

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule FAQs
Round 11: Job Order Content, Amendments, and Recruitment

Note: The numbering of the FAQs in Round 11 reflects their placement within existing 2015 H-2B IFR FAQs.

JOB ORDERS AND APPLICATION FILING AND PROCESSING

Job order

6. What minimum content must the job order include?

An employer's job order must contain the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits as well as the assurances and obligations required under the H-2B regulation. We have developed a checklist of minimally sufficient job order content to help employers satisfy their obligation to apprise prospective applicants of the job opportunity in the job order. Although each employer's job opportunity and business operation is unique, we provide, where appropriate, example language that may help employers better understand how to disclose their obligations under the regulations. In addition, employers may use abbreviations so long as the abbreviation clearly and accurately captures the underlying job order content requirement. The checklist is available on our Web site [here](#).

Revised December 8, 2015

7. What is the minimum language I need to include in the job order to appropriately disclose my obligation to provide or pay for a worker's transportation and subsistence costs to and from the place of employment?

A job order prepared in connection with an *H-2B Application for Temporary Employment Certification* must include language notifying prospective applicants as to how the employer will provide or reimburse a worker for the cost of transportation and daily subsistence to the place of employment from the place where the worker is located (whether in the United States or abroad), if the worker completes 50 percent of the employment period. Where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well. The Department has interpreted the regulation to require the employer to assume responsibility for the reasonable

costs associated with the worker's travel, including transportation, food, and, in those cases where it is necessary, lodging. If not provided by the employer, the amount an employer must pay for transportation and, where required, lodging must be no less than (and is not required to be more than) the most economical and reasonable costs.

The job order must also include language notifying prospective applicants that, if the worker completes the employment period or if the worker is dismissed early for any reason, the employer will provide or pay for the worker's return transportation and daily subsistence from the place of employment to the place from which the worker came to work for the employer. Please note that the employer will not be responsible for return transportation and subsistence fees where the worker will not return due to subsequent employment with another employer or where the employer has appropriately reported a worker's voluntary abandonment of employment.

To help employers appropriately disclose these inbound and outbound travel cost obligations, the following language may be included in the job order:

"If the worker completes 50 percent of the work contract period, the employer will [insert suggested language for option A, B, and/or C below]

Option A: arrange and pay directly for transportation and subsistence

Option B: reimburse the worker for transportation and subsistence

Option C: provide advance payment for transportation and subsistence

from the place of recruitment to the place of work. Upon completion of the work contract or where the worker is dismissed earlier, the employer will provide or pay for worker's reasonable costs of return transportation and subsistence back home or to the place the worker originally departed to work, except where the worker will not return due to subsequent employment with another employer or where the employer has appropriately reported a worker's voluntary abandonment of employment. The amount of transportation payment or reimbursement will be equal to the most economical and reasonable common carrier for the distances involved. Daily meals will be provided at a rate of at least \$____ p/day during travel to a maximum of \$____ p/day with receipts."

The current minimum and maximum amounts for the meal component of subsistence expenses to be included in the job order are available on the OFLC Web site at http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm

Revised February 11, 2016

Processing

21. My H-2B application is pending with the Chicago NPC. Can I amend the period of employment (e.g., start date of work) or number of workers requested or make other changes to my H-2B application before it is certified?

Yes, the employer may request amendments to the period of employment or number of workers, or to make other changes to the *H-2B Application for Temporary Employment Certification* and/or job order, before a certification decision is issued by the Chicago National Processing Center (NPC). The Certifying Officer (CO) will evaluate the requested amendments. The CO will approve the amendment request if the CO determines the change(s) proposed:

- are sufficiently justified;
- will not negatively impact the labor market test;
- will not change the total period of employment by more than 14 days;
- will not result in a total period of employment longer than nine months; and/or
- will not result in an increase of more than 20 percent (50 percent for employers requesting fewer than 10 workers) from the number listed on the employer's *H-2B Registration*, once implemented. Before implementation of the H-2B Registration process, the CO will calculate the resulting increase using the number of workers the employer requested when submitting the *H-2B Application for Temporary Employment Certification*, Form ETA-9142B.

To request amendment of an H-2B application and/or job order before the Chicago NPC issues a final determination, submit a written amendment request directly to the Chicago NPC.

The employer may e-mail the request directly to the Chicago NPC using the address: TLC.Chicago@dol.gov, with the words "H-2B Amendment Request" contained in the subject line of the e-mail.

Employers without internet access may send a written request by facsimile to (312) 886-1688 (ATTN: H-2A Amendment Request) or by U.S. mail to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court

Chicago, IL 60604-2105
ATTN: H-2B Amendment Request

If the CO approves the amendment request, the CO will notify the employer of the decision, submit to the State Workforce Agency any necessary changes to the job order, and update the electronic job registry. Upon receipt of the CO's notification, the employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order.

December 8, 2015

RECRUITMENT PROCEDURES AND THE RECRUITMENT REPORT

11. Must all employer-conducted recruitment be completed within 14 calendar days from the date on which the Notice of Acceptance (NOA) was issued?

The 2015 H-2B Interim Final Rule (IFR) requires the employer to engage in the employer-conducted recruitment activities directed in the NOA (e.g., newspaper advertisements, contact with former U.S. workers, and contact with the bargaining representative or posting a notice) within the 14-calendar days from the date the NOA is issued. The employer must begin all employer-conducted recruitment activities within 14 calendar days from the date of the NOA. The employer will be able to both begin and complete many of these activities within the 14-day period. Where an activity takes longer to complete, the employer must start the recruitment activity within the 14-day period and continue the activity until it is completed before submitting the recruitment report to the Chicago NPC.

For example, where there is no applicable bargaining representative, the regulation requires the employer to post the availability of the job opportunity for at least 15 consecutive business days at the place(s) of intended employment. This posting must be started, but does not need to be completed, within the 14-day period after the NOA is issued. Similarly, if the CO directs the employer to conduct additional recruitment activity that requires more than 14 calendar days to complete, that activity must be started, but need not be completed, within the 14-day period after the NOA is issued.

Important Reminders: The posting of the Notice of Posting, if one is needed, and all other employer-conducted recruitment must be completed before the employer may submit its recruitment report. In addition, the employer must continue to accept referrals to the job opportunity until 21 days before the employer's date of need.

Revised December 8, 2015