

H-2A Job Orders

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What is a “Job Order”?

Form ETA-790A

Clearance Order

Job order. The document containing the *material terms and conditions of employment* that is posted by the SWA on its inter- and intra-state job clearance systems based on the employer’s Form ETA–790, as submitted to the SWA.

20 CFR 655.103(b) and 29 CFR 501.3(a)

Job Order Process: 20 CFR 655.121

- File Form ETA-790A with the State Workforce Agency (SWA)(Employment Development Department (EDD) in California)
- Foreign Labor Application Gateway (FLAG)
- 75-60 days before your date of need unless filed under an emergency exception
- **Open to the public on *seasonaljobs.dol.gov*!!!! (The dating app)**
- ***Becomes your H-2A contract with H-2A and corresponding domestic workers!***

Job Order vs Job Offer

Job offer. The offer made by an employer or potential employer of H-2A workers to both U.S. and H-2A workers describing all the *material terms and conditions of employment*, including those relating to wages, working conditions, and other benefits.

The Job Order is Your Disclosure Document

(a) *Prohibition against preferential treatment of aliens.* The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers. This does not relieve the employer from providing to H-2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

What you put in the job order matters!!

Becomes H-2A Contract enforced by Department of Labor, Wage & Hour Division

- Drafted by an employee of the employer most knowledgeable about the job duties and conditions of employment
- Understand “corresponding employment”
- **Cannot amend after certification except for COVID-related reasons that must be documented**

Contents of Job Order: 20 CFR 655.122

- (a) *Prohibition against preferential treatment of aliens.*
- (b) *Job qualifications and requirements.*
- (c) *Minimum benefits, wages, and working conditions.*
- (d) *Housing.*
- (e) *Workers' compensation.*
- (f) *Employer-provided items. (Tools and equipment)*
- (g) *Meals.*
- (h) *Transportation; daily subsistence. **(Inbound and outbound)***
- (i) *Three-fourths guarantee.*
- (j) *Earnings records. (i.e. not the actual wage statement given to the workers--field tally records, supporting*
- (k) *Hours and earnings statements. (The actual paystub given to the workers--Items 1-8)*
- (l) *Rates of pay. (Hourly and/or piece rate(s))*

Contents of Job Order (cont'd)

- (m) *Frequency of pay. (At least twice monthly or prevailing practice)*
- (n) *Abandonment of employment or termination for cause. (Notice to DOL/USCIS)*
- (o) *Contract impossibility.*
- (p) *Deductions. (Required by law or in writing for deductions not required by law but which must be **permissible** deductions)(Cannot be a profit to the employer)(No prohibited fees)*
- (q) *Disclosure of work contract. (H-2A: no later than at the time they apply for the visas; for corresponding domestic workers, no later than the first day work commences)*

Certification by Employer

Conditions of Employment and Assurances

By virtue of my signature below, I **HEREBY CERTIFY** my knowledge of and compliance with applicable Federal, State, and local employment-related laws and regulations, including employment-related health and safety laws, and certify the following conditions of employment:

Penalty of Perjury!

I **declare** under penalty of perjury that I have read and reviewed this clearance order, including every page of this Form ETA-790A and all supporting addendums, and that to the best of my knowledge, the information contained therein is true and accurate. This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. 20 CFR 653.501(c)(3)(viii). I understand that to knowingly furnish materially false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both. 18 U.S.C. 2, 1001.

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Agricultural Clearance Order
Form ETA-790
U.S. Department of Labor



IMPORTANT: In accordance with 20 CFR 653.500, all employers seeking U.S. workers to perform agricultural services or labor on a temporary, less than year-round basis through the Agricultural Recruitment System for U.S. Workers, must submit a completed job clearance order (Form ETA-790) to the State Workforce Agency (SWA) for placement on its Intrastate and Interstate Job clearance systems. Employers submitting a job order in connection with an H-2A Application for Temporary Employment Certification (Form ETA-9142A) must complete the Form ETA-790 and attach a completed 790A. All other employers submitting agricultural clearance orders must complete the Form ETA-790 and attach a completed 790B. Employers and authorized preparers must read the general instructions carefully, complete ALL required fields/items containing an asterisk (*), and any fields/items where a response is conditional as indicated by the section (§) symbol.

I. Clearance Order Information

FOR STATE WORKFORCE AGENCY (SWA) USE ONLY			
Questions 1 through 17			
1. Clearance Order Number *	2. Clearance Order Issue Date *	3. Clearance Order Expiration Date *	
17739437	6/30/2021	10/17/2021	
4. SOC Occupation Code *	5. SOC Occupation Title *		
45-2092.02	Farmworkers and Laborers, Crop		
SWA Order Holding Office Contact Information			
6. Contact's last (family) name *	7. First (given) name *	8. Middle name(s) §	
	EDD Representative		
9. Contact's job title *			
Employment Program Representative			
10. Address 1 *			
North County Coastal Career Center			
11. Address 2 (suite/floor and number) §			
1949 Avenida del Oro, Suite 106			
12. City *	13. State *	14. Postal code *	
Oceanside	California	92506	
15. Telephone number *	16. Extension §	17. E-Mail address *	
(760) 631-6150			

