

Welcome Back from all of us!
We hope you have
a good season in 2020,
and we hope to see you on
one of our visits!

2020 H-2A CONTRACT NEWS

YOUR H-2A CONTRACT

Your contract includes:

- **New wage rates:** In New York, Connecticut, Massachusetts, Maine, New Hampshire, Vermont and Rhode Island, the minimum wage per hour will be **\$14.29** per hour in 2020, up from \$13.25 per hour last year.
- **Transportation reimbursement:** Your boss must pay for your transportation from your home to the farm and the return trip to your home. Your new visa expense must be reimbursed shortly after arrival at the farm. Also, most workers receive only \$12.68 per day for food while traveling from home country to U.S. and return trip. That is the daily allowance when workers do not save their receipts. However, if you save your receipts, and turn them into the boss, you can receive up to \$55.00 a day. These figures could be revised during 2020. See “transportation arrangements” in your contract for details.
- **Housing protections:** The housing in the labor camp must be inspected for health and safety.
- **Vehicle safety rules:** The transportation provided by your boss must meet standards for safety, vehicle insurance, and drivers must be licensed.



Further information on your contract:

You should get a copy of your contract before you leave your country. Keep your contract for your records.

Your contract is about 8 pages long. It explains what your pay rate will be and the type of work you will do. It will also explain the hours of work that are promised, your responsibilities and many other things.

The law requires your contract to provide you with free housing, workers’ compensation insurance and other benefits.

The contract will also tell you who you are working for and where your labor camp is located.

You are only authorized to work for the farm listed on your visa and contract.

If you have questions about your contract, call us.

If you have questions about your wage rate, your work contract, or the H-2A rules, call the legal services office listed on this page that helps in the state where you work:

If you work in: NEW YORK

CONTACT:

Andrea Ortega
Alaina Varvaloucas
Arturo Delgado
Catherine Giller

Farmworker Law Project
Legal Aid Society of Mid-New York, Inc.
52 South Manheim Boulevard
New Paltz, NY 12561

Phone: **845-256-9096**
Toll free in the U.S.:
1-800-804-8575

From Jamaican landline:
Toll free: 1-800-248-2429
From Jamaican cell phone:
845-256-9096
(ask us to call you back)

If you work in: MAINE, CONNECTICUT, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, or VERMONT

CONTACT:

Mike Guare
Nicolaas G.Meijer

Pine Tree Legal Assistance
115 Main Street, 2nd Floor
Bangor, ME 04401

Phone: **207-942-0673**
Toll free in the U.S.:
1-800-879-7463
Collect from Jamaica:
1-207-942-0673

Office Cell/WhatsApp **207-233-2930**

LEGAL SERVICES HELPS

We have worked with farm workers on many problems over the years. Here is a list of the most common ways we have helped:

Travel reimbursement.
Worker’s Compensation claims.
Problems with bad housing.
Unpaid wages and other problems.
Health and safety, including pesticide problems.

There are many other situations where we can help.

For us to be able to help you, we ask that you:

- Provide us with correct information to keep in touch with you, as well as correct information regarding your issues.
- If your phone number or address changes, please let us know.
- Please remember to check your messages and return calls.

***If you call an office listed here and you get an answering machine, please wait for the tone and leave your name, phone number and where you work. Our phones do not identify your phone number.*





HEALTH INSURANCE WITH AFFORDABLE HEALTH CARE ACT STILL OKAY

Foreign workers here on H-2A or H-2B visas can continue to get health care under the Affordable Care Act without fear this will impact future visa applications.

Under a new law, the government may deny an application for immigration status, such as your visa application, if the government finds you received certain public benefits in the U.S.

However, receiving health care insurance under the Affordable Care Act (ACA) and receiving ACA tax credits and subsidies **are NOT considered** public benefits by the government.

Applicants for an H-2A or H-2B visa are included under the new law. Under the new law, the government considers whether you might become a “public charge.” Receiving public benefits is just one factor the government considers when it makes such a determination. The government can deny your visa application if you are found likely to become a public charge.

Please contact a legal services office or an immigration attorney if you have any questions about:

- any other government benefit program,
- what the government means by a “public charge”, or
- whether a government benefit program could affect your ability to get a visa in the future.

AFFORDABLE HEALTH CARE FOR H-2A WORKERS

You **may** qualify for **health insurance** at little or no cost while working in the US on your H-2A contract under what is called the Affordable Care Act (ACA).

- **To sign up for health care insurance under the Affordable Care Act (ACA)**, ask your boss, your local clinic or your Legal Services office for a phone number to contact the **navigator**. A navigator is a person who will see if you qualify for health insurance and help enroll you. Many navigators can visit you at your farm housing or office. Remember, you have the right to sign up.
- This health insurance is only available while you are in the United States. When you return home, you must cancel this insurance.
- H-2A workers over 65 cannot qualify for health insurance under the ACA.
- **Each state has different rules when signing up for health care insurance**, so check with legal services or the health department in your state.

