



Seso

Seso Labor: Intro to H-2A + Spotlight on Compliance

www.sesolabor.com



Agenda

- 01** Introduction to H-2A
- 02** About Seso
- 03** Audit Specifics



How H-2A Works



- Employers apply to the Department of Labor for approval to bring in seasonal workers on the H-2A Visa



- Employers work with an Agent to recruit workers and get visas approved by USCIS



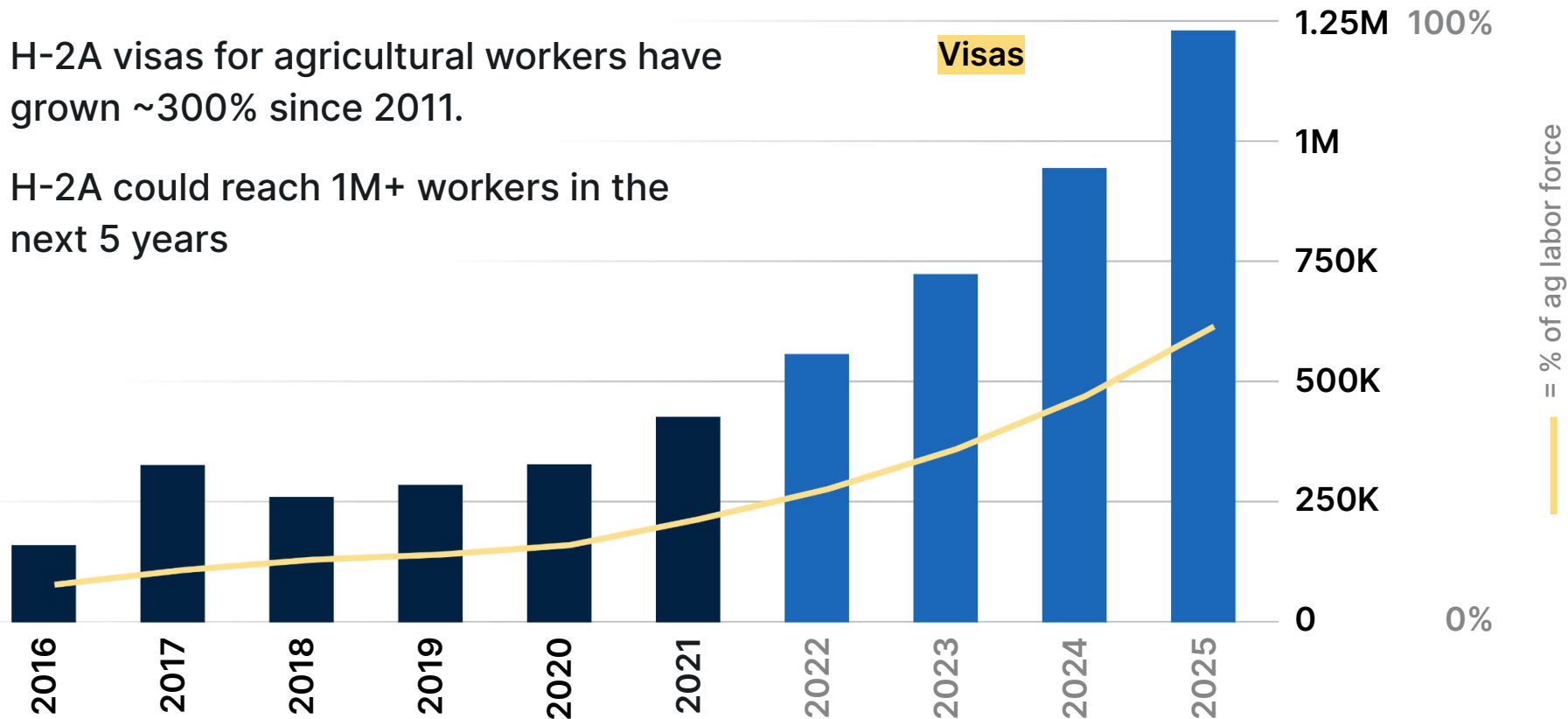
- Employers provide housing and transportation for H-2A workers

H-2A is the future of Ag Labor



H-2A visas for agricultural workers have grown ~300% since 2011.

