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## H-2A FEDERAL REFERENCE MATERIALS

### Definitely Not Everything You Need to Know but a Good Start on What's Required!

#### Key Federal H-2A Regulations in Two Long Sections

##### **20 C.F.R. § 655.122 Contents of job offers.**

**(a) *Prohibition against preferential treatment of aliens.*** The employer's job offer must offer to 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-2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers. This does not relieve the employer from providing to H-2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

**(b) *Job qualifications and requirements.*** Each job qualification and requirement listed in the job offer must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupations and crops. Either the CO or the SWA may require the employer to submit documentation to substantiate the appropriateness of any job qualification specified in the job offer.

**(c) *Minimum benefits, wages, and working conditions.*** Every job order accompanying an *Application for Temporary Employment Certification* must include each of the minimum benefit, wage, and working condition provisions listed in paragraphs (d) through (q) of this section.

##### **(d) *Housing.***

**(1) *Obligation to provide housing.*** The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. Housing must be provided through one of the following means:

**(i) *Employer-provided housing.*** Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404 through 654.417 of this chapter, whichever are applicable under § 654.401 of this chapter. Requests by employers whose housing does not meet the applicable standards for

conditional access to the interstate clearance system, will be processed under the procedures set forth at § 654.403 of this chapter; or

**(ii) Rental and/or public accommodations.** Rental or public accommodations or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards will apply. In the absence of applicable local or State standards, DOL OSHA standards at 29 CFR 1910.142 will apply. Any charges for rental housing must be paid directly by the employer to the owner or operator of the housing. The employer must document to the satisfaction of the CO that the housing complies with the local, State, or Federal housing standards.

**(2) Standards for range housing.** Housing for workers principally engaged in the range production of livestock must meet standards of DOL OSHA for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock must meet guidelines issued by OFLC.

**(3) Deposit charges.** Charges in the form of deposits for bedding or other similar incidentals related to housing must not be levied upon workers. However, employers may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

**(4) Charges for public housing.** If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by the employer, the employer must pay any charges normally required for use of the public housing units directly to the housing's management.

**(5) Family housing.** When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, it must be provided to workers with families who request it.

**(6) Certified housing that becomes unavailable.** If after a request to certify housing, such housing becomes unavailable for reasons outside the employer's control, the employer may substitute other rental or public accommodation housing that is in compliance with the local, State, or Federal housing standards applicable under this section. The employer must promptly notify the SWA in writing of the change in accommodations and the reason(s) for such change and provide the SWA evidence of compliance with the applicable local, State or Federal safety and health standards, in accordance with the requirements of this section. If, upon inspection, the SWA determines the substituted housing does not meet the applicable housing standards, the SWA must promptly provide written notification to the employer to cure the deficiencies with a copy to the CO. An employer's failure to provide housing that complies with the applicable standards will result in either a denial of a pending *Application for Temporary Employment Certification* or revocation of the temporary labor certification granted under this subpart.

**(e) Workers' compensation.**

**(1)** The employer must provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the

course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment.

**(2)** Prior to issuance of the temporary labor certification, the employer must provide the CO with proof of workers' compensation insurance coverage meeting the requirements of this paragraph, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or, if appropriate, proof of State law coverage.

**(f) Employer-provided items.** The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.

**(g) Meals.** The employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. The amount of meal charges is governed by § 655.173.

**(h) Transportation; daily subsistence -**

**(1) Transportation to place of employment.** If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer must pay the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment. When it is the prevailing practice of non-H-2A agricultural employers in the occupation in the area to do so, or when the employer extends such benefits to similarly situated H-2A workers, the employer must advance the required transportation and subsistence costs (or otherwise provide them) to workers in corresponding employment who are traveling to the employer's worksite. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount of the daily subsistence payment must be at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount permitted under § 655.173(a). Note that the FLSA applies independently of the H-2A requirements and imposes obligations on employers regarding payment of wages.

**(2) Transportation from place of employment.** If the worker completes the work contract period, or if the employee is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer must provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer who has not agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer must provide or pay for such expenses. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the subsequent employer must provide or pay for such expenses. The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the 50 percent rule as described in § 655.135(d) of this subpart with respect to the referrals made after the employer's date of need.



**(3) Transportation between living quarters and worksite.** The employer must provide transportation between housing provided or secured by the employer and the employer's worksite at no cost to the worker.

**(4) Employer-provided transportation.** All employer-provided transportation must comply with all applicable Federal, State or local laws and regulations, and must provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.105 and 29 CFR 500.120 to 500.128. If workers' compensation is used to cover transportation, in lieu of vehicle insurance, the employer must either ensure that the workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation and they must have property damage insurance.

**(i) Three-fourths guarantee -**

**(1) Offer to worker.** The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any.

**(i)** For purposes of this paragraph a workday means the number of hours in a workday as stated in the job order and excludes the worker's Sabbath and Federal holidays. The employer must offer a total number of hours to ensure the provision of sufficient work to reach the three-fourths guarantee. The work hours must be offered during the work period specified in the work contract, or during any modified work contract period to which the worker and employer have mutually agreed and that has been approved by the CO.

