

**SOP 24-03**  
**Foreign Labor Certifications**  
**Standard Operating Procedures**  
**Grow Southwest Indiana Region 11**  
**Approval Date: 05/17/2024**

**Purpose**

The purpose of the Foreign Labor Certification SOP is to:

- Provide a summary of the H-2A, H-2B, and PERM programs.
- Introduce the responsibilities of the DWD Foreign Labor Certification Unit, and
- Notify the Local Workforce Development Areas (local areas) of the required WorkOne/American Job Center staff activities associated with Foreign Labor Certification job orders and employment services provision.

**References**

- WIOA Section 188
- 20 CFR Parts 655 and 656
- 29 CFR part 38
- CFR 29 Part 501
- Immigration and Nationality Act (<https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>)
- U.S. Department of Labor Sheet #78 *General Requirements for Employers Participating in the H-2B Program*
- TEN 15-22 *American Job Center Role in Connecting U.S. Job Seekers to Job Opportunities Available with Employers Seeking to Employ H-2B Nonimmigrant Foreign Workers Certified for Work Starting in Fiscal year 2023.*
- U.S. Citizenship and Immigration Services Policy Manual, Chapter 6 (Volume 6, Immigrants USCIS)
- DWD Policy 2022-20 Procedures and Required Forms for WorkOne Centers Pertaining to the Employment Service and Employment-Related Law Complaint System
- DWD Policy 2016-09 Equal Opportunity and Nondiscrimination Guidance Letter
- DWD TA 2021-07 Complaint Procedures for WIOA Nondiscrimination and Equal Opportunity Provisions

## **Content**

Objectives of the Foreign labor Certifications programs are:

- To enable agricultural and other employers to obtain foreign worker for temporary or seasonal jobs when domestic (U.S.) workers are not available.
- To ensure adequate working and living conditions for domestic and foreign workers employed in corresponding employment.
- To provide greater protection for U.S. and foreign workers alike,
- And
- To assist applicants in securing employment and workforce information through the network of local WorkOne AJCs by providing a variety of services to both job seekers and employers free of charge.

### **H-2A**

- A temporary agricultural program that allows agricultural employers who anticipate a shortage of domestic worker to bring nonimmigrant foreign worker to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.
- Subpart B of 20 CFR Part 655 provides worker protections and employer requirements concerning wages and working conditions.
- USDOL employment and Training Administration's Office of Foreign Labor Certification (OFLC) has responsibility for administering the H-2A program including reviewing application and issuing temporary labor certifications.
- The USDOL Wage and Hour Division (WHD) has responsibility for investigating and enforcing obligations applicable to the employment of H-2A workers.

To issue an H-2A certification, OFLC must determine that:

- There are not sufficient able, willing, and qualified U.S. workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire foreign workers, and
- The employment of the H-2A worker(s) will not adversely affect the wages and working conditions of similarly employed U.S. workers.

### **H-2B**

- H-2B temporary non-agricultural programs permit employers who meet the program requirements to hire nonimmigrant worker to temporarily come to the U.S. and perform non-agricultural services or labor based on the employer's temporary need.
- Employer requirements and worker protections with respect to wages and working conditions for H-2B are issued jointly by USDOL and the U.S. Department of Homeland Security (DHS) through the Immigration and Nationality Act.
- WHD has the responsibility for enforcing provision or worker contracts and applicable of employment laws.

To issue an H-2B certification, USDOL must make the same determination noted above for H-2A certification.

## PERM

- Permanent labor certification allows an employer to hire a foreign worker to work permanently in the United States (U.S. Citizenship and Immigration Services Policy Manual, Chapter 6).
- To issue a PERM certification, USDOL ETA must:
- Certify to the U.S. Citizenship and Immigration Services that there are not sufficient U.S. workers able, willing, qualified, and available to accept the job opportunity in the area of intended employment, and
- Determine that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employer U.S. workers.

## DWD Foreign Labor Certification Unit

The DWDFLC is federally funded to:

- Support Foreign Labor Certification programs.
- Review and post H-2A, H-2B, and PERM related job orders.
- Inspect employer-provided housing facilities.
- Administer prevailing wage and prevailing practices surveys.
- Administer the referral and follow-up services to job applicants, provide support, and provide guidance to WorkOne/AJCs to ensure consistency in the management of FLC job order.

The table below identifies the responsible entity for entering FLC job orders into Indiana’s labor exchange system, ICC, for the recruitment of U.S. workers for each program.