H-2A could reach 1M+ workers in the next 5 years



How H-2A Works



- Employers apply to the Department of Labor for approval to bring in seasonal workers on the H-2A Visa



- Employers work with an Agent to recruit workers and get visas approved by USCIS



- Employers provide housing and transportation for H-2A workers

Why consider H-2A labor?



H-2A provides a reliable source of labor for growers

Reliable Workforce: 99% of H-2A workers complete full harvest season and most workers will return to the same grower each year



Younger Workforce: H-2A workers are on average 10 years younger than domestic agricultural workers



Purchasing power: H-2A workers sent 80% of their salaries back to their home country, which translates to a purchasing power of \$55 per hour on avg.

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What We Does



All in-one H-2A Solution

Files visa applications on behalf of growers

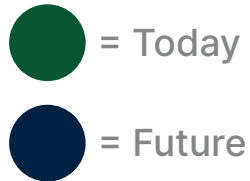


Provides software for tracking applications, complying with audits, and onboarding workers

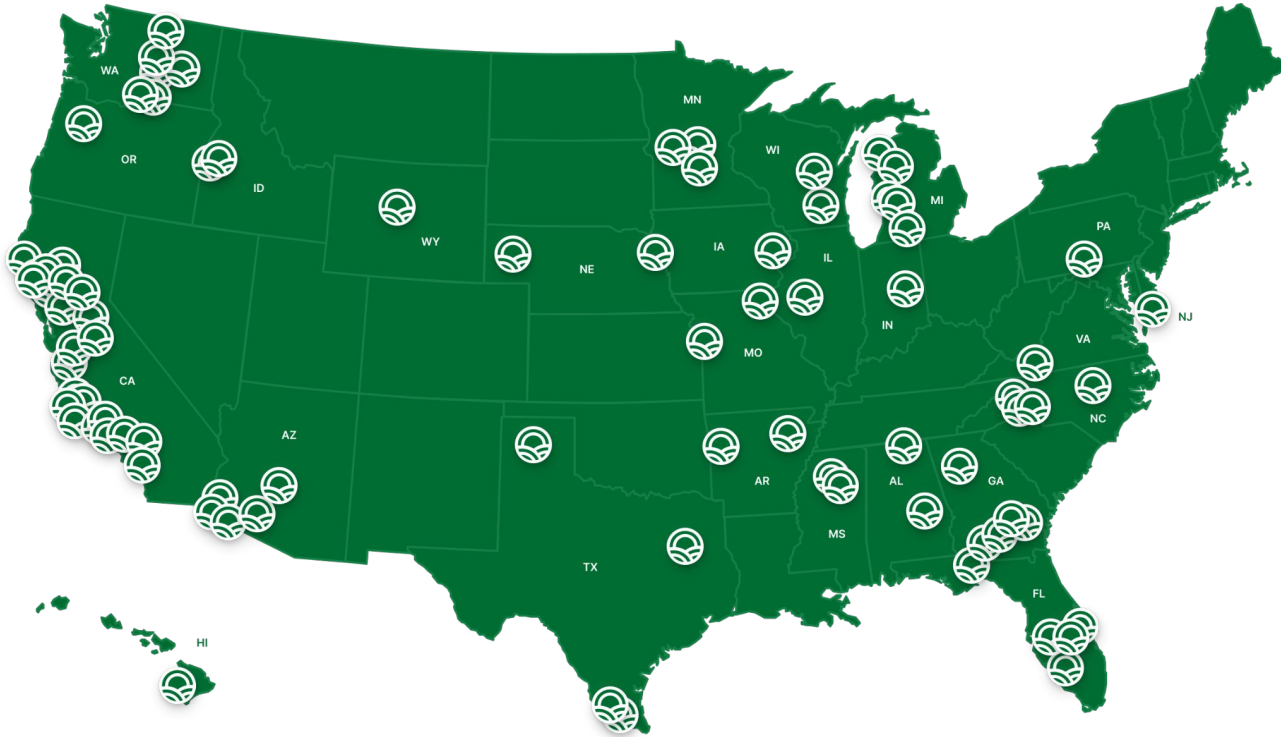


Offers an all-in-one recruitment and worker logistics solution


Seso provides growers with comprehensive HR software for H-2A and domestic workers





