

H-2A and H-2B Webinar Q&A

02/24/2016

Q: I was hoping to learn more about records retention. What are we required to keep on record at the OMJ Center? And for how long?

The Foreign Labor Certification (FLC) unit has the original documents for each program, therefore the OhioMeansJobs center staff are not required to maintain records as it relates to H-2A and H2B. Furthermore, any documents that are forwarded to the FLC unit like the referral sheet for the H-2A program will be saved by FLC unit.

Q: If we complete the Qualifications form, do we need to keep those if they are not qualified?

Qualification forms do not need to be retained for those persons who are not qualified.

Do we keep them if they are qualified?

Qualification forms do not need to be retained for those persons who are qualified.

If so, again, for how long?

N/A

And should we be keeping them electronically?

See above

Q: If a customer comes into the OMJ center seeking a specific foreign labor job do we send them to the website to apply?

If customers come to the OhioMeansJobs center seeking a referral to a specific job order do the following: (see attached flow chart for reference)

For H-2A

- Review the 790 with the job seeker so they understand the terms and conditions of employment
- Use the Qualifications form as a handy checklist of the requirements listed on the 790
- Call the employer to schedule an interview for those job seekers you find are qualified and willing to do the work offered on the 790. If employer refuses referrals, notify the FLC unit at FLC@jfs.ohio.gov
- Complete the Referral form on a weekly basis with the names of the job seekers you referred to employers

For H-2B

- Conduct a resume search of job seekers who you determine may be qualified to perform the tasks identified on the H-2B job order
- Forward all resumes to work-now@jfs.ohio.gov

Q: We are already seeing some of these orders. When will you start sending this information and to who will you be sending it to?

H-2A and H-2B job orders will be emailed to the local Supervisor that has staff that is located near the employer or near their work site(s). The job orders will be forwarded by the Supervisor to the CSR to work. Only those offices that have H-2A or H-2B employers in their county or whose worksites might be located in the county will receive e-mails from the FLC unit.

Q: If U.S. workers are hired, do they qualify for unemployment or no because they are temporary seasonal employees?

Qualifying for unemployment will be determined by whether each job seeker meets the unemployment eligibility requirements based on whether they worked all the weeks necessary to collect unemployment benefits. Sometimes workers may qualify for unemployment benefits when all their work places are combined. In H-2A, item 21 of the form 790 asks the question whether the employment is covered by unemployment insurance.

Q: WIA works our resource room, are they supposed to refer them to us or should they have the info to give the customer?

Customers that are seeking to fill an H-2A or H2B job order should be referred to state staff. The CSR should review the 790 and its attachments with job seekers before they are referred to employers.

Q: When I worked in another county we had local nurseries who brought back U.S. workers every year, but they were required to complete I-9s for their regular workers. They were frustrated by that process. Are they still required to register those jobs if they are using local U.S. staff?

According to the USCIS Handbook for Employers, page 25, a new form I-9 does not need to be completed each year if an employee is temporarily laid-off for lack of work or because it is seasonal employment that interrupts an employee's "continuing employment."

Employers who want to use the H-2A or H-2B programs must file their jobs orders with the Foreign Labor Certification unit.

Q: When MSFW workers are back for the season should we refer H2A and H2B to them instead of an OMJ center?

The H-2A and H2B are part of the Foreign Labor Certification program and is different from the Migrant and Seasonal Farmworker (MSFW) Program.

H2A and H2B job orders will be worked by the CSR (see flow for reference).

Q: Did you say that they are not required to have a valid driver's license?

Each H-2A and H-2B job order has its own unique minimum applicant requirements. The driver's license was merely an example of a generic set of questions found on the Qualification Form used for the H-2A program.

Q: Is the employer required to consider the U.S. workers first, before the H-2A job seeker?

Yes, the employer is required to consider U.S. workers before being allowed to hire foreign workers through the H-2A and H-2B programs.

Q: Will the job order come to our county designated email address or our personal work email?

H-2A and H-2B job orders will be emailed to the local Supervisor that has staff that is located near the employer or near their work site(s). The job orders will be forwarded by the Supervisor to the CSR to work. Only those offices that have H-2A or H-2B employers in their county or whose worksites might be located in the county will receive e-mails from the FLC unit.

Q: Will the CSR be expected to work and recruit workers?

Yes, the job orders are expected to be worked. (See flow for reference)

Q: May want to see about including the Admin Professionals for each region along with the Regional Coordinator, and the supervisor for that county...in case one or both are out?

Thank you for the suggestion. The H-2A and H-2B job orders will be emailed to the local Supervisor that has staff that is located near the employer or near their work site(s). The job orders will be forwarded by the Supervisor to the CSR to work. Only those offices that have H-2A or H-2B employers in their county or whose worksites might be located in the county will receive e-mails from the FLC unit.

If the FLC determines that that communication string is not efficient it will be revisited with Workforce Management supervision.

Q: What is the role of the MSFW?

Migrant and Season Farm Workers (MSFW) are:

The Workforce Innovation and Opportunity Act §651 defines a migrant worker as a seasonal farmworker who travels to the job site so that the farmworker is unable to return to his/her permanent residence within the same day. Additionally, seasonal farmworker means an individual who is employed, or was employed in the last 12 months, in farmwork of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Labor is performed on a seasonal basis where, the employment pertains to or is the kind exclusively performed at certain seasons or periods of the year, which from its nature, may not be continuously or carried on throughout the year.

