

# Workforce: Enhancing Retention and H-2A Workers-The Basics

Shannon Sand

Regional Agricultural Economist

Ssand2@unl.edu



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I am not an attorney, accountant, financial advisor, etc.



Everyone's situation is unique, and it is best to seek professional advice on your own situation



# Overview

- What is employee retention
- Strategies to increase employee retention
- Steps/overview of applying for H-2A workers

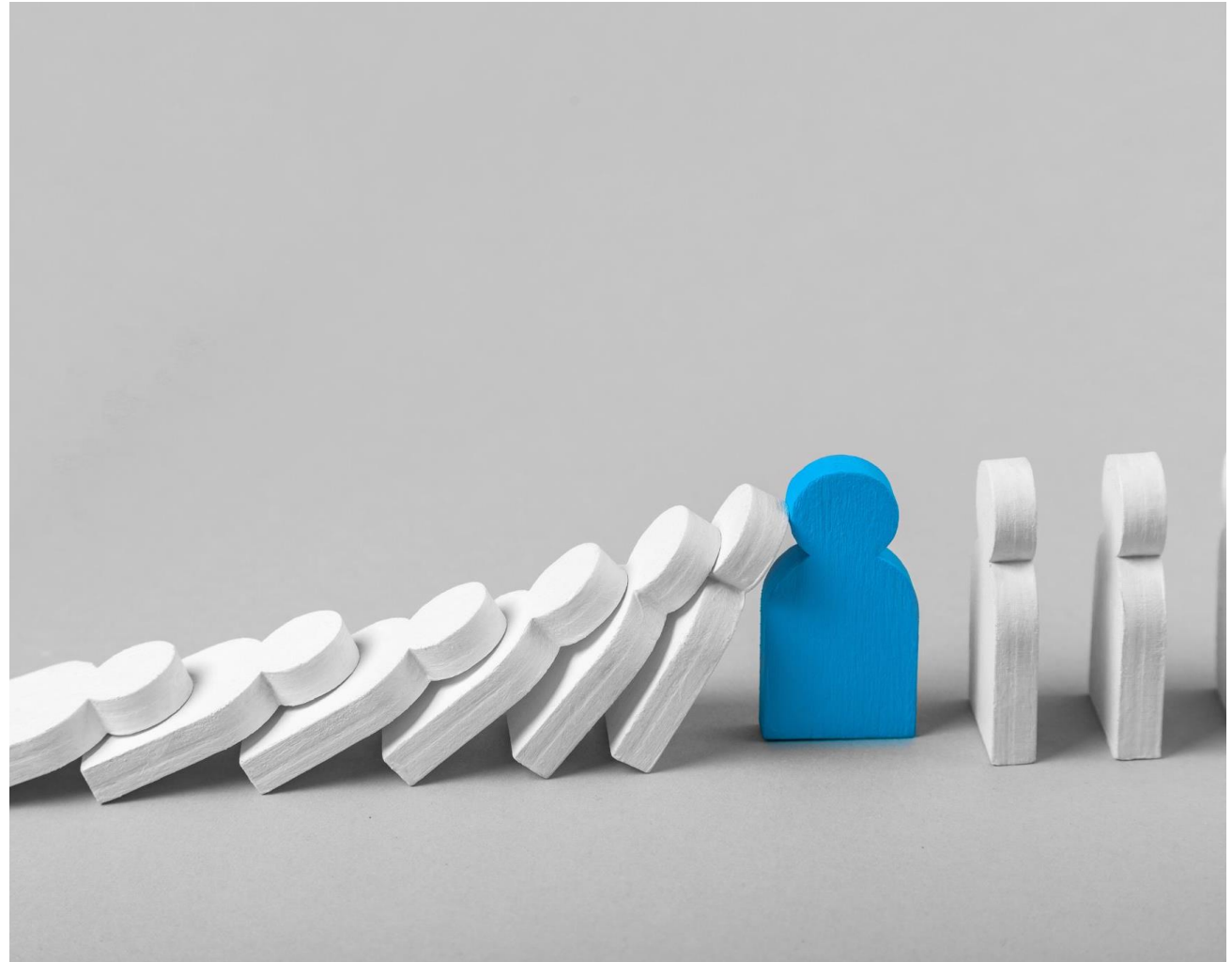


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# What is employee retention?

Employee retention is defined as an organization's ability to prevent employee turnover, or the number of people who leave their job in a certain period, either voluntarily or involuntarily. Increasing employee retention has a direct impact on business performance and success.



# Types of turnover

- Voluntary
- Involuntary



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# Challenges unique to farm and ranch businesses



Seasonality (harvest, lambing, calving, etc.)



Working conditions/hours



High volatility



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# Some ways to potentially increase retention

- A coach vs a boss



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# Frequent feedback not annual reviews

- Communication, communication, communication
- Assume you are doing a good job, and I will let you know if you're doing something wrong





# Create a job that is inspiring, rewarding and consistent with their personal and family

- Additional learning/training opportunities
- Work life balance
- Time for family and the kids, etc.



