

Farmers Guide to the H-2A Visa Program

The H-2A Agricultural Guest Worker Program, often called the H-2A visa program, helps employers hire foreign workers for temporary agricultural jobs. The H-2A program was authorized by Congress under the Immigration and Nationality Act of 1952. This publication provides an overview of the H-2A program for Missouri agricultural producers.

Background

Farms began to use the H-2A program much more in recent years. Certified H-2A positions in the U.S. increased from about 94,000 in 2010 to 372,000 in 2022. The increase in H-2A use reflects changes in the labor market and challenges of finding seasonal and temporary farm labor. There is no U.S. statutory limit on the number of H-2A visas certified each year.

Who can participate

The H-2A program is available to an employer or association of agricultural producers that anticipates a shortage of domestic workers to do agricultural labor or services on a seasonal or temporary basis. [The U.S. Department of Labor \(DOL\) lists these general guidelines for determining if employers are eligible for the H-2A program](#) (dol.gov/agencies/whd/agriculture/h2a):

- Your business must be physically located in the United States.
- You must possess a valid Federal Employer Identification Number (FEIN) and be able to hire, pay, fire, supervise, or otherwise control the work of the workers you employ.
- The work must consist of agricultural labor or services.
- The work must be full-time (at least 35 hours per week).
- The work must be seasonal or temporary (a time period of 10 months or less) and tied to a certain time of the year.



Figure 1. The H-2A program can provide visas for workers to do many activities on agricultural operations.

Agricultural labor and services

The H-2A program may only be used for work consisting of agricultural labor or services. The top three occupational titles used in the H-2A program applications by agricultural employers in 2022 include:

- Farmworkers and laborers, crop, nursery, and greenhouse (86 percent of workers)
- Agricultural equipment operators (7 percent of workers)
- Farmworkers, farm, ranch, and aquacultural animals (4 percent of workers)

State workforce agency

The [Missouri Office of Workforce Development](#) (jobs.mo.gov) is the state's workforce agency. Its [Agricultural Employment Services](#) (jobs.mo.gov/employer/aes) offers free assistance such as publicly posting a job order placed in connection to an H-2A application, recruitment of domestic U.S. workers and hiring event assistance, labor law information, foreign labor certification assistance and additional training. Services also include an outreach program for both domestic and H-2A visa workers. They also conduct housing inspections to assure employers meets the requirements of the H-2A program. You can directly contact AES at aes@dhewd.mo.gov or 573-751-3346.

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Table 1. Agents or attorneys who helped Missouri agricultural employers with H-2A visas, 2022.

Firm name	Website	Phone number	Certified workers
Signature Staffing Inc.	Not available	863-201-9211	323
AgWorks H2 LLC	agworksh2.com	229-559-6879	243
másLabor LLC	maslabor.com	434-263-4300	220
Agri Placements International	agri-placements.com	580-227-4747	138
Farmer Law PC	farmerlawpc.com	512-982-9074	115
CCH Bookkeeping Inc.	cchbooks.com	863-465-5550	113
USA Farm Labor Inc.	usafarmlabor.com	828-246-0659	93
New Century Solutions 2000, Inc.	Not available	863-273-8870	74
H2 Visa Consultants, LLC	h2visaconsultants.com	830-584-4555	62
The Bernard Firm PLC	bernardfirm.com	515-232-4444	60
<i>Subtotal of top 10 sources</i>			1,441 <i>73% of Missouri</i>
<i>Other agents or attorneys</i>			315 <i>16% of Missouri</i>
<i>Employers themselves</i>			213 <i>11% of Missouri</i>
Total certified H-2A workers			1,969

Source: [U.S. Department of Labor foreign labor certification performance data](#) (dol.gov/agencies/eta/foreign-labor/performance). Company websites. Listing of firm names and contact information is for informational purposes only and does not imply recommendation or endorsement.

Who else can help

Every H-2A position must be certified by the U.S. Department of Labor (DOL). Agricultural producers can complete this certification process. In 2022, 213 of the 1,969 certified H-2A positions in Missouri were certified to agricultural employers.

Many agricultural employers choose to outsource the H-2A certification process to a firm specializing in H-2A visas. These firms apply for the visa on behalf of the employer. The DOL defines these authorized representatives as “agents” and “attorneys.” These third-party businesses charge fees for their services and often have experience in H-2A certification and recruitment channels.

In 2022, there were 1,214 Missouri H-2A positions certified by agents and 542 positions certified by attorneys. Some agents are defined by the DOL as H-2A labor contractors and must follow additional requirements when certifying H-2A positions.

Table 1 lists the firms used most frequently in 2022 for certifying H-2A positions in Missouri. Firms are named in this publication only for informational purposes with no endorsement intended. If you decide to use an attorney, agent or H-2A labor contractor, conduct your own research and due diligence to select a firm that best meets your farm business needs.

H-2A process

Employers can apply for the H-2A program using the DOL’s online [FLAG System](#) (flag.dol.gov). The **Standard** filing process takes around 60 to 75 calendar days prior to the start day of work. The online system allows the application to be created electronically, tracked throughout the process and reused in future applications.

These are the general steps to complete for H-2A:

1. File an agricultural job order (Form ETA-790) with the Missouri Office of Workforce Development.



Figure 2. The H-2A program is used to provide farm workers for seasonal activities such as harvest or planting.

They will review the job order, help with needed corrections and initiate recruitment of U.S. workers.

