

FAQ on Staggered Dates of Need

Question: Can an employer file a single Application for Temporary Employment Certification for staggered dates of need?

Answer: No. An application must contain a single date of need for all workers under that application. Under the H-2A program, a date of need is defined as the first date the employer requires the services of H-2A and U.S workers as indicated in the Application for Temporary Employment Certification. The date is not an indication of the first date of need for some workers, but for all the workers that are the subject of the application. We expect that the filing of an Application indicates that the employer has full-time work available for all positions it is requesting for that single start date and that all information reflects the employer's true need. Changing the date of need for some or all workers invalidates the validity of the labor market test, which eliminates the Department's basis for granting the labor certification. A different date was not advertised to U.S. workers, in particular those who, if they had been apprised of the later date, could have made themselves available for the job opportunity, and therefore made the approval of the certification unnecessary. Where the employer has staggered dates of need, the employer must file a separate application for each date of need.