# Onboarding employees properly

- Job description
- Know who to go to for questions
- Understanding processes and procedures
- Knowing about additional training/certifications/advancement
- Expectations for performance



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# Create a written Standard Operating Procedure



# Disclaimer

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# H-2A Workers

The H-2A temporary agricultural workers program – often called the H-2A visa program - helps American farmers fill employment gaps by hiring workers from other countries.



<https://www.farmers.gov/working-with-us/h2a-visa-program#checklist-tool>



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# H-2A Workers- Requirements

- Transportation must be given for free from housing to worksite
- From worksite to worksite
- From your permanent home in Nebraska



[https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023\\_ENG.pdf](https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023_ENG.pdf)



# H-2A Workers- Requirements

- A separate seat for each passenger is required
- Seats must securely be attached to the vehicle
- Doors and windows that are not broken
- Seatbelts as required by law
- Brakes, lights, and blinkers must be well maintained
- Side and rearview mirrors

[https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023\\_ENG.pdf](https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023_ENG.pdf)





# H-2A Workers- Requirements

- Housing must be provided to H-2A workers for free
- Housing must have kitchen facilities, or the employer must provide 3 meals a day, but can charge for them.

[https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023\\_ENG.pdf](https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023_ENG.pdf)



# H-2A Workers- Requirements

- Rate of pay is adverse effect wage rate
- Paycheck should be paid two times per month
- NOT entitled to overtime pay

[https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023\\_ENG.pdf](https://www.legalaidofnebraska.org/wp-content/uploads/2024/10/Ag-Worker-Handbook-Mar2023_ENG.pdf)



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# H-2A Workers- Requirements

- **Laws and Obligations**
- Employers can't hold or confiscate workers' passports or other immigration documents.
- Employers may also be subject to the Fair Labor Standards Act of 1938, as amended (FLSA).
- There can be no strike or lockout during a labor dispute at the worksite.
- Employers can't discriminate against, or discharge without just cause, any person who:
  - Has filed a complaint
  - Consulted with an attorney or an employee of a legal assistance program
  - Testified, or in any manner, exercised or asserted on behalf of himself/herself or others any right or protection afforded by sec. 218 of the INA or the H-2A regulations

Reference: <https://www.farmers.gov/working-with-us/h2a-visa-program#checklist-tool>

# H-2A Workers- Requirements

- **Guaranteed Payment (3/4 Guarantee)**
- Under the H-2A Visa Program, employers must guarantee workers employment hours equal to at least 75% of the workdays in the contract period. The employer will pay workers who weren't offered sufficient hours.
- For example, if a contract is for a 10-week period, where a normal workweek is 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (10 weeks x 48 hours per week = 480 hours x 75% = 360 hours)



# H-2A Workers- Requirements

- **Taxing Workers**
- H-2A workers aren't required to pay Social Security and Medicare taxes on their wages. In addition, the employer is not required to pay these taxes on the worker either.
- Workers may owe U.S. federal income tax when they file income tax returns for the year. If both the worker and the employer agree to withhold federal income tax, employers can withhold. In order for the employer to withhold taxes from the worker's compensation, the worker must complete and return Form W-4, Employee's Withholding Allowance Certificate, to the employer. Note that some states allow employers to withhold the employee's portion of workers compensation.



# H-2A Workers- Standard

1. **The farmer** applies for a domestic job order with the local State Workforce Agency between 60 and 75 calendar days before the date they need work to start.
2. **The State Workforce Agency** provides approval of the job order.
3. **The farmer** submits a temporary labor certification (Form ETA-9142A - H-2A Application for Temporary Employment Certification) online with the Department of Labor's Office of Foreign Labor Certification using its FLAG System at least 45 calendar days before the date they need work to start.
4. **Department of Labor's Office of Foreign Labor Certification** provides the farmer with its final determination.
5. **The farmer** completes an H-2A visa petition with US Citizenship and Immigration Services.
6. **Workers** apply for the H-2A visa with the Department of State and complete consulate interviews.
7. **Approved workers** travel to the worksite and arrive on the start date with an arrival/departure record.



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# H-2A Workers- Emergency

- Then the farmer should follow the same steps as a standard filing.

## **1. Department of Labor's Office of Foreign Labor**

**Certification** provides the farmer with its final determination.

**2. The farmer** completes an H-2A visa petition with US Citizenship and Immigration Services.

**3. Workers** apply for the H-2A visa with the Department of State's National Processing Center and complete consulate interviews.

**4. Approved workers** travel to the worksite and arrive on the start date with an arrival/departure record.



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# H-2A Workers- Extending

- **A short-term extension of two weeks or less**
- **The farmer** submits an extension request directly to the Department of Homeland Security.
- **A long-term extension of more than two weeks**
- **The farmer** may apply by sending a notice to the US Department of Labor's Office of Foreign Labor Certification that explains the request for a long-term extension. The US Department of Labor will notify the farmer of the decision.





# Keep your own records and information in a safe place for 3 years

- What information to keep:
  - Hours worked or piece-rate units worked each day
  - Amount paid in each paycheck
  - Deductions from each paycheck
  - Name, address, and EIN of FLC and farm owner
- Where to keep your records:
  - Somewhere safe such as a locked filing cabinet at your permanent house
  - Photos on your phone, cloud storage

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# Questions?



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