Seso supports H-2A employers across the country





Seso streamlines the H-2A process for employers


**Seso**
Acme Corp

 **Contracts**


 Workers


 Company assets


 Signatures


 Settings


Tomato Harvest 2021


Start date	End date	Workers	75% hours 	Case number	USCIS petition ID
Feb 1, 2022	Jul 31, 2022	1/210	900/1200	Add	Add


Application | Timeline |  Compliance | Workers


 General Info


 Employer Info


 Job duties


 Worksites


 Housing


 Qualifications


 Work schedule

 Referrals

 **Workers' comp**

 Logistics

 Recruiting

 Confirm & submit


Workers' compensation


Let's make sure you're up to date on these documents.

Workers' compensation insurance

Policies are managed in your Company assets


Workers' compensation insurance

[Acme_Workers Comp.pdf](#) 

 Expired on Sep 2, 2021

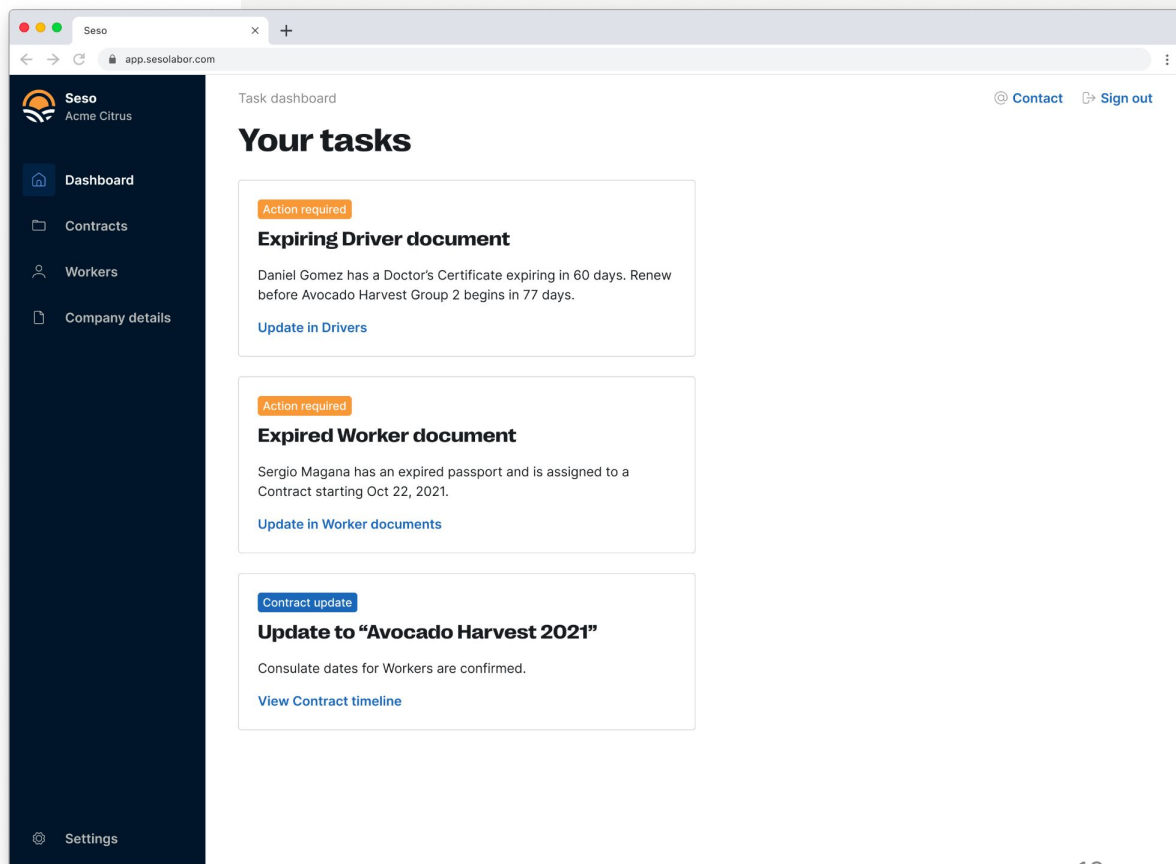
Attestation signed

You've signed the Workers' compensation attestation.