All H-2A workers, including those over 65, are always covered under **Workers’ Compensation**. This is insurance that covers you if you are injured at work or suffer a work-related illness. Tell your boss right away if you are injured or if you get sick at work. Be sure to tell your doctor that the injury, accident or illness happened at work. (see last page, for details)

If you are hospitalized, but you don’t have health insurance, and it is not related to your work, ask the hospital social worker or case manager about any programs that help with hospital bills. You should ask while you are still in the hospital. Do not delay this request.

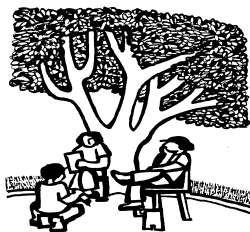
Local clinics are other ways to obtain less expensive doctor visits. Some clinics allow doctor visits for a reduced fee based on your wages. Remember to bring a paycheck stub to the clinic to show your income. Let them know how many people you support.

BREAKS

Unfortunately, there is no federal law that says your boss must give you a break during your workday on a farm. However, most bosses realize that workers are more productive when they are given time to rest. Many workers rest around noon for lunch.

The federal wage law says that if you take less than 20 minutes to eat, you should be paid for that time. If your lunch break is 30 minutes or longer, however, that time is not counted as work time.

If you have questions, please call the legal services office in your state.



EXTENSIONS OF AN H-2A VISA

If your boss wants to extend the amount of time you are working in the United States, your boss must request permission from U.S. Immigration before your visa expires. If the extension is approved, then your boss must give you a copy of the approval of your extension. If a different farm wants you to work for additional time in the U.S., again you must have an immigration approval for this job before you start working. Make sure you get a copy of this new approval document for this employer, and keep it with your passport.

Many times a sick or injured person cannot travel until he or she gets better. You may request an extension of your time in the U.S. for health or worker’s compensation purposes. You will need to apply for a new different kind of visa.

If you and your boss do not follow these rules, and you stay in the U.S. longer than your visa allows, you may be denied a visa to come to the United States in the future. **Do not** stay longer than your visa and travel time allows. You may call one of our offices if you have questions.

ADDITIONAL H-2A VISA FOR DIFFERENT FARMS

If you are asked to extend the amount of time you are working in the United States to work at another farm, you must be sure to follow the rules to avoid having problems with visas in the future.

- Be sure to have an H2A immigration approval before you begin to work at the new farm.
- Be sure to keep your immigration approval for your 2nd job with your passport.
- Never accept a verbal agreement that the new boss has secured an immigration approval; be sure to get a printed copy of it.
- Remember to collect your inbound travel reimbursement, as well as the cost of getting to the new farm, from the first farm before you transfer to the new farm. Collect your outbound travel reimbursement from the last farm.
- If you have more than two contracts, be sure to have immigration approval documents for all of the farms.
- You can contact legal services in your state if you have more questions.



DO YOU NEED TO RETURN HOME BECAUSE OF A FAMILY EMERGENCY?

Some contract workers need to return home because of a family emergency. You always have the right to leave the U.S. early. However, your H-2A visa allows only one entry into the United States.

If you want to return home and then come back during the same season, Immigration needs to approve your trip before you leave. Getting immigration approval is a formal process that could take some time. Your boss must agree that you can miss work and you would need to buy a round trip plane ticket. The process is not easy and you need the help of a lawyer.

If you leave the United States without following the rules, the U.S. may not approve a future visa for you. You may call one of our offices if you have questions.

2020 H-2A CONTRACT NEWS SPECIAL TAX EDITION

INCOME TAXES 2019 FOR H2A WORKERS

Whether you are required to pay any income taxes will depend on how long you are in the U.S. on the H2A contract and how much money you earn. We will explain how this works in this special tax addition, which are the center pages of the H2A News.

To work in the U.S. on the H2A contract, the first thing you need is a **Social Security number**. Please see the box on this page for details.

The first time you work at the farm, and each year after, when you arrive, your employer will have you fill-up some forms and sign documents. Some of the forms are for withholding taxes from your paycheck. Withholding means an amount of money that will be taken from your check to pay taxes. For the majority of workers, it is best to withhold enough money to pay taxes so that you do not owe any at the end of the season. You also do not want to withhold too much because you will have to wait months to get your money back. Many people are waiting at least 4-6 months, or even longer, to be refunded the taxes that they overpaid from their paychecks. You also do not want to withhold too little or you will have to pay what you owe when you file your taxes.

The Federal withholding form is called a **W-4**. Also, many states have their own withholding form. For example, NY state withholding form is called the IT-2104. Each year you can change the amount withheld or taken out of you paycheck by filling out a new **W-4** form and a new state withholding form. If you did not do so at the beginning of the season, you can fill out new forms at any time during the season.

