

Monitor Advocate System and Foreign Labor Certification in Nebraska: Addressing the Needs of an Essential Workforce

Monitor Advocate System

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State Monitor Advocate

NEBRASKA

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What is the Monitor Advocate System?

- The Monitor Advocate System is a federal/state monitoring system that ensures that migrant and seasonal farmworkers (MSFWs) in Nebraska have equitable access to career services, skill development, and workforce protections offered by American Job Centers (AJCs).
- Services offered are “qualitatively equivalent and quantitatively proportionate” to the services provided to other job seekers.
- Migrant and seasonal farmworkers (MSFWs) receive all workforce development services, benefits, and protections on an equitable and non-discriminatory basis.

Eligibility

- SEASONAL FARMWORKER A person who, during the past 12 months:
 - Worked, or is working, in farmwork (as defined in 20 CFR 651) of a seasonal or other temporary nature, and
 - Is not required to be absent overnight from their permanent place of residence
 - Non-migrant individuals who are full-time students are excluded.
- MIGRANT FARMWORKER A seasonal farmworker who had to travel to do the farmwork and was unable to return to their permanent residence within the same day
- As defined at [20 CFR 651.10](#)

Services Provided

- Serves jobseekers and employers through Wagner-Peyser Act Employment Service, including:
 - NEworks Registration Assistance
 - Training Opportunities
 - Job Search Assistance
 - Job Referrals
 - Referrals to Supportive Services
 - Complaint Resolution
 - Agricultural Recruitment System
- Per [20 CFR 653.101](#)

Outreach

- Designed to contact MSFWs who are not being reached by normal intake activities conducted by the local offices.
- This is the single most important way to reach workers who otherwise would not speak with anyone else about their employment conditions.
- Includes provision of information about services available at the local one-stop center, such as the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities, and information about farmworker rights and complaint system.


Complaint System

- The complaint system handles complaints against an employer about the specific job referred to; OR
- Employment Service regulations under the Wagner-Peyser Act. Services of the W-P Act to MSFWs, to include 651 general provisions, 653 employment service system, and 654 Housing for Farmworkers.
- The Complaint System also accepts, refers, and under certain circumstances, tracks complaints involving employment-related laws as defined in 651.10.

Complaint System (cont'd)

- All MSFW complaints or apparent violations must be recorded on the official ETA 8429 DOL Complaint/Apparent Violation form.
- Most recent official version available at:
<https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/resources>

ETA 8429

 U.S. Department Labor Employment and Training Administration		OMB Approval No. 1205-0039 Expiration Date: 07/31/2023
For Official Use Only Complaint/Apparent Violation Form¹		
Complaint/Apparent Violation No.		Date Received
Part I. Contact Information²		Respondent's Information³
1. Name of Complainant (Last, First, Middle Initial) ⁴		4. Name of Person, Company, or Agency the Complaint is Made Against
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer (if different from Part I #4 above) /One-Stop Office
b. Temporary Address (if Appropriate)		6. Address of Employer/One-Stop Office
3a. Permanent Telephone () - () - () - ()	b. Temporary Telephone () - () - () - ()	7. Telephone Number of Employer/One-Stop Office () - () - () - ()
8a. Description of Complaint or Apparent Violation (if additional space is needed, use separate sheet(s) of paper and attach to this form)		
8b. <input type="checkbox"/> I hereby give authorization to: _____ to act on my behalf regarding this complaint. Phone #: _____ Address: _____		
I CERTIFY that the information furnished is true and accurately stated to the best of my knowledge. I AUTHORIZE the disclosure of this information to other enforcement agencies for the proper investigation of my complaint. I UNDERSTAND that my identity will be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of my complaint.		
9. Signature of Complainant ⁵		10. Date Signed / /
¹ For information regarding complaints that are covered through the Employment Service and Employment-Related Law Complaint System see 20 CFR 658 Subpart E. ² If the Complaint/Apparent Violation Form is used to submit an Apparent Violation, the name of the Complainant is not necessary and may remain anonymous. Parts 2a and 2b also do not need to be filled out if the form is used for an Apparent Violation. ³ For definition of "Respondent" see 20 CFR 651.10. ⁴ Pursuant to 658-400(d), "A complainant may designate an individual to act as his/her representative." If the complainant has a designated representative, the name and contact information of the designated representative must be provided in 8b. ⁵ No signature is required at Part 9 if this form is submitted as an Apparent Violation. If the form is submitted as a complaint and a designated representative is acting on behalf of the complainant, the designated representative must sign here.		