[Signed Workers' compensation attestation](#) 

[Previous](#) [Next](#)

Seso's dashboard walks you through the H-2A process



and provides
compliance
reporting at the
click of a button

Acme Citrus

Contracts / Avocado Harvest 2021 / Timeline

ContactSign out

Avocado Harvest 2021

Audit file

Generating an audit file initiates a download of a zip folder containing all of the data selected below. Uncheck categories to exclude them from the report.

☒ H-2A visa approval documents

☒ 790

☒ 9142

☒ Labor certification

☐ I-129 Missing

☒ Worker facilitation agreement

☒ H-2A Contract documents

☒ Workers' compensation insurance

☒ Final recruitment report

☒ H-2A job contract

☒ FLC registration (Orange Card)

☒ Fixed site agricultural agreement (for each unique fixed site agribusiness)

☒ Surety bond

☒ Housing (for each Housing location)

☒ Lease/rental agreement or proof of ownership

☒ Inspection paperwork

☒ Rooms

☒ Room assignment

☒ Drivers (for each Driver)

☒ Driver license

☒ Medical certificate

☒ FLCE certificate

☒ Vehicles (for each Vehicle)

☒ Proof of insurance

☒ Inspection certificate

☒ Miscellaneous documents

☒ {{ Document name }}

☐ {{ Document name }}

☒ Workers (for each Worker)

☒ Name

☒ US Address and Room number

☒ Phone number

☒ Dates of employment

☒ Completion status (completed, terminated, absconded etc.)

☒ Social Security number

☒ Visa issuance date

☒ Border crossing date

☒ Consular location

☒ Worksite arrival

Cancel

Generate

Settings

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WHD Investigations



- The Wage and Hour Division of DOL (WHD) is the enforcement department for DOL. It can conduct on site investigations either randomly or in response to a worker complaint
- WHD has the authority to enforce all federal labor laws, including OSHA, FLSA (Fair Labor Standards Act), and MSPA
- WHD may order back wages paid and/or Civil Penalties for violations

WHD Investigations (Cont'd)



- WHD investigators can show up ***unannounced***. (They may also issue a notice letter)
- The Employer must make all the requested records available within ***72 hours***.
- WHD may also meet privately with workers one on one, and investigate worksites, housing units, and vehicles.

Audits can be extensive!



The U.S. Department of Labor, Wage and Hour Division, is responsible for the enforcement of a number of federal labor laws, among them the following:

- *The Fair Labor Standards Act of 1938, as Amended* (FLSA) which contains provisions related to the minimum wage, overtime, record keeping and child labor.
- *Migrant and Seasonal Agricultural Worker Protection Act, as Amended* (MSPA), which requires registration and certification, proper disclosure, wage payments, compliance with transportation safety and insurance, and housing safety and health standards.
- Section 101(a)(15)(H)(ii)(a) of the *Immigration and Nationality Act*, which authorizes the employment of temporary, non-immigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature in the United States. H-2A contains requirements including (but not limited to) housing, transportation, and wage payments.
- *The Occupational Safety and Health Act* Field Sanitation Standards which contains provisions regarding access to water, toilets, and handwashing facilities for hand-laborers in the field.

I will hold a virtual initial conference with you on **July 1, 2021 at 8:30 AM** to determine compliance with the FLSA and the H-2A and other applicable Acts. As part of the investigation, and with your assistance I will virtually tour your establishment, conduct the initial conference, and conduct employee interviews (see [Fact Sheet #44](#)). On the above date and time from a web browser or mobile device click on the following website to join the meeting: [Click here to join the meeting](#)

Accordingly, you will need to have records from **July 2019 to the present**. Please provide and organize the following information via the Department of Labor's External User Portal, more details at the end of this letter or if you choose to, you may send the records to me electronically via email to burgos.adriana@dol.gov.