II. Employer Contact Information

1. Legal Business Name *			
West Coast Tomato Growers, Inc.			
2. Trade Name/Doing Business As (DBA), if applicable §			
3. Contact's last (family) name *	4. First (given) name *	5. Middle name(s) §	
Singh	Harry	David	
6. Contact's job title *			
Director of Human Resources			
7. Address 1 *			
5780 Mission Ave.			
8. Address 2 (apartment/suite/floor and number) §			
9. City *	10. State *	11. Postal code *	
Oceanside	California	92057	
12. Telephone number *	13. Extension §	14. Business e-mail address *	
+1 (760) 305-5335		david@westcoastvineripe.com	
15. Federal Employer Identification Number (FEIN from IRS) *		16. NAICS Code *	
45-3622607		115115	

III. Type of Clearance Order

1. Indicate the type of agricultural clearance order being placed with the SWA for recruitment of U.S. workers. (choose only one) *	<input checked="" type="checkbox"/> 790A (H-2A clearance order) <input type="checkbox"/> 790B (regular clearance order)
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H-2A Agricultural Clearance Order
Form ETA-790A
U.S. Department of Labor



I. Conditions of Employment and Assurances for H-2A Agricultural Clearance Orders

By virtue of my signature below, I HEREBY CERTIFY my knowledge of and compliance with applicable Federal, State, and local employment-related laws and regulations, including employment-related health and safety laws, and certify the following conditions of employment.

- JOB OPPORTUNITY:** Employer assures that the job opportunity identified in this clearance order (hereinafter also referred to as the "job order") is a full-time temporary position being placed with the SWA in connection with an H-2A Application for Temporary Employment Certification for H-2A workers and this clearance order satisfies the requirements for agricultural clearance orders in 20 CFR 653, subpart F and the requirements set forth in 20 CFR 655.122. This job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR 655, Subpart B. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship.
- NO STRIKE, LOCKOUT, OR WORK STOPPAGE:** Employer assures that this job opportunity, including all worksites for which the employer is requesting H-2A labor certification does not currently have workers on strike or being locked out in the course of a labor dispute. 20 CFR 655.135(b).
- HOUSING FOR WORKERS:** Employer agrees to provide for or secure housing for H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence at the end of the work day. That housing complies with the applicable local, State, or Federal standards and is sufficient to house the specified number of workers requested through the clearance system. The employer will provide the housing without charge to the worker. Any charges for rental housing will be paid directly by the employer to the owner or operator of the housing. If public accommodations are provided to workers, the employer agrees to pay all housing-related charges directly to the housing's management. The employer agrees that charges in the form of deposits for bedding or other similar incidentals related to housing (e.g., utilities) must not be levied upon workers. However, the employer may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation. When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, the employer agrees to provide family housing at no cost to workers with families who request it. 20 CFR 655.122(d), 653.501(e)(3)(vi).

Request for Conditional Access to Intrastate or Interstate Clearance System: Employer assures that the housing disclosed on this clearance order will be in full compliance with all applicable local, State, or Federal standards at least 20 calendar days before the housing is to be occupied. 20 CFR 653.502(a)(3). The Certifying Officer will not certify the application until the housing has been inspected and approved.

- WORKERS' COMPENSATION COVERAGE:** Employer agrees to provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer agrees to provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment. 20 CFR 655.122(e).
- EMPLOYER-PROVIDED TOOLS AND EQUIPMENT:** Employer agrees to provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. 20 CFR 655.122(f).
- MEALS:** Employer agrees to provide each worker with three meals a day or furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer will state the charge, if any, to the worker for such meals. The amount of meal charges is governed by 20 CFR 655.173. 20 CFR 655.122(g).

For workers engaged in the herding or production of livestock on the range, the employer agrees to provide each worker, without charge or deposit charge, (1) either three sufficient meals a day, or free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals. To be sufficient or adequate, the meals or food provided must include a daily source of protein, vitamins, and minerals; and (2) adequate potable water, or water that can be easily rendered potable and the means to do so. 20 CFR 655.210(e).

- TRANSPORTATION AND DAILY SUBSISTENCE:** Employer agrees to provide the following transportation and daily subsistence benefits to eligible workers.

A. Transportation to Place of Employment (Inbound)

If the worker completes 50 percent of the work contract period, and the employer did not directly provide such transportation or subsistence or otherwise has not yet paid the worker for such transportation or subsistence costs, the employer agrees to reimburse the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount the employer will pay for daily subsistence expenses are those amounts disclosed in this clearance order, which are at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event will less than the amount permitted under 20 CFR 655.173(a). The employer understands that the Fair Labor Standards Act applies independently of the H-2A requirements and imposes obligations on employers regarding payment of wages. 20 CFR 655.122(h)(1).