ODJF hires seasonal outreach staff, commonly referred to as a Migrant Outreach Specialist (MOS). Their role is to go into the agricultural community and meet with MSFW, their families, and their agricultural employers. These agricultural customers are usually working during the daylight hours when the OhioMeansJobs centers are open. The MOS will be meeting with our agricultural customers during office hours and informing them of the services available to them in the OhioMeansJobs centers. If they are unable to come to the center, the MOS will solicit job orders from employers to refer qualified workers to them and register MSFWs for possible referral to jobs and other agencies that may provide services they need.

Q: What specific email should we forward the referral sheet to?

All H-2A correspondence should be forwarded to flc@jfs.ohio.gov

All resumes for H-2B job orders should be e-mailed to work-now@jfs.ohio.gov

(See flow for reference)

Q: Is that on the bottom part of the form we can't see?

The e-mail address is not on the Referral Sheet but, that is a good suggestion and it we'll add it to the form.

Q: Will we recruit potential workers - not everyone is bilingual (that could be needed); are there instructions?

If you are helping a Limited English Proficient (LEP) customer, you may use the "language line" for interpreter/translator assistance

Q: Are the employers required to send interested workers to us first before they hire them so that we can keep track of who is hired?

The employers are not required to send interested workers to the OhioMeansJobs Centers before they hire them. The only workers that need to be tracked are the workers referred from the OhioMeansJobs Centers or the Migrant Outreach Staff.

Under the H-2B program, forward the job seeker's resume to work-now@jfs.ohio.gov. The FLC unit will forward the resumes to the employer and the U.S. Department of Labor to inform them of the efforts we made to help the employer find U.S. workers.

Under the H-2A program, simply write the name of the person referred to the employer on the Referral sheet and forward it the FLC unit at flc@jfs.ohio.gov on a weekly basis. If employers refuse to interview job seekers, you may let them know that because they are participating in the H-2A program, they must interview qualified U.S. workers. If employers still refuse a job seeker referral, the OMJ center should notify the FLC unit at flc@jfs.ohio.gov.

Q: How long has this program been around?

The Foreign Labor certification Program was created nearly 30 years ago by the Immigration Reform and Control Act of 1986.

Q: So if it is an H-2A employer and a U.S. citizen worker are they still required to house their workers?

All workers hired through H-2A program must be provided free housing if the workers live beyond the normal commuting distance of 50 to 60 miles (coincides with the unemployment compensation requirements).

Q: Can we please get a workflow on this and how it looks from start to finish? My staff are confused.

The workflow for both programs is attached.

Q: Are we (CSR) going to be contacting prospective employees and send them out or call them with the potential job lead? Is it then in the customer's hands to apply or not?

The CSRs will contact prospective job seekers. CSRs may do a resume search for qualified job seekers and interview job seekers responding to an advertisement or walk-ins. Under the H-2B program, the CSR only needs to forward the job seeker's resume to work-now@jfs.ohio.gov. Under the H-2A program the CSR shall call the employer to schedule interviews in person or telephone interviews with qualified job seekers. The job seekers' names will be recorded on the referral sheet and forwarded to flc@jfs.ohio.gov. If employers refuse to interview job seekers, you may let them know that because they are participating in the H-2A program, they must interview qualified U.S. workers. If employers still refuse a job seeker referral, the OhioMeansJobs center should notify the FLC unit at flc@jfs.ohio.gov (Please see the flow for reference)

Q: Do you check to see what the pay is for the job, meaning not paying too little to keep the U.S. worker from taking a position?

The State Monitor Advocate has the responsibility of conducting field checks wherein she verifies whether all terms and conditions of employment are being met by the employer. This year, H-2A jobs are paying a minimum of \$12.07 an hour.

Q: So typically, will the job be posted in the paper before the job order is sent to the CSR?

Under normal circumstances, the CSR will receive H-2A and H-2B job orders before they are posted in the newspaper.

Q: Is there a form to submit if we refer many U.S. workers and none or very few are hired and the majority being hired are foreign workers?

Yes, please use the referral form that was forwarded to the CSR. List all the names of the persons that were referred to the H-2A employer on the referral sheet and email it to the FLC unit at flc@jfs.ohio.gov. Employers should be called to schedule interviews with qualified job seekers in person or over the telephone. Employers who refuse to interview job seekers should be reminded that the H-2A program requires them to interview U.S. workers and document that they are not available before their application for foreign workers will be approved. ODJFS does not recruit or refer foreign workers. The employer must hire qualified U.S. workers before they can hire foreign workers. If an employer refuses to accept job seeker referrals, send an e-mail to the FLC unit at flc@jfs.ohio.gov. (See flow for reference)

Q: If an employer calls us directly and needs agriculture workers, would we refer to central office or what process would we follow in this situation?

If the employer specifies that he/she is desiring an H-2A please refer him to the FLC unit.

If the employer is looking for agricultural labor, outside of H-2A, please consider this as a request for help with writing an agricultural job order.

Q: For clarification, after we get the job order from the FLC unit do they also post the position on OhioMeansJobs or do we here in the OMJ center post it?

The FLC unit staff will post H-2A and H-2B job orders in OhioMeansJobs.com. The FLC staff will e-mail the H-2A and H-2B instructions to the Supervisor for distribution and to be worked. (Please see flow for reference)

Q: Are these job orders noted or marked to be identified?

The job orders will be identified on the e-mails whether they are H-2A or H-2B.

Q: Are they marked on OMJ?

The H-2A job orders are marked under “type of employment.” The H-2B job orders can be identified as the job requirements are usually very detailed because the U.S. Department of Labor requires many assurances.

Q: Is it ok to recruit the assistance of a bilingual employee to assist with these customers even if they are not classified (paid) as a bilingual?

The CSR should help all customers and to comply with federal law, Limited English Proficient (LEP) customers should be helped by using the “language line” when you do not have bilingual staff.