

U.S. DEPARTMENT OF LABOR
Employment & Training Administration



June 23 – Webinar NPWC – H-2B

Office of Foreign Labor Certification
Employment and Training Administration
United States Department of Labor

June 2016

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AGENDA

- General Filing tips
- Job Duty tips
- Survey tips

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H-2B General Filing Tips

- Importance of filing early
- Anticipation of longer wait times due the influx of H-2B applications
- Beginning July 1, 2016, the validity period for Prevailing Wage Determinations will go through June 30, 2017.

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H-2B Job Duty Tips

- **Reminder:** Job Duties: The employer is to describe the job duties, in detail, to be performed by any worker filling the job opportunity. *They are to specify the field(s) and/or product(s) involved, any equipment to be used, and pertinent working conditions.* The duties provided must be specific enough to be classified under a relevant SOC pursuant to the O*Net publication. All job duties must be submitted on the form.

Job Duty Clarifications:

- If the job duties entail “**loading and unloading**”...
 - Due to brevity of most of the submitted job descriptions, it is difficult to determine what the **load/unload** duties actually entail. The employer must clarify what the position is **loading and unloading**; since, some cases are unclear if the **load/unload** duties are to and from a truck or movement within the workstation.

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H-2B Job Duty Tips

Job Duty Clarifications:

- If the job duties entail “**concessions**”... : The employer needs to specify the type of concessions they are operating, e.g. amusement ride/game or food stand or food concessions.
- If the job duties entail “**setting up and tearing down**”... : The employer needs to elaborate what type of equipment (amusement or food stand) and the duties that are involved in **setting up and tearing down**.
- If the job duties entail “**cooking and preparing foods**”... : The employer needs to provide a description of what items are being **prepared or cooked**. Examples might be ‘Make sandwiches to order’ or ‘Cook a variety of meats on a grill’.

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H-2B Survey Tips

- Employer requests for a prevailing wage determination based on a private wage survey submitted on or after December 19, 2015, must be accompanied by the revised **Form ETA-9165**. The CO will issue a Request for Information requiring the employer submit the revised Form ETA-9165 for any survey-based request for a prevailing wage determination submitted without the revised Form ETA-9165.
- Because the 2016 DOL Appropriations Act required DOL to accept “statistically supported” private surveys, there is no longer any distinction between State surveys and surveys that are conducted by private entities. Accordingly, DOL interprets the term “private survey” to include both: 1) government surveys not conducted or issued by DOL and 2) nongovernment surveys conducted by private individuals or organizations who are *bona fide third parties*.
- Employer-provided surveys must provide the single arithmetic mean of the wages paid to all workers in the occupational classification within the area of intended employment, regardless of skill level or experience, education, and length of employment.
 - **Reminder:** Where the survey provides only a median, not an arithmetic mean, a median wage will be acceptable.

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H-2B Survey Tips

- The surveyor may provide a chart showing the **total compensation paid during the period and the hours worked for that pay, then summing those values across all employers and dividing the total hours into the total pay** resulting in an **hourly rate**.
- Next is an example of a possible way to show what was mentioned above.

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Sample Compensation Calculation Table

Employer: Fill this column with whatever designation the survey uses to represent a particular employer.

Workers: Fill this column with the count of workers who's hours and wages from any portion of the period reported were used in the next two columns.

Compensation: Fill this column with the sum of all wages paid during the period reported. Use the definition below to decide what to include.

A **wage** is money that is paid or received for work or services performed in a specified period. Base rate pay, cost-of-living allowances, guaranteed pay, hazardous-duty pay, incentive pay such as commissions and production bonuses, tips, and on-call pay are included in a wage. Back pay, jury duty pay, overtime pay, severance pay, shift differentials, nonproduction bonuses, employer costs for supplementary benefits, and tuition reimbursements are excluded. [<http://www.bls.gov/opub/hom/pdf/homch3.pdf>]

Total Hours: The sum of all the hours worked to earn the pay under the Compensation column

Total Row: Sum the values in the Total Compensation column, and then sum the values in the Hours column.

Hourly Rate Row: Divide the Total Hours in to the Total Compensation (Compensation in \$/Hours) giving a \$/hr value.

Employer	Workers	Compensation	Hours
A	5	\$8,272.08	802
B	7	\$11,189.18	918
C	23	\$42,002.76	3678
D	19	\$38,890.72	3344
E	4	\$8,042.66	794
Total		\$108,397.40	9536
Hourly Rate		\$11.37 per hour	

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H-2B Survey Tips

- The survey must base inclusion of a worker or employer's wage information solely on the duties performed. Factors relating to the nature of the employer, such as whether the employer is public or private, for profit or nonprofit, large or small, charitable, a religious institution, or a job contractor are not relevant to determining the prevailing wage for an occupation. Private surveys in which the survey's sample is based on the nature of the employer rather than duties of the job will be rejected.
 - **Reminder:** Private surveys must reflect a good faith effort to include all employers who employ workers in the occupation and area surveyed or a randomized sample of those employers.
- Must include the wages of all workers in the occupation regardless of skill level or experience, education, and length of employment

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H-2B Survey Tips

- Survey hourly wages must include all types of pay. Therefore, if employer guarantees a minimum hourly wage but pays other types of monetary compensation including tips, piece rate, commission, bonus, etc., this additional compensation must be included in the survey wage
- Specified expansion of area when needed
- From at least 3 employers and 30 workers
- Must be most recent version of the survey and must be data collected within 24 months of submittal
- Form **ETA-9165** is required
 - Attestation signed by employer
 - Includes contact information from third party or state agency
 - Consolidates information from the survey
 - Specific to a particular survey and employer
 - Uploaded with Form **ETA-9141**

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H-2B Survey Tips (Standards for Bona Fide Third Parties)

- A third party has no stake in the outcome of the survey, but only in producing a survey product that meets statistical and regulatory standards

Important Note: *Any H-2B employer or any H-2B employer's agent, representative, or attorney are not bona fide third parties*

- A state agency is also a third party and includes entities such as colleges, universities, agricultural extension services, and maritime agencies
- Employer associations could be considered bona fide third-parties
 - An employer association covering a mixture of employers who do and do not hire workers under H-2B will likely be appropriate
 - While one only covering those who hire H-2B workers will not
- The third party may be a company who produces the survey as a published work, to include continuous updates, or on commission

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Questions and/or Comments

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