**(ii)** The work contract period can be shortened by agreement of the parties only with the approval of the CO. In the event the worker begins working later than the specified beginning date of the contract, the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect.

**(iii)** Therefore, if, for example, a work contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would have to be guaranteed employment for at least 360 hours (10 weeks × 48 hours/week = 480 hours × 75 percent = 360). If a Federal holiday occurred during the 10-week span, the 8 hours would be deducted from the total hours for the work contract, before the guarantee is calculated. Continuing with the above example, the worker would have to be guaranteed employment for 354 hours (10 weeks × 48 hours/week = 480 hours – 8 hours (Federal holiday) × 75 percent = 354 hours).

**(iv)** A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker will not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays. However, all hours of work actually performed may be counted by the employer in calculating whether the period of guaranteed employment has been met. If during the total work contract period the employer affords the U.S. or H-2A worker less employment than that required under this paragraph, the employer must pay such worker the amount the worker would have earned had the worker, in fact, worked for the

guaranteed number of days. An employer will not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order.

**(2) Guarantee for piece rate paid worker.** If the worker is paid on a piece rate basis, the employer must use the worker's average hourly piece rate earnings or the required hourly wage rate, whichever is higher, to calculate the amount due under the guarantee.

**(3) Failure to work.** Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work in accordance with paragraph (i)(1) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays), may be counted by the employer in calculating whether the period of guaranteed employment has been met. An employer seeking to calculate whether the number of hours has been met must maintain the payroll records in accordance with this subpart.

**(4) Displaced H-2A worker.** The employer is not liable for payment of the three-fourths guarantee to an H-2A worker whom the CO certifies is displaced because of the employer's compliance with the 50 percent rule described in § 655.135(d) with respect to referrals made during that period.

**(5) Obligation to provide housing and meals.** Notwithstanding the three-fourths guarantee contained in this section, employers are obligated to provide housing and meals in accordance with paragraphs (d) and (g) of this section for each day of the contract period up until the day the workers depart for other H-2A employment, depart to the place outside of the U.S. from which the worker came, or, if the worker voluntarily abandons employment or is terminated for cause, the day of such abandonment or termination.

**(j) Earnings records.**

**(1)** The employer must keep accurate and adequate records with respect to the workers' earnings, including but not limited to field tally records, supporting summary payroll records, and records showing the nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (i)(3) of this section); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions taken from the worker's wages.

**(2)** Each employer must keep the records required by this part, including field tally records and supporting summary payroll records, safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. All records must be available for inspection and transcription by the Secretary or a duly authorized and designated representative, and by the worker and representatives designated by the worker as evidenced by appropriate documentation (an Entry of Appearance as Attorney or Representative, Form G-28, signed by the worker, or an affidavit signed by the worker confirming such representation). Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Secretary, or a duly authorized and designated

representative, and by the worker and designated representatives as described in this paragraph.

(3) To assist in determining whether the three-fourths guarantee in paragraph (i) of this section has been met, if the number of hours worked by the worker on a day during the work contract period is less than the number of hours offered, as specified in the job offer, the records must state the reason or reasons therefore.

(4) The employer must retain the records for not less than 3 years after the date of the certification.

**(k) Hours and earnings statements.** The employer must furnish to the worker on or before each payday in one or more written statements the following information:

- (1) The worker's total earnings for the pay period;
- (2) The worker's hourly rate and/or piece rate of pay;
- (3) The hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in paragraph (i) of this section, separate from any hours offered over and above the guarantee);
- (4) The hours actually worked by the worker;
- (5) An itemization of all deductions made from the worker's wages;
- (6) If piece rates are used, the units produced daily;
- (7) Beginning and ending dates of the pay period; and
- (8) The employer's name, address and FEIN.

**(l) Rates of pay.** If the worker is paid by the hour, the employer must pay the worker at least the AEW, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest, for every hour or portion thereof worked during a pay period.

(1) The offered wage may not be based on commission, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, semi-monthly, or monthly basis that equals or exceeds the AEW, prevailing hourly wage or piece rate, the legal Federal or State minimum wage, or any agreed-upon collective bargaining rate, whichever is highest; or

(2) If the worker is paid on a piece rate basis and at the end of the pay period the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate:

(i) The worker's pay must be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had instead been paid at the appropriate hourly wage rate for each hour worked;

(ii) The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment; and

(iii) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention, such standards



must be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or, if the employer first applied for H-2A temporary labor certification after 1977, such standards must be no more than those normally required (at the time of the first *Application for Temporary Employment Certification*) by other employers for the activity in the area of intended employment.

**(m) Frequency of pay.** The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Employers must pay wages when due.

**(n) Abandonment of employment or termination for cause.** If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the NPC, and DHS in the case of an H-2A worker, in writing or by any other method specified by the Department or DHS in a manner specified in a notice published in the Federal Register not later than 2 working days after such abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (i) of this section. Abandonment will be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer.

