer's date of need.

12. What information must I include in my recruitment report under the 2015 H-2B Interim Final Rule?

The recruitment report is intended to inform the Certifying Officer (CO) of the results of the recruitment conducted before the CO issues a final determination on the ETA Form 9142, *Application for Temporary Employment Certification*.

The recruitment report must contain the following information:

- ✓ Name of each recruitment activity or source;
- ✓ A statement confirming that the employer contacted the bargaining representative of its employees in the occupation and area of intended employment or, if there is no bargaining representative, it posted the availability of the job opportunity to all of its employees in the job classification and area in which the work will be performed by the H-2B workers.
- ✓ In the event of a posting of notice to employees, the recruitment report must indicate the means the employer used to make the posting.
- ✓ If applicable, a statement that the employer:
 - Contacted former U.S. workers and by what means;
 - Contacted the community-based organization designated by the CO and
 - Conducted any additional recruitment the CO directed the employer to conduct in the Notice of Acceptance.
- ✓ Name and contact information of each U.S. worker who applied or was referred for the job and the disposition of each worker's application;
 - Clearly indicate whether each worker was offered the job and whether the worker accepted or declined the offer.
 - For each U.S. worker who was not hired, the recruitment report must identify the lawful job-related reason(s) for not hiring the U.S. worker.

13. When will I be required to submit my recruitment report?

The Certifying Officer will direct the employer in the Notice of Acceptance to submit the initial recruitment report by a specific date. The employer is required to continue to update the recruitment report for the duration of the recruitment period (i.e., 21 days before the employer's start date of need). At the end of the recruitment period, the employer must prepare and sign a final recruitment report reflecting the activities and results of the full recruitment period. The final recruitment report and supporting documentation must be retained by the employer and ready for submission in the event the Department requests it, including in the event of audit.

Important Reminder: The employer must continue to accept referrals to the job opportunity until 21 days before the employer's date of need. In addition, if an employer is a job contractor filing jointly with its employer-client, both the job contractor and the employer-client must sign the recruitment report.