Your employer may permit you to have money withheld from your pay each week for payment to the U.S. Internal Revenue Service, or I.R.S. The I.R.S. is the agency which collects taxes for the Federal government. If you are not having money withheld from your pay and you want to do so, ask your employer. Most employers are already doing withholding for other workers and so there is no problem adding to the list. The employer has tables to help you decide how much to withhold so that it is not too much and not too little compared to your end of year tax bill. You must sign a **W-4** and a state authorization for withholding.

If you have withholding, you will see it as a deduction on your pay receipt. Your employer then sends the money to the U.S. Internal Revenue Service (I.R.S.) under your name and Social Security number. Be sure if your Social Security number is on your check it matches your actual number.

By end of January of the following year, your employer provides you a **W-2 form**. The **W-2 form** is what you need to prepare your tax returns. It will show your employer's name and address, your name and address, the amount of money you earned at that job, and the amount of income tax withholding, if any.

You need to prepare a **tax return** to get your tax refund. Many people get the word "return" mixed up with "refund". A tax return is a form that your tax preparer will fill out for you. We will show some samples in this newsletter. A refund is the check you receive after you file your return. To remember the difference between tax return and tax refund, remember you must send in a **tax return** to get your **tax refund check**.

Tax returns can be filed electronically or in paper form. Ask you tax preparer which one will be filed for you. Either way be sure to get a copy from your tax preparer.

Another important point is that if you did not have taxes withheld from your pay check, then you cannot get a refund. If you had only a small amount withheld from your pay check, you will not get a big refund. In either case, you may owe money. Every farm is different so you cannot compare yourself to a friend at another farm who is getting a big tax refund.

Getting your tax return filed is your responsibility. Your tax return, for any year, must be postmarked or electronically filed to the I.R.S. by April 15 of the following year. If it is not filed by April 15 and you owe taxes, then you will be charged a penalty for filing late. The I.R.S. will also add interest every month to the penalty and to any taxes you owe.

2020 New deadline for filing is July 15, 2020
Due to COVID-19, this date could possibly change again.

State Tax Returns. Depending on which state you are working in, you may also need to file a **state tax return**. Some states follow the I.R.S. guidelines regarding income, other states require that you do file returns for greater or lesser incomes. Please ask your tax preparer if you need to file a state tax return. Remember you need to file a state tax return to get a state refund check. If they don't know, please contact the legal services office for your state if you have any questions.



SOCIAL SECURITY NUMBERS

H-2A workers are now required to have Social Security Numbers in the United States. Here is what you need to know:

- Social Security Number are for employment and tax purposes. You can also use your number to open a U.S. bank account.
- Your boss should take you to apply for your Social Security Number.
- Use the same number for each job. You only apply once for your Social Security Number.
- Your Social Security Number is private – do not share your number or let others use it. Keep the card in a safe place.
- Sign your Social Security card. **Do not laminate it.**
- H-2A workers **cannot** be required to pay Social Security or Medicare taxes.
- Your boss **cannot** deduct Social Security or Medicare taxes from your pay.
- H-2A workers **are not eligible** to receive Social Security retirement benefits.
- If Social Security or Medicare taxes are deducted from your pay, you can apply for a reimbursement.

W-4 form

SAMPLES OF W-2s

Safe, accurate, **e-file** Visit the IRS website at www.irs.gov/efile

OMB No. 1545-0048

W-2 Wage and Tax Statement 2012

Department of the Treasury—Internal Revenue Service

Form **W-2** Wage and Tax Statement 2012

Copy B—To Be Filed With Employee's FEDERAL Tax Return. This information is being furnished to the Internal Revenue Service.

SAMPLE

W-2 Wage and Tax Statement 2008

STRACON UNIVERSITY
SENIOR OFFICE BUILDING
SERVICES ROAD
SYRACUSE NY 13244-5300

JOHN DOE
PO BOX 1
SYRACUSE NY 13244

SAMPLE

Safe, accurate, **e-file** Visit the IRS Web Site at www.irs.gov/efile

Employee Reference Copy
W-2 Wage and Tax Statement 2012

Control number: 000060-8088/7C13

Employer's name, address, and ZIP code: CHRYSLER TRUCK FINANCIAL GROUP, 77 YANKEE STREET, FLAGTOWN NJ 08821-3453

Batch #00283

Employee's name, address, and ZIP code: JOHN DOE, 77 YANKEE STREET, FLAGTOWN NJ 08821-3453

Wages, tips, other comp.: 1569.26
Federal income tax withheld: 162.41
Social security wages: 1578.26
Social security tax withheld: 66.29
Medicare wages and tips: 1578.26
Medicare tax withheld: 22.88

State wages, tips, etc.: 1563.26
State income tax: 784.69

SAMPLE

FEDERAL TAX RETURNS

First Page 1040NR form

Short-Contract Workers

There are two ways that workers who are not U.S. citizens - including H-2A workers – file their tax returns. Workers who have been in the United States for short periods of time are called **“non-resident alien taxpayers”**. This year, these workers will file their tax returns on a form called a **“1040-NR”** or a **“1040-NR-EZ”**.

