



H-2B Filing Tips

June 23, 2016

**Office of Foreign Labor Certification
Employment and Training Administration
United States Department of Labor**

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Filing Requirements

- **Completed Application for Temporary Employment Certification**
- **Appendix B**
- **A Valid Prevailing Wage Determination (PWD)**
- **Copy of Job Order**
- **Agent/ Recruiter Documentation**

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Completed Application for Temporary Employment Certification (ETA Form 9142)

- Timeframes: 75 to 90 days from requested Start Date
- Highlight Form Areas with Applicable Tips
 - Section B9 **9. Statement of Temporary Need ***
 - Keep Content centered around explaining temporary need and requested number of workers:
 - Annual Operations
 - Why Job Opportunity Fits the Chosen Standard in Item B8
 - 8. Nature of Temporary Need: (Choose only one of the standards)***
 - Seasonal Peakload One-Time Occurrence
 - Intermittent or Other Temporary Need
 - What causes the need
 - What causes the need to go away
 - If applicable explain any change in dates of need or requested number of workers from the previous year

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- Sections C, D & E
 - Make sure to identify a Physical Address so packages can be sent via overnight delivery using UPS

C. Employer Information

Important Note: Enter the full name of the individual employer, partnership, or corporation and all the other information in this section. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

- Make sure to include a correct email address and choose one that will be monitored daily

D. Employer Point of Contact Information

Important Note: The information contained in this section must be that of an Employee of the Employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application.

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■ Section F, Job Offer Information

- (a)(5) Job Duties

5. Job duties - A description of the duties to be performed **MUST** begin in this space. If necessary, add attachment to continue and complete description. *

Fb. Minimum Job Requirements

- Education
- Training
- Experience
- Other

Completed Application for Temporary Employment Certification (ETA Form 9142)

■ Section F, Job Offer Information

- (c) Place of Employment Information – Additional worksites

7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? * Yes No

7a. If Yes in question 7, identify the geographic place(s) of employment with as much specificity as possible. If necessary, submit an attachment to continue and complete a listing of all anticipated worksites. §

State	Area Based On	Area
<input type="text"/>	<input type="text"/>	<input type="text"/>

Appendix B

- Make sure to provide a signed Appendix B
 - Latest version expires 12/31/2018:

H-2B Application for Temporary Employment Certification
Form ETA-9142B - APPENDIX B
U.S. Department of Labor

For Use in Filing Applications Under the H-2B Non-Agricultural Program ONLY*

A. Attorney or Agent Declaration
I hereby declare under penalty of perjury that I am an attorney for the employer, or that I am an employee of, or hired by, the employer based on Section C of the Form ETA-9142B, and that I have been designated by that employer to cooperate with 20 CFR 655.8 to act on its behalf in connection with this application, as evidenced by the attached agency agreement. I also certify that to the best of my knowledge and information, and based on the information furnished to me by the employer, I am not a U.S. worker who is in the process of applying for a U.S. job offer, and I am not a U.S. worker who is in the process of applying for a U.S. job offer, or a U.S. worker who is in the process of applying for a U.S. job offer, or a U.S. worker who is in the process of applying for a U.S. job offer.

1. Attorney or Agent's last (family) name	2. First (given) name	3. Middle initial
4. Firm/Business name		
5. E-Mail address		
6. Signature		7. Date signed

B. Employer Declaration
By virtue of my signature below, I HEREBY CERTIFY my knowledge of and compliance with the following conditions of employment applicable to H-2B workers and/or U.S. workers who are hired during the recruitment period for positions covered by this application, including any approved extension thereof:

- The job opportunity is a bona fide, full-time temporary position (of at least 35 hours per workweek), the qualifications and requirements for which are consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same or comparable occupations and area of intended employment. The employer has listed all qualifications and requirements in the job order.
- There is no strike or lockout at any of the employer's workplaces within the area of intended employment for which the employer is requesting an H-2B certification.
- The job opportunity remains open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship. U.S. workers who apply for the job will be rejected only for bona fide job-related reasons, and the employer will retain records of all rejections.
- The employer has excluded not offer terms, wages, and working conditions to U.S. workers that are less favorable than those offered or will be offered to H-2B workers or impose restrictions or obligations on U.S. workers that are not imposed on H-2B workers. This exclusion does not relieve the employer from providing H-2B workers with at least the minimum benefits, wages, and working conditions that must be offered to U.S. workers under 20 CFR 655.16, except for those required by 20 CFR 655.16(a)(17).