1) Legal information for the firm including

- a) Legal name
 - b) Trade name (if applicable)
 - c) Listing of company officers and percentage of ownership
 - i) If applicable, also include organizational chart.
 - d) Date firm began operation, incorporation date, and state of incorporation (if applicable)
 - e) Federal ID number
- 2) Gross sales of the firm for the years 2019 (to date), 2020, and 2021. For annual gross sales under \$700,000 please provide photocopies of documentation (e.g. tax report, fiscal year report, etc).
- 3) Main office address and any branch office address(es)
- 4) Total number of employees for this location and the entire enterprise.
- 5) Listing of all employees, (except those paid on salary) within the last two years containing:
- a) Employee's name, address, and phone number
 - b) Rate of pay

- c) Dates of employment
 - d) Job title
 - e) If applicable, a copy of the worker's visa (i.e H-2A, H-2B, J-1, etc.)
 - f) If applicable, address of employer provided housing they lived at and dates of occupancy.
- 6) Listing of all salaried employees, within the last two years containing:
- a) Employee's name, address, and phone number
 - b) Rate of pay
 - c) Time period when they were paid on salary
 - d) Description of job duties
 - e) List of employees the salaried employee directly supervised (if applicable)
 - f) If applicable, a copy of the worker's visa (i.e H-2A, H-2B, J-1, etc.)
 - g) If applicable, address of employer provided housing they lived at and dates of occupancy.
- 7) Listing of all minors under the age of 18 employed by the enterprise within the last two years containing:
- a) Employees name, address and phone numbers
 - b) Date of birth (including verification if available, e.g. work permit, birth certificate)
 - c) Date of hire and date of termination (if applicable)
 - d) Job title
 - e) Description of job duties
 - f) Injury report for any minor injured in the last two years.
 - g) For minors employed under the age of 16 please include copies of all time cards showing their start and stop time for all hours worked while under the age of 16.
- 8) A copy of all approved and signed job orders (ETA Form 790), applications (Form ETA-9142A, Form ETA-9142A-Appendix A), certifications, immigration forms (i.e. USCIS Forms I-129, I-797, I-94), and information regarding the type of agricultural operation for each certification for the past two years.
- 9) Policies regarding payment of wages: pay frequency, method(s) of pay (hourly, salary, piece, etc.), and manner of payment (check, electronic deposit, cash, check and cash, etc.). Please include a copy of an employee handbook if you have one.
- 10) Payroll records on a pay period basis showing hours worked, hours offered, rate(s) of pay, total wages paid and deductions from pay for all workers (seasonal and year-round, H-2A and non H-2A) in the last two years.
- 11) Time records for the past two years showing start and stop times.
- 12) Records for the past two years that show type of work performed, State(s) work was performed in, how pay was calculated, and if applicable piece rate records.
- 13) A copy of a wage statement provided to a worker.
- 14) Documentation of payment or reimbursement for the H-2A visa and associated fees; plus any other costs incurred to obtain the visa (i.e. lodging, transportation, etc.).
- 15) Information regarding the transportation of workers including:
- a) The date each worker arrived at your facility
 - b) The place they came from
 - c) Date of border crossing (if applicable)
 - d) The period of time (i.e. dates) they worked for each legal entity
 - e) Date of departure
 - f) Your costs for transporting workers to and from your facility (provide documentation)
 - g) Costs paid by workers for transportation to and from your facility and method of transportation (e.g. bus, plane, private vehicle, etc.), border crossing fees or any other governmental fees, and subsistence. If these costs were reimbursed, provide documentation of reimbursement (amount, basis, and dates of payment).

