

H-2A Provisions - Contract Impossibility

The U.S. Department of Labor- Wage and Hour Division (WHD) stands ready to assist Growers/H-2A Labor Contractor's (H-2ALC's) and workers affected by severe storms, floods, and other disasters with their labor law compliance needs.

We remind Growers/H-2ALCs that in the event of contract impossibility resulting from an Act of God, you may only terminate the work contract after receiving approval from the Chicago National Processing Center (NPC) Certifying Officer (CO). To obtain approval, please contact the NPC by email, fax, or regular mail. See instructions and Federal regulations below.

Contract Impossibility:

A Grower/H-2ALC may, upon receiving approval from the Chicago National Processing Center (NPC) Certifying Officer (CO), terminate H-2A work to be performed under the job order and/or work contracts with employees before the end date of work due to an Act of God that makes fulfillment of the contract impossible. A Grower/H-2ALC seeking the CO's "contract impossibility" determination must submit a written request directly to the Chicago NPC. The Grower may e-mail its request for relief under the "Contract Impossibility" provision directly to the Chicago NPC using the address: TLC.Chicago@dol.gov, with the words "H-2A Contract Impossibility Request" contained in the subject line of the e-mail.

Grower's or H-2ALC's without internet access may also fax a request to (312) 886-1688 (ATTN: H2A Contract Impossibility 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-2A Contract Impossibility Request

Important Reminders:

- A Grower/H-2ALC continues to be responsible for its obligations under the H-2A work contract until receiving a favorable "contract impossibility" determination from the CO.
- In the event that the CO makes a finding of contract impossibility, the employer should document its efforts to comply with each aspect of the contract impossibility provision. Specifically, the employer should document that it fulfilled the three-fourths guarantee for the time that has elapsed from the start date of work specified in the work contract to the date of termination.
- H-2A employers must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration laws.

In situations where a transfer did not occur:

- Return the workers at the Grower's/ H-2ALC's expense to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to his/her next certified H-2A employer, whichever the worker prefers. Note: This requirement does not apply if the worker has contracted with a subsequent employer who has agreed to provide or pay for the worker's transportation and subsistence expenses from the present employer's worksite to the subsequent employer's worksite;
- Reimbursed the worker the full amount of any deductions made by the Grower/H-2ALC from the worker's pay for transportation and subsistence expenses to the place of employment, and
- Pay the worker for any transportation and subsistence expenses, including any lodging expenses incurred on the Grower's/H-2ALC's behalf, incurred by the worker to that employer's place of employment.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

20 CFR §655.122(o)

(o) Contract impossibility. If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must:

- (1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers;
- (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and
- (3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.