



Final Rule Issued on H-2A Visa Regulations

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Announced on October 6 and published on October 12, 2022, the U.S. Department of Labor (DOL) issued a final rule to amend H-2A certification regulations. The H-2A program allows employers to temporarily address their labor needs by hiring foreign agricultural workers when there are not enough workers that are willing and available. The rule arises from the thousands of comments received by the DOL from Ag and Labor organizations after proposed changes to the H-2A program in 2019.

This rule becomes effective on November 14, 2022 and is meant to improve and strengthen program protections for U.S. workers and H-2A workers, enhance enforcement against fraud and abuse, modernize the H-2A application process and provide clarity to employers and stakeholders. Among the changes and clarifications of the new rule include:

- Improves safety and health protections for workers housed in rental or public accommodations.
- Streamlines and updates bond requirements for labor contractors to better hold them accountable and clarifies joint-employer status for employers and organizations.
- Clarifies that employer-provided meals must be delivered in a timely and sanitary manner.
- Authorizes the DOL to debar attorneys and agents for their own misconduct, independent of an employer's violations.
- Electronic filing is mandatory for most applications to improve employers' processing efficiency.
- Modernizes the methodology and procedures to determine prevailing wages and empowers state workforce agencies to produce more prevailing wage survey findings.

These changes in the final rule will help support enforcement capabilities of the DOL's Wage and Hour Division to address cases of H-2A program fraud and abuse which have increased in recent years. According to [dol.gov](https://www.dol.gov), in 2021, the Division found 358 violations and collected more than \$5.8 million in back wages for thousands of

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workers. These instances of fraud undermine workers' rights and hurts law-abiding employers.

If you are an employer and have concerns over how this rule may impact your organization or have questions on how to remain compliant, contact Ryan Lamb at 616.796.2503 or at rlamb@fosterswift.com.