- 16) Copies of any written terms regarding employment given to each worker employed during the past two years. If the document is not dated, please state the date when it was provided to the worker.
- 17) Information regarding housing provided to any worker during the past two years including:
- a) Type of housing
 - b) Location
 - c) Policies and terms
 - d) Charges
 - e) Documentation of housing inspection
- 18) Information regarding vehicles used to transport workers during the past two years including:
- a) Copies of registration and licensing for each vehicle(s)
 - b) Evidence of insurance and coverage/limitation
 - c) Safety inspection
 - d) List of drivers or workers who drove these vehicles and copies of their driver's license
- 19) Documentation showing workers compensation insurance coverage for the past two years.
- 20) Proof of recruitment efforts, as applicable, including:
- a) Documentation of advertising efforts (e.g. newspaper ads)
 - b) Recruitment reports
 - c) Listing of contacts made with prior-year US workers
 - d) Listing of any SWA referrals and evidence of contact or attempt to contact all SWA referrals
 - e) Results of all interviews conducted of applicants who applied for the job opportunity, including documents demonstrating the applicant had been offered the job opportunity and either refused it or was rejected for lawful, job-related reasons.
- 21) If applicable, information regarding any worker who left your employment in the last two years before the end of the certification including:
- a) Name
 - b) Date of departure
 - c) Reason for their departure
 - d) Copy of the termination notice(s) sent.
- 22) If you allowed or facilitated the H-2A workers to work for any other business entity other than the one(s) named above, please identify the other business entity name, address, contact information, type of work performed, and whether you paid the employee or whether the other business entity paid the H-2A worker for the hours worked for this other entity.
- 23) If applicable, copy of contract with recruiters and/or labor contractors used to obtain workers and the contact person's name, address, email, and telephone number; plus a list of identities, locations and contact information of persons working for the agent or recruiter who recruited the workers.
- 24) If applicable, a copy of the Farm Labor Contractor (FLC) registration card and/or FLC employee (FLCE) registration card for any individual who was required to register as an FLC or FLCE.
- 25) If applicable, a copy of the surety bond for the past two years.
- 26) If applicable, for any minor employed in the past two years while under age 16, provide a listing of the minor's date of birth, period of employment, and job duties.
- 27) If applicable, time and pay records for any worker paid as an independent contractor (i.e. 1099).
- 28) If applicable, records of cash payments paid to any workers.
- 29) List of names, addresses and telephone numbers of all shippers, packers, processors, growers, and retailer that you do business with and sell commodities to.
- 30) List of names and addresses of business' major suppliers.

You can be prepared



- The best way to stay prepared is to proactively update an **Audit File** for each H-2A Contract
- Digitizing the records in an Audit file is the best approach to ensure you are organized and prepared
- H-2A employers using Seso can use Seso software to keep a digital Audit File up to date.

Transportation: Inbound & outbound



You must track the following:

- Date each worker arrived at your facility
- Worker's home address
- Date of border crossing
- Costs incurred for inbound and outbound transportation
- Costs incurred for inbound/outbound transportation before reimbursement

Transportation: In the United States



Transportation to and from worksites:

Vehicles used to transport workers:

- Inspection Certificates
- Insurance
- Registration

Company Vehicles

[Add Vehicle](#)

Vehicle	Occupants	Inspection	Insurance
Ford Transit Passenger Van	15	Uploaded	Vehicle Insurance ▾
Chevrolet Express 2500 Passenger Van	10	Uploaded	Hartford Fire and National Fire & Marine ▾ Ins. Companies
Ford E350 Passenger Van	11	Uploaded	Hartford Fire and National Fire & Marine ▾ Ins. Companies
Ford E-150 Passenger Car	2	Uploaded	Hartford Fire and National Fire & Marine ▾ Ins. Companies

Drivers:

- Driver's Licenses
- Doctor's Certificate
- FLCE Cards if applicable

Company Drivers

[Add Driver](#)

Driver	Driver's license	Doctor certificate	FLCE license (Blue Card)
Nicholas Erdman	! Missing	! Missing	! Missing ▾
Richard Grimes	! Missing	Uploaded	! Missing ▾

Reimbursements



- Reimburse for inbound costs incurred no later than the 50% point, ideally in the first week
- Retain all documentation/evidence of reimbursements file in EFM
- Reimburse for return transportation and subsistence to where the worker departed (usually home) upon completion of the work contract
- Current subsistence \$13.17/day, max of \$55/day (with receipts)

Corresponding employment



- **What is it?**

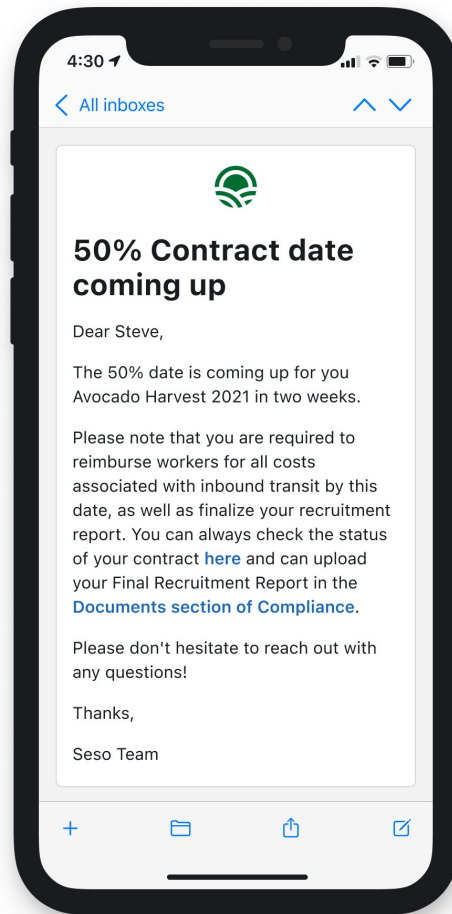
- When you use the H-2A program and bring in foreign workers, any U.S. worker who performs any overlapping duties as an H-2A worker completes is known as a “corresponding” worker.

