



WS 09-12

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To: Employer Service
Career Offices

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Subject: Documenting Referrals for H-2A and H-2B Postings

Purpose

Update procedures for documenting referrals on foreign labor certification H-2A and H-2B postings

Background

The U.S. Department of Labor's (DOL) Foreign Labor Certification H-2A agricultural and H-2B nonagricultural nonimmigrant visa program allows employers to hire foreign workers to perform temporary or seasonal agricultural and nonagricultural labor or services. Before filing a petition for one or more H-2A or H-2B workers with the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), employers must file an application with DOL.

Employers filling temporary (less than ten months of work) openings list these positions through the Texas Workforce Commission Foreign Labor Certification (FLC) unit. The FLC unit enters the postings into WorkInTexas.com.

If employers contact Workforce Solutions staff to list such openings, we direct them to the FLC unit at (512) 475-2571.

The posting is identified in the Job Posting General Details by the FLC case number and FLC Job Type (H-2A or H-2B). The job description contains the words "temporary employment (start date – end date)". If it is an H-2A posting, the job description also will contain the phrases "do not refer without hardcopy" and "clearance order." For both types of FLC postings, the Contact Information contains the phrase "employment eligibility verification required for all staff referrals."

The hard copy is a copy of the employer's application, ETA-750, which the FLC sends to the order-holding office once the job is listed.

Each Workforce Solutions office must have procedures to (1) receive and maintain the hard copies of the employer applications for each H-2A posting and (2) maintain a file for each H-2B posting.

Each office must have a designated Employment Service (i.e., employed by TWC) staff member to complete the Employment Eligibility Verification Certificate.

Making Referrals to H-2A Job Listings

If a Workforce Solutions staff member determines that a customer is qualified for an H-2A FLC posting, she must follow these steps in referring:

1. Complete the I-9 form to confirm that the customer is eligible to work in the United States.
2. Complete TWC form E-50 Job Seeker Agricultural Checklist with the customer.
3. Give the customer TWC form E-83 Department of Labor Protection for Farm Workers.
4. Give the customer the hard copy (ETA-750) and the contact information. Request the hard copy from the order-holding office if needed.
5. Give the I-9 to the Employment Service (i.e., TWC-employed) staff member in her office designated to complete the Employment Eligibility Verification Certificate.

The designated Employment Service staff member will complete the Certificate, sign it, copy it, and fax or mail it to the employer immediately.

- She will also record the completion date of the Certificate in the Job Posting Notes. File the I-9, form E-50, the Certificate and any supporting documents, including the hard copy (ETA-750, in the posting file.

Making Referrals to H-2B Job Listings

If a Workforce Solutions staff member determines that a customer is qualified for an H-2B FLC posting, she follows these steps:

1. Complete the I-9 form to confirm that the customer is eligible to work in the United States.
2. Give the customer the contact information.
3. Give the I-9 to the Employment Service staff member in her office authorized to complete the Employment Eligibility Verification Certificate.

The Employment Service staff member will complete the Certificate, sign it, copy it, and fax or mail it to the employer immediately.

- She will record the completion date of the Certificate in the Job Posting Notes. File the I-9, form E-50, the Certificate and any supporting documents in the posting file.

Records

We must keep individual customer records for each referral to an H-2A or H-2B FLC posting for three years. These records must be available to be given to monitors or other reviewers when requested.

Remember to keep a posting file for each H-2A or H-2B posting.

Action

- Make sure that appropriate staff and supervisors are aware of the requirements for documenting referrals to H-2A and H-2B postings
- Make sure offices have designated Employment Service staff to carry out the required functions.
- Check to make sure offices are keeping required records.

Questions

Staff should first ask questions of their managers or supervisors. Direct questions for Board staff to the staff web Q&A at <http://wrksolutions.com>.

Attachments

- Form I-9 and instructions
- Form E-50 Job Seeker Agricultural Checklist and instructions
- Form E-83 Department of Labor Protection for Farm Workers.
- Employment Eligibility Verification Certificate