

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION H-2A Program
	CORRESPONDENCE SYMBOL OWS
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 23-01

TO: ALL STATE WORKFORCE AGENCIES
ALL STATEWORKFORCE LIAISONS
ALL WORKER ADJUSTMENT LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS

/S/
FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Clarification of Transportation Requirements Under the
H-2A Program

1. Purpose. To clarify the employer's requirements to provide transportation reimbursement to workers in the H-2A temporary foreign agricultural worker program.

2. Reference. 20 C.F.R. 655.102(b)(5)(i) and (ii), 55 Fed. Reg. 20500, 20507 (June 1, 1987).

3. Background. There have been a number of questions regarding the regulatory provisions governing the H-2A employer's obligation to reimburse transportation expenses for foreign and domestic workers.

U.S. workers, and in some cases H-2A workers, may go from a current H-2A employer to a subsequent employer. When this happens, questions are raised regarding which, if any, employer has the obligation to pay for (or provide) transportation back to the place from which the worker was recruited.

Workers have a right to make an informed decision regarding the economic benefits of a subsequent non-H-2A job and weigh these benefits against the loss of the transportation benefit.

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State and regional staff will attempt to assist former workers obtain transportation assistance either voluntarily from employers or through other sources.

4. Pertinent Regulatory Provisions. The following regulatory provisions apply:

20 C.F.R. 655.102(b) (5) (i) “...the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment.”

20 C.F.R. 655.102(b) (5) (ii) “Transportation from place of employment. If the worker completes the work contract period, the employer shall provide or pay for the worker’s transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, has come to work for the employer, or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker’s transportation and daily subsistence expenses from the employer’s worksite to such subsequent employer’s worksite, the employer shall provide or pay for such expenses; except that, if the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker’s transportation and daily subsistence expenses from the employer’s worksite to such subsequent employer’s worksite, the employer is not required to provide or pay for such expenses.”

20 C.F.R. 655.102(b)(5)(i) and (ii), 55 Fed. Reg. 20500 (June 1, 1987) (Supplemental Information) “...the employer must offer to pay for (or provide) the worker’s transportation home, or wherever the worker began the series of jobs culminating at the current place of employment....H-2A workers may be authorized to go from “criteria” employment...to other criteria employment....**This effectively places the requirement on the H-2A worker’s final criteria employer to pay for (or provide) the H-2A worker’s transportation “home.”** (bold added)

“U.S. workers, however, may go from “criteria” employment (i.e., where they have H-2A co-workers in the same agricultural activity) to either criteria or non-criteria employment....**The transportation “home” requirement is assumed by the next criteria employer...**” (bold added)

If the U.S. worker’s subsequent employer is a non-criteria employer, ...and unless that subsequent employer offers to pay for...transportation “home”, or to further employment, it is the worker’s responsibility to obtain transportation... The transportation “home” requirement...is not assumed by the non-criteria employer...” (bold added)

“If the U.S. worker has no subsequent employer, the current employer must offer to pay for (or provide) the worker’s transportation home, or wherever the worker began the series of jobs culminating at the current place of employment.”

5. Policy.

a. In general, the final H-2A employer has responsibility for the trip home when the contract is completed, but only when there is no subsequent employer.

“Home” is where the worker was originally recruited. However, if subsequent employment is involved and the worker, whether H-2A or U.S., is referred from one H-2A employer to a subsequent H-2A employer, the last H-2A employer is responsible for the transportation home once the “final” contract is completed.

b. When there is a non H-2A subsequent employer, the worker becomes responsible for his/her own transportation costs home.

c. When the regulations were written, it was not contemplated that an H-2A worker could go on to work for an employer in another legal status - - such as H-2B, which has no transportation requirement. It is ETA’s position that in this case, neither employer has an obligation under the H-2A regulations to provide transportation home.

Examples (assume contracts are completed):

(i) U.S. worker is recruited in Texas by a Michigan H-2A employer, and the worker goes on to a Wisconsin H-2A employer. The Wisconsin employer is responsible for transportation back to Texas.

(ii) U.S. worker is recruited in Texas by a Michigan H-2A employer, and the worker goes on to a New York non-H-2A harvest job. If the subsequent, Michigan non-H-2A employer does not offer to pay for (or provide) the U.S. worker’s transportation from the current place of employment to the subsequent place of employment, the Michigan H-2A employer is required to pay for (or provide) such transportation. The transportation home requirement is not assumed by either employer and it is the worker’s responsibility to obtain such transportation from some other source.

(iii) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then moves (after an approved visa status change petition) to another certified H-2A employer in New York. After completion of the contract, the New York H-2A employer is responsible for transportation home to Jamaica.

(iv) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then moves (after an approved visa status change petition) to a Maine H-2B forestry employer. If the subsequent, Maine H-2B employer does not offer to pay for (or provide) the worker’s transportation from the current place of employment to the subsequent place of employment, the Connecticut H-2A employer is required to pay for (or provide) such transportation. DOL regulations do not require either employer to pay for transportation back to Jamaica. It is the worker’s responsibility to obtain such transportation from some other source.

(v) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then moves (after an approved visa status change petition) to H-2B employment with the same employer or an entity owned by the same employer. The H-2A employer is required to pay for (or provide) transportation home for the worker.

6. Action Required. State Workforce Agencies are requested to:

- a. Inform appropriate state and regional office staff of above policy;
- b. Inform worker advocates and outreach workers of these provisions (pre-harvest meetings are one means of disseminating this information); and
- c. Work with advocacy groups and the regional-state monitor advocate network in attempting to provide voluntary transportation reimbursement or other assistance to workers who might find themselves in a situation where no employer is under an obligation to pay for the worker's transportation home.

7. Inquiries. Questions should be directed to Charlene Giles at (202) 693-2950.