

Local and ARS Agricultural Job Order Procedures

The Commonwealth offers a variety of services to Massachusetts employers to help them build the skilled workforce needed for a strong, competitive economy. These services include recruiting and hiring assistance, and funding to train new hires and upgrade the skills of current employees. We can also help with staffing up quickly, managing a permanent downsizing, or responding to a short-term sales decline that requires workforce flexibility.

The following is a summary of the services or resources available to agricultural workers and employers:

Services for Employers:

- Local, regional and national recruitment assistance
- Write-up assistance and posting of local job orders
- Screening job applicants
- Labor market information
- Connections with government and community agencies
- Technical assistance with Foreign Labor Certification
- Prevailing wage rate information

Services for Workers:

- Internet job search - JobQuest
- Job search workshops and resources
- Computer resources for resumes and cover letters
- Career planning and training programs
- Complaint handling
- Assistance for Limited English Proficient (LEP) customers
- Referral to services of partner agencies outside the MA One-Stop Career Center system.

Local Job Orders

Job order taken by the One-Stop Career Center (OSCC) for the recruitment of agricultural workers from the local service delivery area must comply with all applicable Job Service regulations (incl. non-discrimination, etc.) and the Fair Labor Standards Act (FLSA). For this type of agricultural related job orders the employers are not required to provide any of the guarantees applicable under the ARS or H-2A Programs.

Local Job Orders are not released to other OSCCs outside reasonable commuting distance of the job site, to the Internet or to the Intra / Interstate Clearance System. Agricultural job orders to be used for local recruitment must be identified in MOSES as "for local recruitment only". There are no processing costs or fees to employers and workers. One-Stop Career Centers in the area of intended employment are responsible for the processing of all local job orders.

Agricultural Recruitment System (ARS - intra / interstate recruitment)

Background

The Wagner-Peyser Act requires that the United States Employment Service maintain a system for the orderly movement of workers within and between States. The ARS helps agricultural employers recruit qualified workers on a temporary or seasonal basis. They provide protection to the workers who are not seeking permanent relocation, but rather temporary agricultural employment. The Wagner-Peyser Act provides authority for operation of the ARS. Through network of One-Stop Career Centers (OSCCs), the State Workforce Agencies (SWAs) can systematically recruit and refer qualified workers from within and between the States. These regulations provide for the use of the Agricultural of Food Processing Clearance Orders (ETA 790) to request workers for less than one year of employment.

The use of this form is based on the Department's policy of requiring specific assurances and information during the recruitment of U.S. workers.

How the Process Works

Operational responsibilities for the program rest primarily with the State Workforce Agency (SWA). The following is a summary of how the system operates.

- Employer determines need for workers.
- Employers then place a job order at a local OSCC.
- Local OSCC prepares a local job order and recruits within the service area.
- If labor needs are not met through a local job order, employer should be advised of the option to clear the order to other local offices within the State (**Intrastate Clearance Order**).
- If labor needs are not met statewide, the SWA, with employer authorization, will submit the Intrastate Job Order to the U.S. DOL Employment and Training Administration, Regional Office for their review as an Interstate Clearance Order.
- The ETA Regional office reviews and approves or disapproves the Interstate Clearance Order, and determines the areas of supply to which the order shall be extended if it is approved.
- The SWA then sends the approved Clearance Order to ETA designated States where qualified workers may be available.
 - **NOTE:** In order to legally operate as farm labor contractor / employee (FLC / FLCE), individuals and companies must register with the U.S. Department of Labor, Wage and Hour Division (WHD). Please note that in addition to the above listed requirements, there are special registration requirements for farm labor contractors / crew-leaders that intend to house, transport, or drive a migrant or seasonal agricultural worker.

All ARS related job orders are processed by the DCS Foreign Labor Certification Unit.

H-2A Temporary Agricultural Program

The H-2A temporary agricultural program provides the means for agricultural employers who anticipate a shortage of domestic (U.S. workers) to bring non-immigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Prior to filing an Application for Temporary Employment Certification (Form ETA 9142), the employer must complete the Agricultural and Food Processing Clearance Order (Form ETA 790) and submit (as early as 75 but not later than 60 calendar days) the form and all attachments to the Department of Career Services, Foreign Labor Certification Unit for processing.

Before the US Bureau of Citizenship and Immigration Services (USCIS) can approve an employer's petition for such workers, the employer must file an Application for Temporary Employment Certification (Form ETA 9142 & ETA 9142 Appendix 2) with the U.S. Department of Labor stating that there are not sufficient workers who are able, willing, qualified and available and that the employment of foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. The H-2A Program contains numerous worker protections and employer requirements with respect to wages and working conditions that are not applicable to the other options listed above. However, the ARS must be first utilized to attempt to recruit U.S. workers before the employer's H-2A application is approved by the U.S. Department of Labor. All H-2A related job orders are processed by the DCS Foreign Labor Certification Unit.

For questions or assistance about the role of the One-Stop Career Center regarding the processing of agricultural job orders, contact the State Monitor Advocate (SMA) at (617) 626-5587 or (413) 452-4688.