Part II. For Official Use Only		
1. Migrant or Seasonal Farmworker? <input type="checkbox"/> Yes <input type="checkbox"/> No	4. Issue(s) involved in Complaint or Apparent Violation (*X* Appropriate Box(es)): <input type="checkbox"/> Wage Related <input type="checkbox"/> Housing <input type="checkbox"/> Child Labor <input type="checkbox"/> Pesticides <input type="checkbox"/> Health/Safety <input type="checkbox"/> Discrimination <input type="checkbox"/> Transportation <input type="checkbox"/> Trafficking <input type="checkbox"/> Sexual harassment/coercion/assault <input type="checkbox"/> Other (Specify) _____	5. If employer is an H-2A/Criteria Employer, is the complainant a: [*X* Appropriate Box]: <input type="checkbox"/> U.S. Worker <input type="checkbox"/> H-2A Worker
2. Complaint or Apparent Violation Employment Service Related (*X* Appropriate Box(es)): <input type="checkbox"/> Complaint against the Employer <input type="checkbox"/> Apparent violation involving the Employer <input type="checkbox"/> Complaint against the Local Employment Service Office <input type="checkbox"/> Apparent violation involving the Employment Service Office		
2a. Job Order No. if available: _____		
3. Complaint or Apparent Violation Employment-Related Law: <input type="checkbox"/> Yes <input type="checkbox"/> No		
6a. Referrals to Other Agencies (*X* Appropriate Box(es)): <input type="checkbox"/> WHD, U.S. DOL. <input type="checkbox"/> OSHA, U.S. D.O.L. <input type="checkbox"/> EEOC <input type="checkbox"/> Other _____	7. Address of Referral Agency (No., St., City, State, ZIP Code and Telephone No.) _____	
6b. Next Follow-up Date if complainant is an MSFW / / () - () - ()		
8. Actions Taken on Complaint/Apparent Violation (if additional space is needed for multiple actions taken, use a separate paper): Action Taken By: _____ (First and Last Name) On: _____ (Date) Action Taken: _____		
9. Complaint resolved at the local level <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," explain* _____		
10. Apparent violations resolved at the local level <input type="checkbox"/> Yes <input type="checkbox"/> No. If "No," explain* _____		
11. Provided other American Job Center Services <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," explain* _____		
*If additional space is needed for explanations, use a separate paper.		
12a. Name and Title of Person Receiving Complaint		12b. Office Address (No., St., City, State, ZIP Code)
12c. Phone Number () - () - () - ()	12d. Signature	12e. Date / /
Public Burden Statement: Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Obligation to reply is required to obtain or retain benefits (44 USC 5301). Public reporting burden for this collection is estimated to average 2 hours and 30 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.		

What kind of information about violations do customers share?

- Discrimination
- Employment Terms and Conditions
- Wrongful Termination
- Wage Payment
- Language Access
- Abuse
- Harassment/Coercion/Assault

The Agricultural Recruitment System (ARS)

- Employer determines need for workers.
- Employers then place a job order at a local State Workforce Agency (SWA).
- Local SWA prepares job order and recruits locally.
- 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 ETA, Regional Office for their review as an **Interstate Clearance Order (ICO)**.
- The ETA Regional office reviews and approves or disapproves the ICO 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.

NEBRASKA DEPARTMENT OF LABOR

Foreign Labor Certification Program

Federico Torres
Reemployment Services Supervisor

NEBRASKA

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What is the Foreign Labor Certification Program?

- Foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy
- H-2A and H-2B, and other Specialty (Professional) Workers

H-2A Temporary Agricultural Program

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

Eligibility

A U.S. employer or an association of agricultural producers who has full-time work that needs to be performed on a temporary or seasonal basis may apply to the Office of Foreign Labor Certification (OFLC) for an H-2A temporary labor certification. The general guidelines below will help you understand whether you are eligible to participate in the H-2A Program

- **You must be an employer** with a place of business physically located in the United States, possess a valid Federal Employer Identification Number (FEIN); and the ability to hire, pay, fire, supervise, or otherwise control the work of the workers you employ

Eligibility

- **The work to be performed must consist of agricultural labor or services**, such as the planting, raising, cultivating, harvesting, or production of any agricultural or horticultural commodity;
- **The work must be full-time**, at least 35 hours (or more) per work week; and,
- **The need for the work must be seasonal or temporary in nature** and tied to a certain time of the year by a recurring event or pattern, such as an annual growing cycle, normally lasting 10 months or less.

H-2A Housing Inspections

- Employers are obligated and must provide housing at no cost to the H-2A workers and U.S. workers in corresponding employment who are not reasonably able to return to their residence within the same day
- Nebraska SWA provide evidence of compliance with the applicable local, State or Federal safety and health standards by conducting housing inspections

Job Orders Compliance

- Employers must submit the job orders with the Nebraska SWA serving the area of the intended employment
- Nebraska SWA review the agricultural job orders for compliance with all regulatory requirements and notify employers in writing of any deficiencies

Referral of U.S. Workers for H-2A Job Orders

- Nebraska SWA places a copy of the job orders in its clearance system and begin recruitment of U.S. workers
- Employers are expected to cooperate with the SWA by accepting referrals of eligible U.S. workers who apply for the job
- SWA may only refer individuals who have been apprised of all the material terms and conditions of employment and who are qualified and will be available for employment

Advantages and benefits for U.S. Workers

- Creates competition for employment
- Prevailing wage for all workers-\$15.89
- Housing availability
- Transportation expense reimbursement

Resources

- U.S. Department of Labor Foreign Labor Certification:
<https://www.dol.gov/agencies/eta/foreign-labor>
- Nebraska Department of Labor Foreign Labor Certification:
<https://dol.nebraska.gov/ReemploymentServices/EmployerResources/ForeignLaborCertification>
- Questions related to Foreign Labor Certification Program should be emailed to: NDOL.FLC@nebraska.gov

Questions?

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Thank You!

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