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Obtain a Valid Prevailing Wage Determination (PWD)

- Upon submission include a copy of ETA Form 9141 or insert the PWD Number in Section G (3):

G. Rate of Pay

<p>From : \$ <input type="text" value="24.35"/> 1. Basic Rate of Pay Offered *</p> <p>To (Optional): \$ <input type="text" value="24.35"/></p>	<p>1a. Overtime Rate of Pay (if applicable) \$</p> <p>From : \$ <input type="text" value="0.00"/></p> <p>To (Optional): \$ <input type="text" value="0.00"/></p>
<p>2. Per: (Choose only one) *</p> <p><input checked="" type="radio"/> Hour <input type="radio"/> Week <input type="radio"/> Bi-Weekly <input type="radio"/> Month <input type="radio"/> Year <input type="radio"/> Piece Rate</p>	
<p>2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$</p> <p><input type="text" value="N/A"/></p>	
<p>3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue and complete</u> description: \$</p> <p><input type="text" value="N/A"/></p>	

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Obtain a Valid Prevailing Wage Determination (PWD)

- Make sure that the following items are consistent between **Section F** of ETA Form 9141 and ETA Form 9142
 - SOC Code (ETA Form 9142, Item B.2)
 - SOC Occupational Title (ETA Form 9142, Item B.3)
 - Job Locations (ETA Form 9142, Item F.c.7 & 7a)

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Obtain a Valid Prevailing Wage Determination (PWD)

- **Important Information:**
 - If the application is submitted without a valid Prevailing Wage Determination (or valid PWD case number) and no emergency request was submitted, the application will be REJECTED without review.
 - The only remedy to the rejection is to obtain a valid PWD, REFILE the H-2B application, and make sure to either provide a copy of the PWD (ETA Form 9141) or identify the PWD case number in Section G(3). (Shown in previous slide)
 - If an emergency request is submitted but is denied, the application will also be rejected without review.

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Job Order

The Job Order Checklist can be found:

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

OFFICE OF FOREIGN LABOR CERTIFICATION, EMPLOYMENT AND TRAINING ADMINISTRATION, USDOL

**Office of Foreign Labor Certification
2015 H-2B Interim Final Rule (IFR) Job Order Content Checklist
January 2016 (Updated)**

A completed job order must be submitted to the State Workforce Agency (SWA) at the same time the employer submits the H-2B application and a copy of the job order to the Chicago National Processing Center (NPC). 20 CFR § 655.16. The job order must offer U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2B workers. Each job qualification and requirement must be bona fide, disclosed in the job order, and consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same occupation and area of intended employment.

The job order must address the content requirements at 20 CFR § 655.18, consistent with new requirements contained in the 2016 Department of Labor Appropriations Act (Division H, Title I of Public Law 114-113) (2016 DOL Appropriations Act), which was enacted on December 18, 2015. Although each employer's job opportunity and business operation is unique, we provide below, where appropriate, example language that may help employers better understand how to disclose their obligations under the regulations. In addition, employers may use abbreviations so long as the abbreviation clearly and accurately captures the underlying job order content requirement.

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Agent/Recruiter Documentation

▪ Agent and Recruiter Agreements

- Agents must provide an agent agreement.
- Foreign recruiter agreements must include the identity and location of all persons and entities hired by or working for the hired foreign recruiter.
- If the employer is not using a foreign worker recruiter, then we will need a statement indicating that.

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Recruitment Report

■ Recruitment Reports

- Must not be on attorney/agent letterhead and not signed by attorney/agent.
- Employer must prepare and sign the recruitment report
- Be mindful of required content for recruitment reports. Many recruitment reports are missing content. (See 655.48)

Department of Labor Helpful Resources

- Visit the OFLC website and “Subscribe” for e-mail updates
<http://www.foreignlaborcert.doleta.gov>

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Employment & Training Administration

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Office of Foreign Labor Certification

H-2A H-2B H-1B PERM Prevailing Wage Determinations

I Want To...

Select an Option GO

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Announcements

NOV 25 November 25, 2014.

November 20, 2014. USDA Release of 2014 Farm Labor Survey

On November 20, 2014, the United States Department of Agriculture (USDA) issued the Farm Labor Survey (FLS) report in which it established the average annual wage rates, by region and the United States, for field and livestock

Department of Labor

Helpful Resources

- If you are having technical problems or issues with your iCERT account, please contact the iCERT Technical Helpdesk at oflc.portal@dol.gov

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