**(o) Contract impossibility.** If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must:

(1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers;

(2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and

(3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

**(p) Deductions.**

(1) The employer must make all deductions from the worker's paycheck required by law. The job offer must specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions must be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such circumstances, the job

offer must state that the worker will be reimbursed the full amount of such deduction upon the worker's completion of 50 percent of the work contract period. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(2) A deduction is not reasonable if it includes a profit to the employer or to any affiliated person. A deduction that is primarily for the benefit or convenience of the employer will not be recognized as reasonable and therefore the cost of such an item may not be included in computing wages. The wage requirements of § 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under this subpart, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. The principles applied in determining whether deductions are reasonable and payments are received free and clear, and the permissibility of deductions for payments to third persons are explained in more detail in 29 CFR part 531.

(q) **Disclosure of work contract.** The employer must provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable. For an H-2A worker going from an H-2A employer to a subsequent H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H-2A employer. At a minimum, the work contract must contain all of the provisions required by this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and the certified *Application for Temporary Employment Certification* will be the work contract.

#### **20 C.F.R. § 655.135 Assurances and obligations of H-2A employers.**

An employer seeking to employ H-2A workers must agree as part of the *Application for Temporary Employment Certification* and job offer that it will abide by the requirements of this subpart and make each of the following additional assurances:

(a) **Non-discriminatory hiring practices.** The job opportunity is, and through the period set forth in paragraph (d) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. Rejections of any U.S. workers who applied or apply for the job must be only for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hires and rejections as required by § 655.167.

(b) **No strike or lockout.** The worksite for which the employer is requesting H-2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.

(c) **Recruitment requirements.** The employer has and will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an *Application for Temporary Employment Certification* is made) for the job opportunity until the end of the period as specified in paragraph (d) of this section and must independently conduct the positive recruitment activities, as specified in § 655.154, until the date on which the H-2A workers depart for the place of work. Unless the SWA is informed in writing of a different date, the date that is the third day preceding the employer's first date of need will be determined to be the date the H-2A workers departed for the employer's place of business.



**(d) Fifty percent rule.** From the time the foreign workers depart for the employer's place of employment, the employer must provide employment to any qualified, eligible U.S. worker who applies to the employer until 50 percent of the period of the work contract has elapsed. Start of the work contract timeline is calculated from the first date of need stated on the *Application for Temporary Employment Certification*, under which the foreign worker who is in the job was hired. This provision will not apply to any employer who certifies to the CO in the *Application for Temporary Employment Certification* that the employer:

(1) Did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in sec. 203(u) of Title 29;

(2) Is not a member of an association which has petitioned for certification under this subpart for its members; and

(3) Has not otherwise associated with other employers who are petitioning for temporary foreign workers under this subpart.

**(e) Compliance with applicable laws.** During the period of employment that is the subject of the *Application for Temporary Employment Certification*, the employer must comply with all applicable Federal, State and local laws and regulations, including health and safety laws. In compliance with such laws, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 18 U.S.C. 1592(a), the employer may not hold or confiscate workers' passports, visas, or other immigration documents. H-2A employers may also be subject to the FLSA. The FLSA operates independently of the H-2A program and has specific requirements that address payment of wages, including deductions from wages, the payment of Federal minimum wage and payment of overtime.

**(f) Job opportunity is full-time.** The job opportunity is a full-time temporary position, calculated to be at least 35 hours per work week.

**(g) No recent or future layoffs.** The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment except for lawful, job-related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the *Application for Temporary Employment Certification* to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired. A layoff for lawful, job-related reasons such as lack of work or the end of the growing season is permissible if all H-2A workers are laid off before any U.S. worker in corresponding employment.

**(h) No unfair treatment.** The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1188, or this subpart or any other Department regulation promulgated thereunder;

(2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder.

**(i) *Notify workers of duty to leave United States.***

(1) The employer must inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under paragraph (i)(2) of this section, unless the H-2A worker is being sponsored by another subsequent H-2A employer.

(2) As defined further in DHS regulations, a temporary labor certification limits the validity period of an H-2A petition, and therefore, the authorized period of stay for an H-2A worker. See 8 CFR 214.2(h)(5)(vii) A foreign worker may not remain beyond his or her authorized period of stay, as determined by DHS, nor beyond separation from employment prior to completion of the H-2A contract, absent an extension or change of such worker's status under DHS regulations. See 8 CFR 214.2(h)(5)(viii)(B).

**(j) *Comply with the prohibition against employees paying fees.*** The employer and its agents have not sought or received payment of any kind from any employee subject to 8 U.S.C. 1188 for any activity related to obtaining H-2A labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor. This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

**(k) *Contracts with third parties comply with prohibitions.*** The employer has contractually forbidden any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H-2A workers to seek or receive payments or other compensation from prospective employees. This documentation is to be made available upon request by the CO or another Federal party.

**(l) *Notice of worker rights.*** The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to 8 U.S.C. 1188.