<b>H-2A Job Orders</b>	<b>H-2B Job Orders</b>	<b>PERM Job Orders</b>
DWDFLC enters these job orders into ICC. Once approved and ready to be opened for referrals, the DWDFLC send the job order and the employer’s application form to the appropriate WorkOne/AJC.	The employer enters the job order into ICC and emails it to the DWDFLC. Once the job order is approved by the DWDFLC, employers must contact a WorkOne/AJC for assistance in recruiting U.S. workers for job opportunities.	The employer enters the job order into ICC and emails it to the DWDFLC. Once the job order is approved by the DWDFLC, employers must contact a WorkOne/AJC for assistance in recruiting U.S. workers for job opportunities.

For each job order, the employer must include the following:

- Total number of job openings the employer intends to fill.
- Description of the job opportunity to include:
  - Job duties
  - Work hours and days.
  - Anticipate start and end dates of the job opportunity.
  - Wage the employer is offering, and
  - Geographic area of intended employment

For H-2A job orders, employers must also list the following:

- Employer provided housing.
- All worksites
- Agreement to provide each worker the three (3) meals a day or furnish free and convenient cooking and kitchen facilities, and
- Agreement to pay at least the Adverse Effect Wage Rate (AEWR) H-2A only)

For H-2A, the DWDFLC reviews job opportunities and attachments to ensure compliance with applicable regulations.

- DWDFLC has seven (7) business days to approve the job order.
- DWDFLC reports H-2A job order deficiencies to the employer and notes the certifying officer at the Chicago National Processing Center for corrections.
- Once approved and ready for referrals, DWDFLC send the job order and the employer's application form to the appropriate WorkOne/AJC.
- If a job order is denied after posting in ICC, DWDFLC will close the job order in ICC and notify the WorkOne/AJC to pull the employer application form and job order to prevent further applicant referral.

For H-2B job orders, employers must:

- Specify the wage they are offering; wage must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage.
- Specify if they will be providing the worker with the option of board, lodging, or other facilities.
- State if they will provide daily transportation to and from the worksite.

For H-2B, the DWDFLC reviews the job opportunities and attachments to ensure compliance with applicable regulations.

- DWDFLC communicates H-2B job order deficiencies to the employer.
- Once the job order is approved, the DWDFLC will open the job order in ICC.
- DWDFLC will email open job orders to the appropriate WorkOne/AJC monthly.

For PERM job opportunities:

- DWDFLC reviews the job opportunities and attachments to ensure compliance with applicable regulations.
- DWDFLC communicates job order deficiencies to the employer.
- One the job order is approved, DWEFLC will open the job order in ICC.
- DWDFLC will email open job orders to the appropriate WorkOne/AJC monthly.

### **WorkOne/AJC Staff Foreign Labor Certification Job Order Activities**

WorkOne/AJCs are responsible for servicing the job orders entered and/or approved by the DWDFLC in ICC. This includes:

- Reviewing terms and conditions of employment
- Referring applicants
- Providing employment services, and

- Following up with applicants and employers.

**NOTE: Applicants must have an active Wagner-Peyser enrollment.**

## **Action**

For job order referrals and employment services provision:

- WorkOne staff will record all participant referrals in ICC.
- Applicants can be referred to the job throughout the recruitment period (can be found in the job order). Full terms and conditions of the Agricultural Clearance Order Form ETA 790 will be disclosed in writing to all potential H-2A applicants.
- Applicants will be offered training referrals, career counseling, supportive services, job listing, and similar employment-related services to applicants, as appropriate.
- WorkOne staff are responsible for informing the DWDFLC of any questionable refusals to interview/consider qualified applicants or hire qualified U.S. workers. Refusal to hire qualified applicants could affect the final determination or lead to revocation of the requested labor certification.
- Employers must provide a valid employment-related reason for any rejection of otherwise qualified U.S. workers.
- WorkOne staff will document refusals within the Customer Relationship manager (CRM).
- WorkOne staff should contact referred applicants to provide any additional services as needed including supportive services and additional employment services as appropriate.
- Employers are to be provided appropriate employment services including labor market information and recruitment services.
- Business Services staff will contact employers to ensure their workforce needs have been met and to offer any additional appropriate employment services.
- Business Services staff shall follow established processes for documenting employer engagement within the CRM.

**All WorkOne/AJC staff will be familiar with and follow processes prescribed in DWD Policy 2022-20 (SOP 23-05 Change 1) for documenting and processing Migrant and Seasonal Farm Workers and employment-related law complaints and alleged violations.**

**Alleged discrimination complaints should be referred to the local area Equal Opportunity Officer to follow the local discrimination complaint policy and procedures.**

Content of this policy may be subject to routine DWD monitoring.

### **Effective Date**

Immediately

### **Ending Date**

Upon Rescission