- **What you need to do**

- Provide a copy of the contract to EVERY worker, no later than the start date
 - Get it signed and dated, then file in EFM
- Offer housing to anyone that does not live within commuting distance
- Pay the AEWR for all job duties
- Reimburse for travel, etc. if applicable
- Make sure $\frac{3}{4}$ guarantee is met
- Report any change in employment status to DOL
 - Consequences of not reporting include fines and wages tied to the $\frac{3}{4}$ guarantee of the contract period

Final Recruitment Report

- The Initial Recruitment Report must be maintained up until the 50% of the contract date.
 - Maintained means you need to continue to add any domestic applicants
- At the 50% point of a contract, you should sign and date a Final Recruitment Report. **If you are audited, this will be requested.**
- Seso will send email reminders about this.



Worker records



The following Worker Records should be kept on file

- Contact Information: Name, DOB, SSN, US Address
- Visas: Documents and Issuance Date

Worker Lifecycle

- Auditors want to see the outcome of each worker on the contract
- Whenever a worker fails to report, absconds, is terminated, or leaves early:
 - This needs to be recorded
 - This needs to be reported to the government with 48 hours

Payroll records



- **Work performed each day**
- **Hours offered**
 - Offered it, but refused?
 - Less than in contract?
- **Have additional hours/weekend work?**
 - Post signup sheets (proof everyone had the offer)
- **EIN must be included**
- **Pay the AEWR**
- **Deductions**
 - If not required by law, make sure you have these listed in your contract, have signed permission from worker, and that they do not bring wages below the minimum wage

Review, be prepared



- Conduct self-audits and have your audit file ready
- Train your staff on best practices — have a plan in place
- Designate your point of contact for any on-site investigations
- Complete regular housing and vehicle inspections
- Ensure worksites are safe with all required facilities
- Make sure your posters are up

Q&A





Thank you

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www.sesolabor.com

Recruitment reports



Purpose:

- Demonstrate that you responded to and properly interviewed any domestic applicants
- Convey that you've reached out to any applicable former domestic workers

Two Types of Recruitment Report:

1. Initial Recruitment Report (during application process)
2. Final Recruitment Report (50% of contract period)

Initial Recruitment Report



When?

After the DOL accepts the 9142, you must submit an Initial Recruitment Report before receiving Labor Certification

Where do applicants come from?

Job Order (790) is posted on DOL Website. You may receive walk-ins, emails, or phone calls.

- Email is always the best method of contact, followed by cell phone
- Emails are trackable, which helps to disprove false claims of contact.
- Have a designated point of contact

Upcoming steps

- 1 Agent files Job Order (Form 790)**
Agent will aim to file 75 days before the contract start date on 10/24/2021. The last day to file is 60 days before the contract start date.
- 2 Job Order (Form 790) approved**
Job Order approved by State Workforce Agency (SWA)
- 3 Form 9142 submitted to DOL**
Agent will submit as soon as possible after Job Order is approved. The last day to submit Form 9142 is 11/23/2021
- 4 Notice of acceptance (NOA) granted by DOL**
The DOL will issue a notice of acceptance and request a copy of the initial recruitment report.
- 5 Initial recruitment report submitted**
An initial recruitment report documenting domestic applications received is required in order to obtain labor certification.
- 6 Labor certification granted by DOL**
This is the final approval required from the DOL.
- 7 I-129 petition submitted**
Agent will overnight this to USCIS as soon as you sign the copy we send you. This should be submitted no later than 12/08/2021
- 8 I-129 approval granted by USCIS**