

§ 655.123

worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such circumstances, the job offer must state that the worker will be reimbursed the full amount of such deduction upon the worker's completion of 50 percent of the work contract period. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(2) A deduction is not reasonable if it includes a profit to the employer or to any affiliated person. A deduction that is primarily for the benefit or convenience of the employer will not be recognized as reasonable and therefore the cost of such an item may not be included in computing wages. The wage requirements of § 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under this subpart, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. The principles applied in determining whether deductions are reasonable and payments are received free and clear, and the permissibility of deductions for payments to third persons are explained in more detail in 29 CFR part 531.

(q) *Disclosure of work contract.* The employer must provide to an H-2A worker not later than the time at which the worker applies for the visa, or to a worker in corresponding employment not later than on the day work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable. For an H-2A worker going from an H-2A employer to a subsequent H-2A employer, the copy must be provided not later than the time an offer of employment is made by the subsequent H-2A employer. For an H-2A worker that does not require a visa for entry, the copy must be provided not later than the time of an offer of employment. At a minimum, the work contract must contain all of the provisions required

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by this section. In the absence of a separate, written work contract entered into between the employer and the worker, the work contract at a minimum will be the terms of the job order and any obligations required under 8 U.S.C. 1188, 29 CFR part 501, or this subpart.

§ 655.123 [Reserved]

§ 655.124 Withdrawal of a job order.

(a) The employer may withdraw a job order if the employer no longer plans to file an *Application for Temporary Employment Certification*. However, the employer is still obligated to comply with the terms and conditions of employment contained in the job order with respect to all workers recruited in connection with that job order.

(b) To request withdrawal, the employer must submit a request in writing to the NPC identifying the job order and stating the reason(s) for the withdrawal.

APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

§ 655.130 Application filing requirements.

All employers who desire to hire H-2A foreign agricultural workers must apply for a certification from the Secretary by filing an *Application for Temporary Employment Certification* with the NPC designated by the OFLC Administrator. This section provides the procedures employers must follow when filing.

(a) *What to file.* An employer that desires to apply for temporary agricultural labor certification of one or more nonimmigrant workers must file a completed *Application for Temporary Employment Certification*, all supporting documentation and information required at the time of filing under §§ 655.131 through 655.135, and, unless a specific exemption applies, a copy of Form ETA-790/790A, submitted as set forth in § 655.121(a). The *Application for Temporary Employment Certification* must include a valid FEIN as well as a valid place of business (physical location) in the United States and a means by which it may be contacted for employment.

(b) *Timeliness.* A completed *Application for Temporary Employment Certification* must be filed no less than 45 calendar days before the employer's first date of need.

(c) *Location and method of filing*—(1) *Electronic filing.* The employer must file the *Application for Temporary Employment Certification* and all required supporting documentation with the NPC using the electronic method(s) designated by the OFLC Administrator. The NPC will return without review any application submitted using a method other than the designated electronic method(s), unless the employer submits the application in accordance with paragraph (c)(2) or (3) of this section.

(2) *Filing by mail.* Employers that lack adequate access to electronic filing may file the application by mail. The employer must indicate that it is filing by mail due to lack of adequate access to electronic filing. The OFLC Administrator will identify the address to which such filing must be mailed by public notice(s) and by instructions on DOL's website.

(3) *Reasonable accommodation.* Employers who are unable or limited in their ability to use and/or access the electronic *Application for Temporary Employment Certification*, or any other form or documentation required under this subpart, as a result of a disability may request a reasonable accommodation to enable them to participate in the H-2A program. An employer in need of such an accommodation may contact the NPC in writing to the address designated in a notice published in the FEDERAL REGISTER or 202-513-7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1-877-889-5627 (this is the TTY toll-free Federal Information Relay Service number) for assistance in using, accessing, or filing any form or documentation required under this subpart, including the *Application for Temporary Employment Certification*. All requests for an accommodation should include the employer's name, a detailed description of the accommodation needed, and the preferred method of contact. The NPC will respond to the request for a reasonable accommoda-

tion within 10 business days of the date of receipt.

(d) *Original signature.* The *Application for Temporary Employment Certification* must contain an electronic (scanned) copy of the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent) or a verifiable electronic signature method, as directed by the OFLC Administrator. If submitted by mail, the *Application for Temporary Employment Certification* must bear the original signature of the employer and, if applicable, the employer's authorized attorney or agent.

(e) *Scope of applications.* (1) Except as otherwise permitted by this subpart, all places of employment on an *Application for Temporary Employment Certification* must be within a single area of intended employment. Where a job opportunity involves work at multiple places of employment after the workday begins, the *Application for Temporary Employment Certification* may include places of employment outside of a single area of intended employment only as is necessary to perform the duties specified in the *Application for Temporary Employment Certification*, and provided that the worker can reasonably return to the worker's residence or the employer-provided housing within the same workday.

(2) An employer may file only one *Application for Temporary Employment Certification* covering the same area of intended employment, period of employment, and occupation or comparable work to be performed.

(f) *Information dissemination.* Information received in the course of processing *Applications for Temporary Employment Certification* or in the course of conducting program integrity measures such as audits may be forwarded from OFLC to WHD or any other Federal agency, as appropriate, for investigative or enforcement purposes.

§ 655.131 Agricultural association and joint employer filing requirements.

(a) *Agricultural association filing requirements.* If an agricultural association files an *Application for Temporary Employment Certification*, in addition to complying with all the assurances,