Workers who are here for longer periods of time might be **“resident alien taxpayers”**. Whether you are a **“non-resident alien taxpayer”** or a **“resident alien taxpayer”** depends on how much time you spend in the United States. Generally, workers who are here more than 4 months for 3 continuous years might qualify as **“resident alien taxpayers”**. The government has a formula to determine if a worker has been in the United States for long enough to qualify as a **resident alien taxpayer**. This formula is called the **“Substantial Presence Test”**. Your tax preparer can use this test and tell you if you qualify as a **resident alien taxpayer**. In order to do this, your tax preparer will need to know how many days you were present in the United States in each of the last three years. Your passport has visa stamps that show both the dates you entered the United States and the dates you returned to Jamaica each year.

Generally speaking, workers who come to the United States only on short contracts are **non-resident alien taxpayers**.

A **non-resident alien taxpayer** who is married should check the box for **“married non-resident alien”**. If the taxpayer is a unmarried, the box **“single non-resident alien”** should be checked. A non-resident alien whether single or married will pay an equal amount of taxes for equal earnings. There is no benefit for being married or having children for a non-resident taxpayer.

Also, a **non-resident alien taxpayer** cannot qualify for the **“Earned Income Tax Credit (EITC)”**.

Filing your tax return properly can save you time and money. Make sure that you talk to your tax preparer about whether you qualify as a non-resident alien taxpayer or a resident alien taxpayer.

Remember that even though you are relying on your tax preparer's expertise, you are ultimately responsible for your tax return and for making sure it gets filed every year.

Remember that the tax rules change every year. Please check with your tax preparer for updates and advice.



Form 1040-NR U.S. Nonresident Alien Income Tax Return

Go to www.irs.gov/form1040nr for instructions and the latest information.

For the year ending 12/31/19, or other year

Your first name and middle initial: JOHN DOE
Last name: DOE
Identifying number (see instructions): 123456789

Please print or type: Country of birth: Jamaica
Country of residence: Jamaica

Filing Status: Single nonresident alien

Income Effectively Connected With U.S. Trade or Business: 1000

Adjusted Gross Income: 1000

Tax and Credits: 1000

Total tax: 1000

SAMPLE

First Page 1040NR-EZ form

Form 1040-NR-EZ U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents

Go to www.irs.gov/form1040nrez for instructions and the latest information.

For the year ending 12/31/19, or other year

Your first name and middle initial: JOHN DOE
Last name: DOE
Identifying number (see instructions): 123456789

Please print or type: Country of birth: Jamaica
Country of residence: Jamaica

Filing Status: Single nonresident alien

Wages, salaries, etc. (attach Form(s) W-2): 1000

Adjusted Gross Income: 1000

Tax: 1000

Total tax: 1000

SAMPLE

The 1040NR and the 1040NR-EZ have more pages, this is just a sample. Your tax preparer will have all the pages to complete your tax return.

FEDERAL TAX RETURNS continued



Long-Contract Workers

When H2A workers who have been in the United States a period of time which is long enough, they file their tax returns as “**resident alien taxpayers**”. This year, these workers will file their tax returns on a form called a “**1040**”.

Generally speaking, workers who come to the United States on a long contract might qualify as **resident alien taxpayers**. If your contract is longer than 4 months, you may qualify as a **resident alien taxpayer**.

The government has a formula to determine if a worker has been in the United States for long enough to qualify as a **resident alien taxpayer**. This formula is called the “Substantial Presence Test”. Your tax preparer can use this test and tell you if you qualify as a **resident alien taxpayer**. In order to do this, your tax preparer will need to know how many days you were present in the United States in each of the last three years. Your passport has visa stamps that show both the dates you entered the United States and the dates you returned to Jamaica each year.

There are some important advantages if you qualify as a **resident alien taxpayer**. First, if you are married, you can file your tax return as a married person. Doing that often reduces the amount of tax you have to pay, sometimes by a lot. Your spouse will need a number known as an “Individual Taxpayer Identification Number (ITIN)” or a Social Security number; see the box titled “ITIN” on this page for more information.

You might be able to file as a married person even if you are not legally married, but you have a “common-law marriage”. Ask your tax preparer about this if you have questions.

Also, **resident alien taxpayers** might qualify for the “Earned Income Tax Credit (EITC)”, which is another way you might be able to save some money when you file your tax return. You might even get a refund, or a bigger refund if you are eligible for the EITC. Ask your tax preparer about this if you have questions.