B. Transportation from Place of Employment (Outbound)

If the worker completes the work contract period, or is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer agrees to 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, departed to work for the employer. Return transportation will not be provided to workers who voluntarily abandon employment before the end of the work contract period, or who are terminated for cause, if the employer follows the notification requirements in 20 CFR 655.122(n).

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17. **ADDITIONAL ASSURANCES FOR CLEARANCE ORDERS:**

- A. Employer agrees to provide to workers referred through the clearance system the number of hours of work disclosed in this clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days before the original date of need by so notifying the Order-Holding Office (OHO) in writing (e.g., e-mail notification). The employer understands that it is the responsibility of the SWA to make a record of all notifications and attempt to inform referred workers of the amended date of need expeditiously. 20 CFR 653.501(c)(3)(i).
If there is a change to the anticipated date of need, and the employer fails to notify the OHO at least 10 business days before the original date of need, the employer agrees that it will pay eligible workers referred through the clearance system the specified rate of pay disclosed in this clearance order for the first week starting with the originally anticipated date of need or will provide alternative work if such alternative work is stated on the clearance order. 20 CFR 653.501(c)(5).
- B. Employer agrees that no extension of employment beyond the period of employment specified in the clearance order will relieve it from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation from the place of employment, as described in paragraph 7.B above. 20 CFR 653.501(c)(3)(ii).
- C. Employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration, and other employment-related laws. 20 CFR 653.501(c)(3)(iii).
- D. Employer agrees to expeditiously notify the OHO or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. 20 CFR 653.501(c)(3)(iv).
- E. If acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on this clearance order, the employer assures that it has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State FLC certificate. 20 CFR 653.501(c)(3)(v).
- F. Employer assures that outreach workers will have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107. 20 CFR 653.501(c)(3)(vii).

I declare under penalty of perjury that I have read and reviewed this clearance order, including every page of this Form ETA-790A and all supporting addendums, and that to the best of my knowledge, the information contained therein is true and accurate. This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. 20 CFR 653.501(c)(3)(viii). I understand that to knowingly furnish materially false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both. 18 U.S.C. 2, 1001.

1. Last (family) name *	2. First (given) name *	3. Middle initial §
Singh	Harry	D
4. Title *		
Director of Human Resources		
5. Signature (or digital signature) *		6. Date signed *
Digital Signature Verified and Retained By <i>Cardignis Officer</i>		6/23/2021

Employment Service Statement

In view of the statutorily established basic function of the Employment Service (ES) as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Department of Labor's Employment and Training Administration (ETA) nor the SWAs are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a SWA is in any way a party. 20 CFR 653.501(c)(1)(i).

Public Burden Statement (1205-0466)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average .83 hours per response for all information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and submitting the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (44 U.S.C. 3501, Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Ave., NW, Suite PPII 12-200, Washington, DC, 20210. (Paperwork Reduction Project OMB 1205-0466). DO NOT send the completed application to this address.

What does this mean for the employer?

Personalize your job order to fit the employer's employment operations

Examples:

- **Job duties: Decide which duties to include: single vs multiple activities?**
- **Job requirements: “Normal and accepted”**
- Employer's weekly work hours (min. of 35 hrs./week)
- Production standards
- Inbound/outbound transportation and subsistence details
- Meals: details of meal provisions
- Specific deductions

H. Additional Material terms and conditions of the Job Offer: Deductions from Pay

Example: Deductions

b. Job Offer Information 2

1. Section/Item Number *	A.11	2. Name of Section or Category of Material Term or Condition *	Deductions from Pay
3. Details of Material Term or Condition (up to 3,500 characters) *			
The following deductions will be made from the worker's pay: FICA (if applicable); federal income tax withholding (if applicable); state and/or local tax withholding (if applicable); recovery of any loss to the Company due to damage or loss of equipment/tools; housing or furnishings (beyond normal wear and tear) caused by the worker (if any) - the employer will not make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that such shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee; medical insurance payments, if applicable; cash advances, if applicable.			

H-2A Deductions: Meals

Improper Deductions for Meals

Example:

- Plaintiffs and advocacy groups have made claims that arraigining for a food service provider (e.g. taco truck) to be come to housing and fields to sell meals to workers is not enough!
- This is not “providing” a meal under the regulations.

OMB Approval: 1205-0400
Expiration Date: 8/31/2022

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E. Provision of Meals

1. Describe how the employer will provide each worker with 3 meals a day or furnish free and convenient cooking and kitchen facilities. * (Please begin response on this form and use Addendum C if additional space is needed.)

The Employer will provide all workers living at XX Hotel with 3 meals a day, 7 days per week, at a reasonable cost not to exceed \$12.46 for three meals per day (or higher when/if the Department of Labor publishes the new maximum meal deduction rate and/or approves a higher meal charge at the employer's request). XX Hotel has a common area where employees will receive breakfast prior to departing to work location and a sack lunch to take with them. Upon return, workers will be provided dinner in the common area.

2. If meals are provided, the employer: *

WILL NOT charge workers for such meals.

WILL charge workers for such meals at \$ 12 . 46 per day per worker.



QUESTIONS?

Thank you!