

TRAINING AND EMPLOYMENT NOTICE	NO. 13-23
	DATE December 5, 2023

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AMERICAN JOB CENTER DIRECTORS

FROM: LAURA P. WATSON *LPW*
Deputy Assistant Secretary

SUBJECT: **American Job Center Role in Connecting U.S. Job Seekers to Job Opportunities Available with Employers Seeking to Employ H-2B Nonimmigrant Foreign Workers Certified for Work Starting in Fiscal Year (FY) 2024**

1. **Purpose.** To ensure State Workforce Agencies (SWA) are aware that employers seeking to hire foreign workers for temporary employment under a supplemental H-2B visa cap for work certified to commence in FY 2024 must contact an American Job Center (AJC) for assistance in recruiting U.S. workers for their job opportunities.
2. **Action Requested.** The Department of Labor (DOL) reminds SWA staff responsible for administering foreign labor certification activities and Title I of the Workforce Innovation and Opportunity Act (WIOA) to use established recruitment practices at AJCs to help connect job seekers with job opportunities from employers seeking to employ foreign workers on supplemental H-2B visas.
3. **Summary and Background.**
 - a. Summary – Employers may contact AJCs seeking help in recruiting U.S. workers due to H-2B regulations contained in the FY 2024 temporary final rule. This notice explains the role of AJCs in the recruitment of U.S. workers for temporary or seasonal job opportunities available with employers seeking to hire foreign workers on supplemental H-2B visas made available by a Temporary Final Rule (TFR) jointly published by DOL and the Department of Homeland Security (DHS) on November 17, 2023.
 - b. Background – In response to strong demand for H-2B visas, Congress authorized a supplemental H-2B visa allocation¹ for additional H-2B visas during FY 2024 for eligible employers whose employment needs during FY 2024 cannot be met under the general fiscal year statutory cap. Accordingly, DOL and DHS jointly published a TFR to exercise this authority to implement a supplemental visa allocation of 64,716 H-2B visas.

¹ See Consolidated Appropriations and Ukraine Supplemental Appropriations Act, 2023, Pub. L. 117-328, Div. O, Tit. I, § 303 (2023), as extended by sections 101(6) and 106 of Division A of the Continuing Appropriations Act, 2024 and Other Extensions Act, Pub. L. 118-15.

When applying for an H-2B visa, employers first recruit U.S. workers by posting the job in SWA job banks or job listing systems. The TFR includes a provision at 20 CFR 655.64(a)(4)(ii) requiring employers seeking access to a supplemental H-2B visa and subject to additional recruitment obligations to contact, by email or other electronic means, the nearest AJC serving the area of intended employment to request staff assistance to advertise and recruit U.S. workers for the job opportunity. This means that some employers may contact AJCs. When contacting the AJC(s), the employers must provide the job order number or, if the job order number is unavailable, a copy of the job order placed on the SWA job listing system. The TFR directs employers to find AJCs using the DOL-sponsored website <https://www.careeronestop.org/LocalHelp/local-help.aspx>.

- 4. AJC Role and Responsibilities.** After locating the nearest AJC, the employer must contact the AJC using an electronic method and provide the AJC a job order identification number or copy of the job order, which contains information necessary to apprise U.S. job seekers of the job opportunity. Once contacted by the employer, WIOA title I and Wagner- Peysner Employment Service (ES) staff at the AJC should make every effort to work collaboratively with the employer and broadly disseminate information about the job vacancies to jobseekers, to the AJC partner network, and to any other organizations including labor unions and those organizations serving disadvantaged populations, where potentially qualified U.S. workers may be available for the employer's job opportunity.

These recruitment activities may include, for example, leveraging the state unemployment insurance program to disseminate the job opportunity to unemployed workers seeking employment and/or sharing H-2B and other job postings with community-based organizations in the geographic area providing employment and training services. SWAs must circulate a copy of the job order to appropriate union offices or hiring halls, consistent with 20 CFR 655.33(b)(5), when the job opportunity is in an occupation or industry that is traditionally or customarily unionized. A list of occupations subject to union contact is available on OFLC website at <https://www.dol.gov/agencies/eta/foreign-labor/union-contacts>. The employer has a separate obligation to accept for consideration all referrals of U.S. applicants regardless of the source of referral. It is unlawful for employers to engage in discriminatory hiring practices; jobs must be truly open. Complaints received by, or on behalf of (e.g., worker advocates, unions, or hiring halls), U.S. applicants must be taken seriously and appropriately handled using the SWA complaint system. Where appropriate, staff at AJCs should refer or direct interested U.S. workers to apply directly with the SWAs if the workers require assistance applying for the job opportunity.

Staff at AJCs or SWAs that receive complaints from jobseekers against an employer about a specific H-2B job order to which U.S. workers were referred should use the ES complaint system established under 20 CFR 658, Subpart E, and should notify jobseekers about the complaint system. SWAs should handle complaints about job orders and referrals for the supplemental visa in the same manner as they would handle complaints about referrals made to job orders for traditional H-2B recruitment.

- 5. Inquiries.** Please direct questions related to foreign labor certification to OFLC. Questions related to ES and WIOA program activities should be directed to ETA regional offices.

6. References.

- a. Consolidated Appropriations and Ukraine Supplemental Appropriations Act, 2023, Pub. L. 117-328, Div. O, Tit. I, § 303 (2023), as extended by sections 101(6) and 106 of Division A of the Continuing Appropriations Act, 2024 and Other Extensions Act, Pub. L. 118-15.
- b. Exercise of Time-Limited Authority to Increase the Fiscal Year 2024 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers at 88 FR 80394, November 17, 2023.

7. Attachments. Not applicable.