Filing your tax return can save you hundreds, maybe even thousands, of dollars. Make sure that you talk to your tax preparer about whether you qualify as a resident alien taxpayer, about filing as a married person and about the EITC.

Remember that even though you are relying on your tax preparer’s expertise, you are ultimately responsible for your tax return and for making sure it gets filed every year.

Remember that the tax rules change every year. Please check with your tax preparer for updates and advice.

ITINs

An ITIN (Individual Tax Identification Number) is a number issued by the IRS to those who do not qualify for a Social Security number. It is used for filing income taxes. An ITIN has 9 digits and begins with the number 9 (example: 900-00-0000). An advantage of your spouse having an ITIN is that it may lower the amount that you owe in income taxes or increase your refund.

H2A workers who file as Resident Aliens (those workers on long contract) on their tax returns can apply for an ITIN for their spouse. If your spouse obtains an ITIN and you file a joint income tax return, any income he or she earns may have to be counted in your joint income tax return.

In order to apply for an ITIN for your spouse you need: 1.) the IRS W-7 form, 2.) your income tax return, 3.) **original documents** that prove the identity and foreign status of your spouse. If you submit your spouse’s passport, it satisfies both the identity and foreign status. You can also provide a **certified copy of your spouse’s passport**, provided by the passport agency of your country to your tax preparer. It would be the only document of theirs you would have to submit to the IRS. Otherwise, you have to submit their birth certificate along with other documents such as: a national identification card, or electoral card, or driver’s license. If you have questions as to what other documents may be accepted, ask your tax preparer.

You can also file corrected tax returns for the last three years once your spouse has an ITIN. If you do that, you may be able to get a refund of some or all of the taxes you paid for the last three years.

To apply for an ITIN, you need to contact an Acceptance Agent or your tax preparer. Unlike your Social Security Number, an ITIN may need to be renewed periodically. If you have questions as to who can help you request an ITIN, please contact one of our offices.

First Page 1040 form

Second Page 1040 form

ECONOMIC IMPACT PAYMENT - Stimulus Checks

Only long contract H2A workers who file Resident Returns as Single, Married Filing Separately (if spouse has ITIN or no ITIN) or Married Filing Joint (spouse must have a social security number) qualify for the Economic Impact Payment (E.I.P.). If you have filed either of these ways for 2018 or 2019 tax returns the E.I.P. check will be sent to you. It will be sent to the same place as your last refund check or direct deposit. Jamaican workers have been calling this the COVID check, the correct term is Economic Impact Payment (E.I.P.). If you did not receive in the first group (April- June 2020), do not worry. When you correctly file your 2019 return, the Internal Revenue Service (I.R.S.) will generate the E.I.P. check. If you still have not received after receiving your 2019 refund, contact your tax preparer to help you. You will still be able to get this E.I.P. check.





TAX PREPARERS for H2A WORKERS

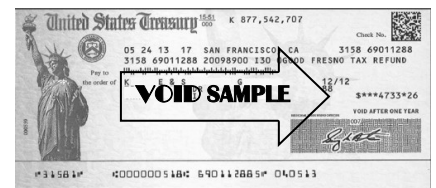
You are responsible for getting your taxes filed so finding a reputable tax preparer is very important. You should find a preparer who understands all the aspects of your special tax situation. Please make sure:

- ◆ That you discuss with your tax preparer whether you qualify as a **resident alien taxpayer**. See the article “Long Contract Workers” on the prior page.
- ◆ Your tax preparer should be able advise you whether you are required to file state tax returns.
- ◆ If a person comes into your camp saying they can prepare taxes, get identification and credentials to prove that they can prepare taxes.
- ◆ Get **contact information** of the person preparing your return. That means you should get that person’s full name, address and phone number.
- ◆ Know how much you are being **charged** before agreeing to have your return prepared. Ask about additional costs.
- ◆ Get a **receipt** for your payment of the return.
- ◆ Make sure that **you and the preparer sign** the correct section of the tax return.
- ◆ Get a **copy** of your returns for your records. If you are not given one by your preparer, **ask** for a copy. You need to keep a copy in your record in case the I.R.S. asks you questions.
- ◆ Make sure your Social Security number and all your information on your W-2 is correct before you give your W-2 to the tax preparer to prepare your return. If there is a problem, the owner boss should fix this problem quickly and give you a new corrected W-2.
- ◆ Make sure that **your Social Security number, address and spelling of your name** on your tax return are correct. The correct address is very important. The address on your return is the address where your refund will be sent. If the IRS sends you anything else, the address on your return is also the address the IRS will use. If you use the address of the boss, you will need to check with the farm boss to see if there is any mail for you. If you use your home address, check with post office or location where you receive mail.
- ◆ You can ask your tax preparer to have your tax refund direct deposited by the I.R.S. into your U.S. bank account only. Ask what information is needed and provide it before filing. There is no fee for this service. You will get your refund more quickly and will not have to worry about the refund check getting lost.
- ◆ DO NOT use the address for FLECTS. You must give your preparer your proper address.
- ◆ You can contact your boss to help you find a good preparer.



