



Division of Compliance and Education
(formerly known as Division of Immigrant Policies and Affairs)

Terms and Conditions of Employment

The complete work order is available at:
The nearest New York State Department of Labor office
Visit the website: labor.ny.gov/careerservices/h2a_orders.shtm

1. Name of employer:

- a. Employer address: _____
- b. Telephone number: (____) ____ - _____
- c. Location and address of the workplace: (list all locations and addresses of workplaces below)

2. Duration of employment: From: ____ / ____ / ____ To: ____ / ____ / ____

3. Wages payable:

The employer shall provide the worker, before or on the day of payment, a written summary showing the total earnings of the worker for the payment periods, the dates of the beginning and the end of each payment period, the hourly payment rate or per piece / unit, the number of units produced per day (if paid per piece), the hours of work that were offered to the worker (as required by the 3/4 guarantee), the current hours worked by the worker, a list of the deductions that the employer has made from the worker's payment, the employer's name, his address and his federal tax identification number ("FEIN").

The employer guarantees to offer workers employment at least 3/4 of the work hours of the total period of the work order and its extensions, beginning with the first day after the arrival of the workers at the place of employment and ending on the date of termination specified in the work order or its extension, if any. If the employer offers, during that period, less employment than is required under this clause, the worker will be paid the amount he / she would have earned if he / she worked for the guaranteed number of hours. Workers will not be required to work more than the number of hours specified in this order on a workday, a rest day or a federal holiday to meet this guarantee. Any worker who is dismissed for cause will not be entitled to this guarantee.

If the adverse effect payment rate (AEWR) increases during the term of the contract, all workers will receive the highest salary on the official date of the increase. If the payment rate is reduced, H-2A guest workers can receive that salary reduction. However, for domestic and local workers, the payment rate must be maintained equal to the salary indicated in the contract (ETA790), as described in the Law on the Protection of Migrant and Temporary Workers in Agriculture (MSPA).

4. Crops and types of activities

5. Transportation or other benefits, if any:

The employer agrees to reimburse the cost of inbound transportation and living expenses of \$ per day up to a maximum of \$ per day (as per the regulations) for each worker or any person, government agency, or private organization that on behalf of the worker has paid or advanced said transportation and subsistence expenses from the residence, place of last job, or place of recruitment to the workplace once the worker has fulfilled 50% of the stipulated period of employment, from the initial date of need of the employer or from the day after the actual arrival of the worker if later than the date indicated to appear.

The employer shall provide or pay the cost of return and subsistence transportation for each worker who completes the period of employment, or who is dismissed for medical reasons, or as a result of a fire, weather, or Act of God (as determined by the Certifying Officer), from place of employment to the place of recruitment, except if the worker will not return to his place of recruitment and has subsequent employment with another employer - see subsection 16 (c) above). The employer will not be responsible for paying the cost of transportation and subsistence from the place of employment to the place of recruitment if the worker voluntarily leaves his job or is dismissed for just cause and the employer gives timely notification to the NPC and DHS.

If requested by the worker, the employer will assist in making transportation arrangements. The employer will provide transportation, at no cost to the worker, from the home provided by the employer to the job site and return at the end of the day.

6. Other benefits:

The home will be clean and will comply with federal and state housing standards. Workers will be responsible for keeping the house clean and tidy. Housing and public services (water, electricity, etc.) are supplied at no cost to H-2A workers and workers who cannot return to their place of residence on the same day. Beds, bedding, and mattresses will be provided at no cost to workers.

This agreement does not create any relationship between tenant and property owner. The employer always retains ownership and control of the home. Workers provided housing under the terms of this order must evacuate the home immediately after termination of employment with the employer.

a. List any additional benefits:

7. In case there is housing available for employees who need the address or location, description of the house:

a. Address or location:

b. Description of property:

8. How to apply:

a. Telephone number: (____) _____ - _____

b. Email address: _____

c. Website: _____

9. Assurances:

Housing for Workers: Article 6 of the NYS Labor Law, sections 193.1 and 193.2, prohibit an employer from deducting monies, either through payroll deduction or by separate transaction, any amount or charge which is not authorized by NYS labor law. Therefore, the employer may NOT require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for the damage.

Frequency of Pay: Article 6 of the NYS Labor Law, section 191.1a, requires that employer pay wages weekly to manual workers (farmworkers are manual workers) no later than 7 calendar days after the end of the week in which wages are earned. Therefore, manual workers can be paid weekly or biweekly (up to date; where all days, including payday hours are paid). **Deductions from Worker's Pay:** Article 6 of the NYS Labor Law, sections 193.1 and 193.2, prohibit an employer from deducting monies, either through payroll deduction or by separate transaction, any amount or charge which is not authorized by NYS labor law. Therefore, the employer may NOT make any other deductions NOT required by law.

Per the Farm Laborer Fair Labor Protections Act, effective January 1, 2020, all covered farm laborers, including H-2A foreign guest workers, will earn **one and a half times the regular rate for all hours worked over 60, and for any hours voluntarily worked on a worker's day of rest.** Limited exceptions to the overtime provision should be reviewed.

NYS Labor Law section 201g requires that employers adopt a **sexual harassment prevention policy.** Interactive training and a copy of the written policy must be provided to all workers. The policy must be provided in the language spoken by the workers.

NYS Labor Law section 196-b requires that employers provide its employees with sick leave as follows:

- Employers with 100 or more employees must provide up to 56 hours of **paid** sick leave per calendar year.
- Employers with 5 to 99 employees must provide up to 40 hours of **paid** sick leave per calendar year.
- Employers with 4 or fewer employees and net income of greater than \$1 million in the previous tax year are required to provide up to 40 hours of **paid** sick leave per calendar year.
- Employers with 4 or fewer employees and net income of \$1 million or less in the previous tax year are required to provide up to 40 hours of **unpaid** sick leave per calendar year.
- Employees began to accrue sick leave on September 30, 2020, or the date on which they are hired, whichever is later.

10. Additional Information: All terms and conditions included in the work order will apply equally to all workers, both US workers and H2A guest workers performing the work described in this work order.

List any additional information: