



WS 10-08

April 15, 2010

To: Employer Service
Career Offices

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Subject: Processing and Documenting Referrals for H-2A and H-2B Postings

Purpose

Update procedures for documenting referrals on foreign labor certification H-2A and H-2B postings. Recent guidance from the U.S. Department of Labor (DOL) has significantly changed the requirements for documenting referrals on foreign labor certification postings.

This issuance changes Workforce Solutions procedures and replaces Issuance 09-12.

Background

DOL's Foreign Labor Certification nonimmigrant visa program permits employers to hire foreign workers to perform temporary labor or services. Prior to filing a petition for the workers with the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), employers file an application with DOL certifying that:

- there are not sufficient workers who are able, willing, qualified, and available at the time and place where the foreign worker is to perform the work; and
- employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Employers can list these positions through the Texas Workforce Commission's Foreign Labor Certification (FLC) unit or enter postings in WorkInTexas.com themselves.

- If employers contact Workforce Solutions to list such openings, we direct them to the FLC unit at (512) 475-2571.

H-2A job postings are for agricultural work. H-2B job postings are for non-agricultural work.

Procedures

1. Comply with the procedures for making referrals to H-2A and H-2B job postings as detailed below. These changes are effective for job postings where the “created date” is after March 15, 2010.
2. Workforce Solutions will document eligibility of candidates we refer to H-2A job postings **only** if the employer requests this service. The employer must request this service from Workforce Solutions and sign an agreement with Employer Service.
3. Workforce Solutions keeps records by posting of the referrals we make.

Making Referrals to H-2A Job Postings

If a Workforce Solutions staff member determines that a customer is qualified for an H-2A FLC posting, she must follow these steps in referring:

1. Complete TWC form E-50 Job Seeker Agricultural Checklist with the customer.
2. Give the customer TWC form E-83 Department of Labor Protection for Farm Workers.
3. Give the customer a copy of the ETA-750 and the contact information.

Employer Service’s central office maintains the ETA-750 provided by TWC’s FLC unit. Obtain a copy from this office.

4. Record in the Job Posting Notes that you provided these forms (E-50, E-83 and ETA-750) to the customer.
5. File a copy of the Form E-50 and the ETA-750 in the posting file.
6. If the employer has a signed agreement through Employer Service for Workforce Solutions to verify employment eligibility on an H-2A posting, follow the instructions for completing the I-9 and the Employment Eligibility Verification Certificate detailed in the instructions for making referrals to H-2B job postings.

Making Referrals to H-2B Job Postings

If a Workforce Solutions staff member determines that a customer is qualified for an H-2B FLC posting, she follows these steps:

1. Complete the I-9 form to confirm that the customer is eligible to work in the United States.

Note: Obtain the current Form I-9 from www.uscis.gov/files/form/i-9.pdf. For more detailed instructions, refer to the Handbook for Employers at <http://www.uscis.gov/files/form/m-274.pdf>.

2. Give the I-9 to the Employment Service staff member in her office authorized to complete the Employment Eligibility Verification Certificate.

The designated Employment Service staff member will complete the Certificate, sign it, copy it, and fax or mail it to the employer. This action must be taken before a Workforce Solutions staff member can refer the customer to the FLC posting. Give the customer the contact information.

3. Record the completion date of the I-9 and the Employment Eligibility Verification Certificate in the *Job Posting Notes*.
4. File the I-9, the Employment Eligibility Verification Certificate, and any supporting documents in the posting file.

Records

We keep records on all the individual candidates we refer to H-2A and H-2B job postings.

1. Keep all records by posting.
 - a. For H-2A job postings, you will have the Form E-50 for each referral and the ETA-750 for the posting.
 - b. For H-2B job postings, you will have original I-9s, originals or copies of Employment Eligibility Verification Certificates, and any supporting documents for each individual candidate you've referred to that posting.
2. Keep records for three years beyond the end of the program year (June 30) in which the posting was closed.

Notes

- Staff can identify TWC Foreign Labor Certification unit-entered postings by checking *Job Posting General Details* section of the posting. This section will contain an FLC Case Number.
- For FLC-entered H-2B postings, the Contact Information should contain the phrase "employment eligibility verification required for all staff referrals."
- If an employer requests eligibility verification for referrals on an H-2A order, the request will be documented in the notepad for the posting.

Action

- Make sure that appropriate staff and supervisors are aware of the changes to requirements for documenting referrals to H-2A and H-2B postings
- Make sure offices have designated Employment Service staff to complete the Employment Eligibility Verification Certificate.
- Confirm offices are keeping required records.

Questions

Staff should first ask questions of their managers or supervisors. Direct questions for Board staff to the staff web Q&A at <http://wrksolutions.com>.

Attachment

- E-50 Job Seeker Agricultural Check List and Instructions
- E-83 US Department of Labor Protection for Farmworkers
- Employment Eligibility Verification Certificate
- I-9