

Referrals/Applicants to H-2A Job Orders: Instructions

The attached forms are tools to help H-2A employers comply with the federally required recruitment of domestic workers to H-2A job orders. The New York State Department of Labor has created these forms as a service to agricultural employers. Agricultural employers are **not required** to use these forms. If you choose to use any of the included forms, keep copies with your recruitment report for three years.

Important reminder: You **may not** make it a requirement that a domestic referral or applicant to your H-2A job order complete a job application or submit a resume unless the same requirement is made of the H-2A worker(s) and appears on the ETA 790. It is unlawful to require anything of a domestic worker that is not also required of an H-2A worker and is clearly stated in the job order.

Recruitment Report (20 CFR 655.156)

You may receive referrals of U.S. workers for consideration from the State Workforce Agency as well as “self-referrals” of applicants who find out about your job opportunity through other recruitment sources. You **must** continue to maintain and update your recruitment report through **50 percent** of the work contract period. This is because that is how long your job order will be open with the State Workforce Agency and on the national H-2A Public Job Registry. You do not need to submit this “final” recruitment report to the Chicago National Processing Center, but you must keep the report on file in case of an audit or other request by the U.S. Department of Labor. Your job order expiration date can be found in **box 3 of the ETA 790**. After that date, you are no longer required to hire qualified domestic referrals on your H-2A job order.

Your recruitment report should contain the following:

1. The name of each recruitment source (i.e. Department of Labor, website, etc.);
2. The name and contact information for each U.S. worker who applied or was referred to your job opportunity;
3. If applicable, for each U.S. worker who applied for the position but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker; and
4. A statement confirming whether former U.S. workers were contacted yet and, if so, by what means.

Document Retention Requirements (20 CFR 655.167(c)(1-3))

You must keep recruitment records and documents for **three** years from the date of certification of the *Application for Temporary Employment Certification* or from the date of termination if the *Application for Temporary Employment Certification* is denied. This includes the following recruitment-related documents and records:

1. Proof of recruitment efforts, including:
 - a. Job order placement;
 - b. Advertising;
 - c. Contact with former U.S. workers; and
 - d. Additional positive recruitment efforts.
2. The final recruitment report.

Note: Per the above-referenced federal regulations, the three-year document retention requirement is a **federal H-2A requirement** that is specific only to recruitment records and documents. Employers would not be required to retain such records under New York State labor law.

Interview Form

This is a tool to help you determine if a domestic referral or applicant to your H-2A job order meets the minimum job requirements stated in the job order and should be hired for the position. The form is designed so that the interviewer can read directly from it while conducting an interview in-person or over the phone. Please remember that it is unlawful for employers to discriminate against employees and applicants for employment on the bases of age, race, color, religion, national origin, gender, sexual orientation, disability, marital status, military status, domestic violence victim status, arrest record, conviction record, predisposing genetic characteristics, and (in housing only) familial status.

Tips for completing the form:

1. This is a general form for all H-2A employers and not all questions may be applicable to your job order.
2. The italicized print is an instruction, or prompt, for the interviewer and should not be read to the person being interviewed.
3. Under “type of agricultural experience” you should list the specific crops, crop activity, hand tools, and equipment that are included in the job description of your job order.
4. If noted as a requirement on the ETA 790 job order, you may contact the applicant’s previous employer(s) to verify his/her agricultural experience and document the results. The attached *Agricultural Experience Verification Form* may be used as a guide and for documentation and recordkeeping purposes.
5. At the end of the interview you should inform the applicant that you will contact him/her within a few days with the results of the interview.
6. If the applicant meets the requirements of the job but is not hired for the position, the reason for not hiring should be documented under “other (specify)” on the second page of the form. You should also include a detailed explanation in the “notes” for not hiring the applicant.
7. If you offer the job to an applicant and something occurs between the time of the interview and actual hiring which prevents the hiring from taking place, it can be documented under “notes.” An example of this would be if an applicant failed to meet you at the farm to complete hiring paperwork after you offered him/her the job over the phone (Note: You cannot expect workers from another state or Puerto Rico to arrive too many days before contract start date).
8. The “notes” section is for you to document any comments or additional topics discussed during or after the interview.