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STATE INSTRUCTION NUMBER 24-09

To: Local Workforce Area Signatory Officials
Local Workforce Area Board Chairs
Local Workforce Area Administrators
DEW Employment Services Deputy Assistant Executive Director
DEW Area Directors
DEW Regional Managers
DEW RESEA Program Directors and Managers

Subject: H-2A Job Order Referrals

Issuance Date: April 23, 2025

Effective Date: April 23, 2025

Purpose: To provide guidance concerning the obligations for staff referrals to H-2A job orders and employers.

References: 20 CFR §§ 653.500, 655.135, 655.144, 655.154; 29 CFR Part 501

Background: The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of U.S. workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

H-2A employment is granted **only** when it is determined that:

1. There are not sufficient **able, willing, and qualified U.S. workers** available to perform the temporary or seasonal agricultural labor or services for which an employer desires to hire temporary foreign workers (H-2A workers).
2. The employment of the H-2A worker(s) will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

Employers must accept the referrals of all **able, willing, and qualified U.S. workers** who apply (or on whose behalf an application is made) for a job opportunity until 50% of the work

contract period is over (20 CFR § 655.135(d)), as required by the U.S. Department of Labor (DOL) and the South Carolina Department of Employment and Workforce (DEW).

In addition to posting the job on an electronic job registry maintained by DOL (20 CFR § 655.144), employers must independently recruit U.S. workers based on the Office of Foreign Labor Certification's annual determination of labor supply (20 CFR § 655.154) until the H-2A workers depart for the job site. Unless DEW is notified in writing, the assumed departure date for H-2A workers is three days before the employer's first date of need.

Employers requiring interviews must conduct them by phone or in the recruitment location of the U.S. worker so that the worker incurs little or no cost due to the interview. Employers cannot provide potential H-2A workers with more favorable treatment than U.S. workers in the requirement for a job interview or in how the job interview is conducted.

Employers must consider all U.S. applicants for the job opportunity until the end of the recruitment period (20 CFR § 655.135(d)). U.S. applicants can be rejected only for lawful, job-related reasons; therefore, the U.S. workers who **meet the qualifications** and **are available for and willing to take** the job opportunity must be accepted and hired by the employer.

Policy: DEW is enhancing the Agribusiness program by streamlining the SC Works Online Services (SCWOS) process to increase referrals of **able, willing, and qualified** U.S. workers to H-2A job orders.

When making referrals to H-2A job orders, all staff must adhere to the following process:

1. SCWOS denotes H-2A job orders by adding "(Growing_@_SC)" to the end of the job title. For example:



Farm worker (Growing @ SC)

Staff must confirm that a U.S. worker is **able, willing, and qualified** before referring the applicant to any job post with the "(Growing_@_SC)" label at the end of the job title. DEW will monitor staff referrals to ensure Federal regulation compliance by SC Works staff and H-2A employers.

NOTE: Referring any applicant to an H-2A job order who is **unable, unwilling, or unqualified** may result in extra scrutiny of an employer due to the appearance of failing to hire U.S. workers before hiring H-2A workers. **The employer may face the threat of consequences and unnecessary delays in hiring needed workers.**

2. Applicants must review the hard copy of the H-2A Agricultural Clearance Order Form (ETA-790A) in the “red” binder. The “red” binder is available and easily accessible in the resource room of each SC Works center. This form will include all information that employers are required to provide to applicants prior to their acceptance of employment.

NOTE: The 12 DEW Regional Managers are responsible for ensuring these “red” binders are up to date within their region.

3. If the U.S. applicant is **able, willing, and qualified**, staff must make the referral. This referral will automatically create an activity code in SCWOS. Staff must then enter a case note, indicating the following:
 - a. The applicant reviewed Form ETA-790A.
 - b. The applicant meets the qualifications set out in the job order.

Form ETA-790A and its General Instructions are available on DOL’s website on the Foreign Labor Certification Forms page, found here: <https://www.dol.gov/agencies/eta/foreign-labor/forms>. DOL also provides a checklist for employers applying to employ H-2A workers: <https://www.dol.gov/agencies/whd/h2a-compliance-review>.

Action: Please ensure that all appropriate staff receive and understand this policy.

Inquiries: Questions may be directed to WorkforcePolicy@dew.sc.gov.

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