What If You Do Not Receive Your Refund Check?

- If you are expecting to receive a refund on your taxes, here are some important things to know.
- It is important to know when your tax return was actually mailed. That will help you know if your refund check is late.
 - ^If your tax return was mailed in the United States, and your refund check is being mailed to an address in the United States, it can take 6 weeks or more from the date you mail your return for the refund check to arrive
 - ^If your tax return was mailed in Jamaica, and your refund check is being mailed to an address in Jamaica, it can take 3 months or longer for the refund check to arrive.
- If you have not received your refund check after waiting enough time, contact your preparer to check the status of you refund.
- **BE PATIENT**
- **DO NOT ask a new preparer** to send in another tax return for the same year. This will not speed up the process, but will slow it down instead. It will also cause a problem. When the I.R.S. gets 2 income tax returns for the same year from the same person, they believe someone other than you is trying to get your refund. You will then have to go through a process called **identity verification**. This takes a long time and is not easy. It can also continue to cause problems for years if not corrected right away.
- If you receive a letter from the I.R.S., have your tax preparer review and explain to you what the problem is and what you need to do to correct the problem. Sometimes it is good news.
- If additional time has passed and you have not received a check and your tax preparer is not helping, you can contact I.R.S. to find out what the problem is.
- There are many reasons that your refund check is delayed. Here is a list of some possible problems:
 - *Lost return.
 - *Lost check.
 - *Identity verification.
 - *You owe taxes from prior year.
 - *Wrong tax return form filled out.
 - *Your address is not correct, and the check was mailed somewhere else. For example, your employer’s address is on the return, but you are at home.
 - *You or your preparer completed the tax return but did not mail it or file with the I.R.S.
 - *I.R.S. reviewed your taxes and sent you a letter explaining an error in your return, and you have not responded.
 - *Stolen check.
- Being patient for a few months is good, especially if you are waiting for mail in a foreign country. But being patient and waiting a year and not doing anything is **not** good. Your check will probably not show up if it has not arrived within 4 months. If more than 4 months go by, you should do something about it. And the longer you wait to do something, the more difficult it might be to get your refund. If more than 3 years go by, it might be impossible.
- Your first step is to ask your tax preparer for help. If they refuse, you can call the I.R.S. directly or ask legal services in your state if they might be able to help you.
- If you have not received your state income tax refund after filing a state income tax return, you should also contact your tax preparer. Again, be patient – but not too patient!



H2A & STATE TAXES

Many H2A workers must file state income tax returns and pay state income tax. This is in addition to Federal income taxes. The amount of state taxes is usually much less than Federal taxes.

Each state has different rules regarding paying your state taxes. In some states, you may not need to file a state tax return. If you are on short contract, it is less likely you will need to file. Please ask your tax preparer to let you know if you need to send in a state tax return.

Just like Federal taxes, you get a refund if 1) you had state taxes taken from your pay, and 2) the amount taken out was more than the taxes you owe. If that is the case, you must file a state tax return to get the money back. This is true even if you are not required to file a state tax return and even if you do not owe any more state taxes.

Just like Federal taxes, you can change the amount taken out of your paycheck to pay your state taxes. The form is different from the Federal W-4, and it is a different form in each state. Ask your boss for the form. It must be completed, signed and returned to the boss.

This paper was produced by the legal services offices listed on first page. We are lawyers and paralegals who offer **free legal help** to eligible workers with the problems they are having at work. We provide legal advice and possibly representation when there are problems. If you have worked under the contract in the states we cover, you may already know some of us. During the harvest season we visit farmworkers in the labor camps to discuss our services and give out information about rights of farmworkers in the U.S. **The information in this paper is intended to provide general information only, not to give legal advice. No one should interpret any law without the aid of an attorney who is fully informed of all the facts involved!!**

BUILD-UP PAY 2020

Your pay receipt or stub should show how many hours you worked and how many pieces you completed. It should also tell you how many hours were offered to you. It should also list everything that is deducted from your gross pay. Each week you should check your pay receipt to make sure you are getting paid properly. Your boss should record your hours daily. You should also write them down so you can compare your hours to what your check stub says.

Even when paid by the piece (bushel or bins), workers must still earn a minimum amount of pay. The minimum pay is equal to the minimum hourly wage rate times the number of hours you actually work, even if you are paid by the piece.