2. File an H-2A application (Form ETA-9142A) with the DOL's Chicago National Processing Center. The Center will review your application, let you know if additional information is needed and notify you with an additional instructions needed to complete the certification.
3. Conduct recruitment for U.S. workers. Once the National Processing Center approves your application, you must start to recruit U.S. workers. The Missouri Office of Workforce Development will actively recruit in the first two weeks following submission. Recruitment efforts continue until 50 percent of the work contract period has been completed.
4. Complete the DOL temporary labor certification process. This may require additional documents to be submitted for the final determination.
5. Recruit H-2A workers. [Eligible countries for recruitment](https://uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers) (uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers) are noted by the U.S. Citizenship and Immigration Services (USCIS).
6. Complete hiring process through USCIS (Form I-129) and future workers complete consulate interviews.

There are provisions for speeding up the filing process if workers are needed sooner. The **Emergency** filing process may be used if H-2A workers are required sooner than 75 days but not less than 45 days after the domestic job order application. If H-2A positions are needed in 44 days or less, the **Immediate Need** filing process may be used. These faster provisions require different steps from the Standard filing process and have not been extensively used in the past.

Employer requirements

Work contract

All employers must provide a copy of the work contract or job order (ETA Form-790 & attachments) to each H-2A worker. You must provide this between the time that the worker applies for a visa and the first day of work. The work contract must be in a language understood by the worker.

[A complete listing of H-2A employer obligations in the work contract is available from the DOL Wage and Hour Division](https://dol.gov/agencies/whd/fact-sheets/26-H2A) (dol.gov/agencies/whd/fact-sheets/26-H2A). Employers must provide reasonable access of their workers to Missouri Office of Workforce Development Migrant and Seasonal Outreach Program staff.

50 percent rule

H-2A employers must provide employment opportunities to qualified U.S. applicants. You must keep the job position open through the first 50 percent of the H-2A contract period and hire referred U.S. workers. Pay offered must be at least equal to H-2A workers.

Wages and payroll deductions

The H-2A program guarantees that the worker is paid for 75 percent of the total hours in the contract period. This is called the three-fourths guarantee.

The hourly wage rate for H-2A workers or U.S. worker in corresponding employment must be at least equal to the Adverse Effect Wage Rate (AEWR). [This state rate is published annually by the Department of Labor](https://dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates) (dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates).

Payroll deductions must be specified in the H-2A work contract. Any payroll deductions not required by law must be reasonable.

Workers' compensation

The H-2A employer must provide workers' compensation insurance (or its equivalent) at no charge to the H-2A worker. This is required under the H-2A contract. U.S. workers similarly employed must receive the same provisions.

Housing

H-2A employers must provide housing to H-2A workers not reasonably able to return to their residence within the same day. If you rent housing for H-2A workers, you must pay all the housing charges (rent, deposits, utilities, etc.) directly to the rental housing management. Housing must include a full kitchen and provide access to a laundry facility.

Any housing you provide or secure must meet certain safety standards. The Missouri Office of Workforce Development provides inspections to determine if H-2A housing meets these standards. Inspections will be conducted 30 days prior to worker arrival. Places available for general rent or public accommodation (hotels, motels, etc.) do not require an inspection.

Meals

You must provide H-2A workers with either three meals per day or free and centralized cooking and kitchen facilities where workers can prepare their own meals. Workers can be charged for provided meals. [Meal charges](https://dol.gov/agencies/eta/foreign-labor/wages/meals-travel-subsistence) (dol.gov/agencies/eta/foreign-labor/wages/meals-travel-subsistence) may not exceed costs specified by the DOL.

Transportation

You must provide daily transportation to the worksite at no cost. Transportation must be operated by licensed drivers, meet safety standards and have properly insurance. Additionally, transportation must be provided weekly to a grocery store.

Inbound and outbound expenses

Employers are responsible for reasonable costs of H-2A worker transportation to your farm from their previous worksite or country of origin. These costs can be paid at the time of inbound transportation or may be reimbursed to the workers once the work contract period is halfway complete. Costs include both transportation and daily subsistence costs during transportation. You must also provide or pay for workers' return transportation at the end of the H-2A contract period.

Record requirements

Employers must keep records about their hired workers. These records about H-2A workers should be retained for a three-year period:

- Recruitment efforts
- Earnings and pay stubs
- Pay rate
- Daily time cards
- Worker address
- Wage deductions
- Time offered and refused (the number of hours of work offered each day and hours the employee worked each day)

Program costs

Employers may not charge workers for any of the costs related to employer H-2A certification. Table 2 lists estimated program costs for H-2A employers. Note these do not include third-party company (agent or attorney) expenses to certify, recruit and hire H-2A employees. Additionally, other employer costs in addition to H-2A wages should be factored into total employer costs:

- Inbound and outbound expenses (airfare, daily subsistence)
- Meals and housing
- Transportation
- Recruitment expenses

Table 2. Estimated H-2A employer costs.

Purpose	Estimated cost
H-2A labor certification filing fee (to DOL)	\$100 per application plus \$10 per certified worker (max of \$1,000 total)
Non-immigrant worker petition filing fee (to USCIS)	\$460 per application
H-2A visa application consulate fee	\$190 per worker. Must be reimbursed to worker in first paycheck
U.S. border stamp fee	\$6 per worker

Note: Costs effective as of May 2023.

Resources

[Missouri Agricultural Employment Services](https://jobs.mo.gov/employer/aes) (jobs.mo.gov/employer/aes)

[U.S. Department of Labor H-2A Program](https://dol.gov/agencies/whd/agriculture/h2a) (dol.gov/agencies/whd/agriculture/h2a)

[U.S. Department of Labor FLAG System](https://flag.dol.gov) (flag.dol.gov)

[U.S. Department of Labor H-2A Forms](https://dol.gov/agencies/eta/foreign-labor/forms) (dol.gov/agencies/eta/foreign-labor/forms)

[U.S. Citizenship and Immigration Services H-2A Temporary Agricultural Workers](https://uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers) (uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers)