

Termination/End of Employment Under an H-2A Contract: Guidelines

The attached guidelines and forms are tools to help H-2A employers comply with federal and New York State requirements related to terminating employment of workers under an H-2A contract. The New York State Department of Labor (DOL) created these forms as a service to agricultural employers. Agricultural employers are **not required** to use these forms.

Important reminder: You may not terminate any worker, foreign or domestic, for reasons not noted in the H-2A contract. Domestic workers must be afforded the same terms and conditions as the foreign guest workers under an H-2A contract. Employers should use care not to give foreign H-2A workers preferential treatment. Employers are encouraged to document instances of poor work performance (such as failure to meet production standards), misconduct, or other areas of concern.

Timely notification to the Chicago National Processing Center (CNPC) and US Citizenship and Immigration Services (USCIS) is required when an H-2A worker is terminated. In certain instances, you may notify the CNPC when a domestic worker is terminated (e.g., to seek a replacement H-2A worker).

1. Employment related notifications to USCIS and CNPC

Employers of H-2A workers are obligated to advise US Citizenship and Immigration Services(USCIS) and the Chicago National Processing Center (CNPC) of foreign H-2A worker termination, abandonment, and any other changes to their contract period.

E-mail correspondence is recommended to ensure timeliness of information sharing. One email sent to both parties is sufficient for notification. The subject line in the email should contain the CNPC case number as well as "abandonment/termination notice."

If you need your case number, you can contact NYS' FLCU at 716-803-0402.

USCIS email: CSC-X.H-2AAbs@dhs.gov

USCIS mail:

California Service Center
Attn: BCU Section
P.O. Box 30050
Laguna Niguel, CA 92607-3004

CNPC email: TLC.chicago@dol.gov

USCIS and the CNPC should be notified in the following cases:

- **No show** - The foreign H-2A worker fails to report to work within 5 workdays of the latter of:
 - The employment start date on the H-2A petition
 - The start date established by the employer
- **Abscondment** - The foreign H-2A worker leaves without notice and fails to report for work for 5 consecutive workdays without the consent of the employer
- **Termination** - The foreign H-2A worker is terminated before completion of the H-2A labor or services for which he or she was hired
- **Early Completion** - The foreign H-2A worker finishes the labor or services for which he or she was hired more than 30 days earlier than the date specified in the H-2A petition

Employers advising USCIS/CNPC of any of these occurrences should include the following information in the body of the email:

1. The reason for the notification (for example, explain that the worker was either a “no show,” “absconder,” “termination,” or “early completion”)
2. The reason for untimely notification and evidence for good cause, if applicable
3. The USCIS receipt number of the approved H-2A petition
4. The petitioner’s information, including:
 - Name
 - Address
 - Phone Number
 - Employer identification number (EIN)
5. The employer’s information (if different from that of the petitioner):
 - Name
 - Address
 - Phone Number
6. The foreign H-2A worker’s information:
 - Full Name
 - Date of birth
 - Place of birth
 - Last known physical address and phone number
 - Social Security Number and visa number, if available

Further information can be found here:

<https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>

USCIS may assess a fee for failure to comply with reporting requirements.

2. Required termination letter

Per New York State Labor Law, employers are required to provide a letter of termination to any employee terminated from employment, with the required details of termination:

- Exact date of termination
- Exact date of cancellation of employee benefits connected with termination

The letter must be issued within five working days of the date of termination.

“Section 195. Notice and record-keeping requirements Every employer shall: 6. notify any employee terminated from employment, in writing, of the exact date of such termination as well as the exact date of cancellation of employee benefits connected with such termination. In no case shall notice of such termination be provided more than five working days after the date of such termination. Failure to notify an employee of cancellation of accident or health insurance subjects an employer to an additional penalty pursuant to section two hundred seventeen of this chapter.”

Please see LS46, <https://dol.ny.gov/letter-termination-ls46>

3. Exit interview

As an employer, you may choose to conduct an exit interview with workers upon termination or the end of their employment with your company. The exit interview may review the workers experiences in employment and may document suggested areas of improvement related to employee and employer relations (for example, quality of training, employer-employee communication, etc).

Sample Exit Interview Form:

Name: _____

Job Title: _____

Start date with organization: ____ / ____ / ____

Separation date: ____ / ____ / ____

Reason for end of employment: _____

Do you believe the training you received was adequate for the job? Were our expectations clear?

Was your supervisor able to communicate with you effectively?

Do you have any suggestions for the employer to improve employee experiences?

Additional comments:

4. Replacing a worker

If foreign workers in H-2A visa status have been terminated or have abandoned the job, the employer may request replacement workers:

“After submitting the written notification of abandonment, if the workers who abandoned the job were in H-2A visa status, the employer may submit a request to USCIS to replace the workers. For more information please contact USCIS at www.uscis.gov or at its National Customer Service Center at 1-800-375-5283.”

Additional information can be found here:

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/h-2a_faq_round6.pdf

If an employer hires domestic applicants under an H-2A job order, and the applicants are terminated or leave employment, and the employer's initial H-2A request was reduced by the number of domestic workers hired, the employer may submit a new request for a temporary labor certification determination:

"By regulation, the employer may contact the Certifying Officer by telephone (312-886-8000) or e-mail to request a new determination based on U.S. worker unavailability. The employer must also submit a signed written statement confirming its belief that U.S. workers are unavailable. Employers may submit the request and/or written statement by e-mail directly to the Chicago NPC using the address: TLC.chicago@dol.gov, with the words "H-2A Redetermination Request" contained in the subject line of the e-mail. Employers without internet access may fax the request and/or written statement to (312) 886-1688 (ATTN: H-2A Redetermination Request) or by U.S. mail to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification,
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105
ATTN: H-2A Redetermination Request"

More information can be found here:

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/h-2a_faq_round6.pdf