If you are being paid by the piece and you want to see if you are being paid correctly, the first thing to do is to calculate your minimum pay. It is very simple to do this. All you have to do is multiply your hourly pay by the number of hours you worked during the week. This year, the minimum hourly wage for H-2A workers in this part of the United States is \$14.29. So for example, if you worked 54 hours in a week, your gross pay (total pay before deductions) must be at least \$771.66 (54 hours times \$14.29).

After you figure out your minimum pay, compare your actual earnings to the minimum pay. For example, let's say you work at a farm that pays by the bin. Let's also say that you filled 38 bins and the piece rate is \$18.00 per bin. Your gross pay (before deductions) would be \$684.00 (38 bins times \$18). But, remember that you worked for 54 hours and \$684.00 is LESS than the guaranteed minimum of \$771.66. Your boss would need to pay you the difference of \$87.66 (\$771.66 minus \$684.00 is \$87.66). This extra amount, **which is usually called build-up pay**, should be included in your pay for the week.

For another example, let's say you work at a farm that pays by the bushel. Let's also say that you filled 836 bushels and the piece rate is \$0.85 per bushel. Your gross pay (before deductions) would be \$710.60 (836 bushels times \$0.85). But, remember that you worked for 54 hours and \$710.60 is LESS than the guaranteed minimum of \$771.66. Your boss would need to pay you the difference of \$61.06 (\$771.66 minus \$710.60 is \$61.06). This extra amount should be included in your pay for the week.

Here are some examples that show sometimes you may need to be paid by the hourly rate. There are also examples when you earn more when paid by the bushel or bin. You are always paid the larger of the two pays. Remember this must be looked at on a weekly basis. You cannot calculate this on a daily basis.

You pick 836 bushels working for 50 hours @ \$0.75 per bushel

836 bushels X \$0.75 = \$627.00 piece rate pay
50 hours X \$14.29 pay/hr = \$714.50 Minimum pay
You must be paid a total of \$714.50

You pick 836 bushels working for 46 hours @ \$0.85 per bushel

836 bushels X \$0.85 = \$710.60 piece rate pay
46 hours X \$14.29 pay/hr = \$657.34 Minimum pay
You must be paid a total of \$710.60

You pick 38 bins working for 48 hours @ \$15.00 per bin

38 bins X \$15 = \$570.00 piece rate pay
48 hours X \$14.29 pay/hr = 685.92 Minimum pay
You must be paid a total of \$685.92

You pick 38 bins working for 46 hours @ \$18.00 per bin

38 bins X \$18 = \$684.00 piece rate pay
46 hours X \$14.29 pay/hr = \$657.34 Minimum pay
You must be paid a total of \$684.00

Remember that there are different crops that are paid at different rates. Don't worry that it might seem complicated. If you are paid piece rate, just compare the total gross earning of your pay check to the number of hours you worked for the week multiplied by \$14.29. Whichever is larger should be your pay.



You should also keep track of the hours you work each day to be sure that you are paid for all hours worked. Not every farm keeps track of your hours and sometimes they record them incorrectly. Please review article "What Counts as Work Time" to be sure all your work hours are properly paid.



FIGURE OUT IF YOU EARNED THE 3/4 GUARANTEE!

Your boss must offer work to you for at least three quarters (75%) of all the hours promised in your contract. This is counted from the first workday after you arrive until the end date listed in your contract. If you are not offered these hours, your boss must make a payment to you at the end of the contract.

For example, let's say you arrive on July 11, your first workday is July 12 and your contract ends on August 22. That is 6 weeks, and your contract offers 40 hours of work per week. That is 240 total hours (which is 6 weeks times 40 hours per week). Three-quarters of 240 hours is 180 hours. Therefore, your boss must offer you at least 180 hours of work by the end of the contract. You will not know for sure if you have been paid the 3/4 guarantee until your contract ends. So, at the end of the season, if your boss only offered you 160 hours of work, then he would have to pay you for 20 more hours.

This year, the minimum hourly wage for H-2A workers in this part of the United States is \$14.29. In the example above you are guaranteed 180 hours. That means that the boss must pay you at least \$2,572.20 for the season (which is 180 hours multiplied by \$14.29). If the boss only offers you 160 hours of work and only pays you for 160 hours, that would be \$2,286.40. That is less than the \$2,572.20 which the boss is required to pay you. Therefore, you would be owed \$285.80 (which is \$2,572.20 minus \$2,286.40).

If you are paid piece rate, (for example by bushel, bin or box) it is possible that if you are a very fast worker that you may not be owed additional money. For example, if you picked 134 bins at \$20.00 a bin during those same 160 hours, you would be paid \$2,680.00. This is more than the guaranteed amount of \$2,572.20, so you would not receive any additional pay.

