

Side by side comparison of 2015 DOL H-2B regulations and S.2225

Issue/Provision	2015 Regulations	Proposed Language S.2225¹
Labor Market Test	Labor Certification – employer provides proof it recruited U.S. workers.	Labor Attestation – employer says it recruited U.S. workers.
Definition of full-time	35 hours or more per week	30 hours or more per week. Exception: If an industry defines full time work as less than 30 hours per week, “full time” is defined by industry practice.
Transparency of supply chain	Employer gives names and locations of its foreign recruiters and their subcontractors.	No transparency of supply chain.
Disclosure in language understood by workers	Terms and conditions of employment are told to workers in a language understood by the workers, as reasonable.	Terms and conditions of employment are told to workers (in English).
Wages	<p>Offered wage is the “prevailing wage” or Federal, State, or local minimum wage, and must be paid for the entire employment period certified in the Application.</p> <p>Employer must pay at least the offered wage free-and-clear, either in cash or in a negotiable instrument payable at par.</p>	<p>Offered wage equals or exceeds the highest of the wages paid by the employer to other employees with similar qualifications, the Federal, State, or local minimum wage, or the prevailing wage.</p> <p>Unless controlled by a collective bargaining agreement signed by the employer or a required wage for governmental projects, the prevailing wage will be either (1) commensurate with Bureau of Labor Statistics data for the occupation, skill level, and local area (i.e., the 2009 Bush wage rule with four skill levels for each job, the</p>

¹ A bill to amend the Immigration and Nationality Act to establish an H-2B temporary non-agricultural work visa program and for other purposes, S.2225 was introduced by Senator Thom Tillis (R-NC) on October 30, 2015. As of November 3, 2015 cosponsors include Senators Barbara Mikulski (D-MD), Bill Cassidy (R-LA), Mark Warner (D-VA).

		<p>lowest of which allows employer to choose to pay H-2B workers the 17th percentile wage) or (2) set by a private wage survey.</p> <p>Private wage surveys may use data no older than two years old, may use similar job descriptions, may reach across industry, may average the wages received or take the median wage, and must use a statistically valid methodology to collect data.</p>
Employer provided items	Employer must provide, without charge or deposit, all tools, supplies, and equipment needed to perform the job.	No provision; bill does not prohibit employers from charging H-2B workers for tools, supplies, and equipment required to perform the job.
Three-fourths guarantee	Employer must provide work for three-fourths of the days it contracted to provide work or pay the difference.	No provision; bill does not require employers to provide H-2B workers with a minimum number of work hours.
Earnings statements	Employer must keep accurate pay and hours records and supply workers with earnings statement on or before each payday.	No provision; bill does not require employers to provide H-2B workers with earnings records.
Protections for U.S. workers - required recruiting	<p>Required recruiting includes:</p> <ul style="list-style-type: none"> -- SWA job posting until 21 days before the date of need -- newspaper ad on 2 days (one a Sunday) -- Call-back/ offer of re-employment to former U.S. workers (including workers who were laid off) from the previous year -- contacting the bargaining representative OR (if there is no bargaining representative) posting the job for 15 business days at 2 conspicuous locations at every place of employment -- SWA contacts the union, where the occupation 	<p>Required recruiting includes:</p> <ul style="list-style-type: none"> -- SWA job posting on Department of Labor electronic job registry for 45 days starting no later than 60 days before the date the employer intends to hire an H-2B worker.

	<p>or industry is customarily unionized -- SWA sends the job order to DOL for posting on the national job registry.</p>	
No layoffs of U.S. workers	<p>Employer has not and will not lay off U.S. workers starting 120 days before H-2B workers arrive and running through when H-2B workers leave. Layoffs for lawful, job-related reasons (such as lack of work or the end of a season) are allowed if all H-2B workers are laid off before U.S. workers.</p>	<p>Employer has not and will not lay off U.S. workers in the 30 days before H-2B workers arrive and running through when H-2B workers leave. Layoffs of U.S. workers allowed for job-related reasons even if H-2B workers are kept on payroll. Layoffs of U.S workers are allowed if the U.S. worker is offered similar employment with the same employer for the same or higher benefits – although at a different location.</p>
Transportation and Subsistence Expenses	<p>Employer is liable for reasonable cost of 1) inbound travel, including related daily subsistence expenses, from worker’s home for workers who complete 50% of the job order, and 2) outbound travel, including related daily subsistence expenses, for workers who work until the end of the job order or are dismissed early.</p> <p>In addition, if worker is entitled to Federal minimum wage, then the FLSA generally requires reimbursement of inbound costs in the first workweek.</p>	<p>Employer is liable for most economical cost of (i) inbound transportation, including documented and reasonable subsistence costs, from U.S. consulate or previous worksite, for workers who complete 50% of the job order, and (i) outbound travel for workers who work to the end of the job period and are not traveling to another job in the U.S., to the U.S. consulate that issued the visa including reasonable subsistence expenses.</p>
Visa and visa-related expenses	<p>Employer is required to pay or reimburse in the first workweek the cost of visa and visa-related expenses.</p>	<p>Employer is not obligated to pay or reimburse the costs of passport, visa, or inspection fees.</p>
Whistle-blower protections	<p>Employers may not retaliate against whistle-blowers nor workers who exercise legally protected rights.</p>	<p>No protections for whistleblowers or protected activity.</p>

<p>Anti-trafficking and labor abuse protections</p>	<p>Employers must comply with employment-related laws, including employment-related health and safety laws.</p> <p>Employers and their agents cannot knowingly confiscate or destroy immigration documents.</p>	<p>No protections.</p>
<p>Enforceability</p>	<p>DOL can debar bad actors and revoke H-2B labor certifications or impose penalties for serious violators.</p>	<p>No enforcement authority for DOL to debar bad actors, revoke H-2B labor certifications, or impose penalties for serious violators.</p>