There are times when this guarantee does not apply. Your boss will not owe you money if you are fired for a good reason, if you quit, if the contract is cut short because of a natural disaster, or if you are unable to finish the contract because you got hurt. But if you are sent home early or there is no work for you for some other reason, the 3/4 guarantee may protect you. If you want us to check for whether you received what was owed, please save all your pay receipts and call us at the end of the season.



WHAT COUNTS AS "WORK TIME"?

Time that you should be paid for, called compensable work time, which includes:

- **Waiting time:** Some of the time that you spend waiting at the worksite is time that you should be paid for. Some examples are waiting for your work assignment; waiting for fields to dry; or waiting for ladders, bins, or other equipment to arrive.
- **Travel time:** After your workday begins, the time you spend traveling from one field to another is work time that you should be paid for.
- **Breaks:** A short morning, afternoon, or meal break that is under 20 minutes counts as work time.

Time that you do not have to be paid for is called non-compensable time, which includes:

- **Lunch breaks** that are 30 minutes or longer, if you are allowed to completely stop working.
- **Time spent traveling** between the labor camp and the worksite in the morning before work, and in the evening after work, is usually non-compensable time. However, in some situations you must be paid for this time. Please call us if you want more information

Use these guidelines to keep a daily record of your work hours.

IMPORTANT!!
IF YOU ARE HURT ON THE JOB:
WORKERS' COMPENSATION INSURANCE

If you are hurt while working, while traveling to work, and sometimes while in the labor camp, you are covered by workers' compensation insurance. This is an insurance program your employer must provide for you under your contract.



The insurance pays your medical bills and a small percentage of your lost wages if you cannot work. Every state has different rules. For example in N.Y. you will only receive a small pay compensation if you miss 2 weeks or more of work.

If you are injured:

—> Go to a doctor right away. Tell the doctor that you were injured or got sick at work. You have the right to speak to the doctor alone.

—> Tell your boss right away. You must do this in order to be covered by the insurance. Your boss needs to fill out a form to help start your claim. Once your boss knows what happened, it is illegal for the boss to try to stop you from getting your workers' compensation benefits.

—> Make sure proper forms are filled out. Usually the hospital or doctor's office will help you fill out the papers to be sent into worker's compensation. The name of the workers' compensation company and the policy number are in your contract.

—> Follow doctor's instructions. Such as: see specialists, return for follow up visits, attend physical therapy treatments. Do not work if the doctor has said not to, and follow limits on activities. If you don't understand ask your doctor to explain. If you work before you are healed you could cause more physical damage. **You also risk stopping your compensation checks.**



—> Usually cases of worker's compensation focus on healing your body to continue a normal work and personal life. You may need to be referred to lawyers who specialize in these types of cases.

—> Keep copies of your medical records. Make sure that you know the names of doctors you see or hospitals you go to, and keep copies of all bills and papers, both in the United States and in your home country.

—> Ask for help. If you want one of our offices to help you, we are available. It is better to call us before you go home, but you are always free to call us from home as well.

—> When you arrive home, continue to seek medical care if needed. If you are from Jamaica, your government has procedures in place to help you.

You should be able to continue to receive benefits and treatment even after you return home. It can be harder to get benefits and medical care when you are home, but a lawyer may be able to help you. If you are injured and return home before you are well or before you receive all of your benefits, you can call one of our offices for help.

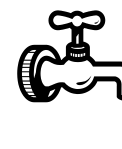


YOU ARE ENTITLED TO
FREE HOUSING
IN GOOD CONDITION

Your boss must give you free housing in the labor camp. The person in charge of the labor camp is responsible for making sure that the housing meets health standards, that it is inspected, and that it has a government-issued permit.

There are many federal and state labor camp requirements, including the following:

- The flooring in the labor camp must be in good condition.
- The windows must open and there must be screens.
- During cold weather there must be adequate heating equipment.
- If there is no commissary, access to stove and food storage.
- Each worker must be provided with their own bed, at least 12 inches off the floor, and there should be at least 36 inches (3 feet) between each bed.
- An adequate supply of clean water must be provided so workers can drink, cook, bathe, and do their laundry at the labor camp.
- There must also be an adequate supply of hot water for bathing.
- Toilet rooms should be in sanitary condition. There should be lights that work at all hours. All waste water must drain properly through a septic or sewer system.
- Effective measures must be taken to prevent infestation by insects and other animal pests.
- Garbage and recycling containers must be picked up regularly.
- If your labor camp has fire extinguishers, smoke detectors and carbon monoxide detectors, they should be in working order.
- There are more requirements that are not listed here.



Important: If there are smoke detectors or carbon monoxide detectors in your labor camp, do not remove the batteries! Alert the boss if new batteries are needed or if the detectors are not working properly.

The rules and responsibilities of living in the camp should be posted where everyone can see them. You may call us for more information.



Some of these rules and requirements should change because of the COVID-19 virus. For example, it may be required that there be more space between beds to keep workers safe. Please call us for more information.



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