

Information Packet for Hawaii's Farmers Regarding H2-A Visa Workers

Department of Labor & Industrial Relations



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EMPLOYERS GUIDE TO H2-A VISA WORKERS

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Presented by Elaine Young, Administrator – Workforce Development Division

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Presented by Pamela Martin, Administrator – Wage Standards Division

INTRODUCTION

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

The Department of Labor and Industrial Relations (DLIR) is responsible for ensuring and increasing the economic security, well-being, and productivity of Hawaii's workers. The DLIR promotes access to employment and strives to alleviate the economic hardship of workers during periods of disability or temporary unemployment; and protect the employment rights of workers and assure a safe and healthy workplace.

The DLIR is committed to protecting the rights of working people while ensuring the interests of businesses and employers. Recent economic realities have made it clear that we can no longer operate in a business versus labor approach. Decisions on policies and legislation must now be geared toward mutual success for labor and business, as their fate is undoubtedly dependent on each other. As a result, the DLIR has adopted a more business-friendly approach to work with employers, eliminate regulations, policies and practices that may hinder or prevent the growth of business, and help reduce the cost of doing business in Hawaii.

H2-A VISA WORKERS

In recent years, there has been an increase in the number of alien workers from foreign countries working in Hawaii in the area of farm workers who are authorized under the Federal Immigration Reform and Control Act (H-2A). The Act authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. Employers that participate in this program are required to file an application with the Department of Labor and Industrial Relations' ("DLIR") Workforce Development Division ("WDD") which processes the initial application on behalf of the United States Department of Labor.

The H-2A program requires Hawaii farm employers to provide the following benefits to their temporary alien workers:

1. Minimum rates of pay, at least at the prevailing wage level;
2. Transportation to and from their temporary residence to worksites;
3. Housing in accordance with federal and state safety and health standards;
4. Meals;
5. Workers' Compensation insurance;
6. Temporary Total Disability insurance; and
7. Prepaid Health Care Insurance

This briefing and material provides general background information on Hawaii labor and employment law and is not intended to serve as a substitute for legal counsel. For specific legal advice on individual situations, please consult an attorney.



Workforce Development Division

- Recruit Seasonal Farm Workers
- Arrange Housing Inspections
- Reviews H2A Applications

Ms. Elaine Young, Administrator

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WORKFORCE DEVELOPMENT

H-2A - Certification for Temporary or Seasonal Agricultural Work and Recruitment

BACKGROUND OF WORKFORCE DEVELOPMENT DIVISION

- ❖ The Workforce Development Division (WDD) is a customer-driven workforce development system that assists job seekers, workers and industries. WDD provides a free referral and placement service that links qualified job seekers with employers.
- ❖ Additionally, the WDD also processes H-2A visa applications and conducts housing inspections to employers submitting H-2A visa applications.
- ❖ As an additional resource for farmers seeking to recruit a local workforce, there are numerous One Stop Career Centers which can provide assistance in placing job orders (recruitment). The One Stop Career centers can help with job listing, recruitment, subsidized training, downsizing/transitioning, access to information including labor market, labor laws, tax credits and hiring incentives.

THE LAW

- ❖ H-2A program is authorized by the Immigration Reform and Control Act of 1986 (IRCA)
- ❖ Establishes a way for agricultural employers who anticipate a shortage of domestic workers to apply for permission to bring nonimmigrant aliens to perform agricultural work of a temporary nature
- ❖ The U.S. Attorney General through the Bureau of U.S. Citizenship and Immigration Services (USCIS) has the authority to approve an employer's petition to import foreign workers. Before the USCIS can approve an employer's petition, the law requires the employer to apply to the U.S. Department of Labor (USDOL) for a certification to allow workers to work for them.

HOW TO APPLY FOR AN H2-A VISA

- ❖ Employer files an H-2A application with the U.S. Department of Labor ("USDOL) and the Hawaii Department of Labor and Industrial Relations ("DLIR"), Workforce Development Division ("WDD") at least forty-five (45) calendar days before the first date on which workers are needed:

USDOL at:
Chicago National Processing Center
844 N. Rush Street
12th Floor
Chicago, IL 60611

DLIR, Workforce Development Division at:
830 Punchbowl Street, Room 329
Honolulu, HI 96813

- ❖ Applications and forms can be found in the Foreign Labor Certification website at www.foreignlaborcert.doleta.gov.
- ❖ The National Processing Center of the USDOL will notify the employer in writing of the decision to accept or reject an employer's application
- ❖ If accepted, will require that the job order be placed into appropriate intrastate and interstate clearances
- ❖ If rejected, the National Processing Center will notify the employer in writing and allow the employer to amend the application within five calendar days of the notice of non-acceptance.

REQUIREMENTS OF AN H2-A VISA APPLICATION

Employers filing H-2A applications must meet the following specific conditions:

- ❖ **Recruitment:** Engage in an active effort in recruitment of U.S. workers, including newspaper and radio advertising
- ❖ **Wages:** The hourly rate must be at least as high as the applicable Adverse Effect Wage Rate (AEWR), federal or state minimum wage, or the applicable prevailing hourly wage rate, whichever is higher. The AEWR is established every year by USDOL
- ❖ **Housing:** Provide free housing to all workers who are not reasonably able to return to their residences the same day. Housing must meet the standards of the DLIR, Hawaii Occupational Safety and Health Division
- ❖ **Meals:** Provide either 3 meals a day to each worker or furnish free cooking and kitchen facilities for workers to prepare their own meals.
- ❖ **Transportation:** Responsible for the following transportation of workers:
 - After a worker has completed fifty percent of the work contract period, employer must reimburse the worker for the cost of

transportation and subsistence from the place of recruitment to the place of work

- Provide free transportation between the employer's housing and the worksite for any worker who is provided housing
- Upon completion of the work contract, the employer must pay economic costs of a worker's subsistence and return transportation to the place of recruitment.

❖ **Proof of Coverage for Workers' Compensation**

❖ **Tools and Supplies**

❖ **Three Fourths Guarantee:** Guarantee to offer each worker employment for at least three-fourths of the workdays in the contract period.

❖ **Fifty Percent Rule:** Hire any worker who applies for a job until fifty percent of the period of the work contract has elapsed.

❖ **Labor Dispute:** Assure that the job opportunity for which H-2A certification is being requested is not vacant because the former employee is on strike.

❖ **Certification Fee:** A fee will be charged to an employer granted an H-2A certification. The fee is \$100, plus \$10 for each job opportunity certified, up to a maximum fee of \$1,000 for each certification granted.

❖ **Other Conditions:** Keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each payday. Also must pay worker at least twice monthly. The employer must provide a copy of a work contract or the job order to each worker.

HOUSING REQUIREMENTS

HOUSING SITE

- ❖ All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.
- ❖ All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping

quarters are located shall be at least 500 feet from any area in which livestock is kept.

- ❖ The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

SHELTER/ACTUAL HOUSING

- ❖ Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.
- ❖ Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.
- ❖ Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.
- ❖ The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.
- ❖ All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.
- ❖ Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.
- ❖ All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.
- ❖ All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.
- ❖ In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.
- ❖ In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed

and screened shelter. Sanitary facilities shall be provided for storing and preparing food.

- ❖ All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

WATER SUPPLY

- ❖ An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.
- ❖ A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2 1/2 times the average hourly demand.
- ❖ The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.
- ❖ Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

TOILET FACILITIES

- ❖ Toilet facilities adequate for the capacity of the camp shall be provided.
- ❖ Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.
- ❖ A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.
- ❖ Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same

building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.

- ❖ Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.
- ❖ Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.
- ❖ Every water closet installed on or after August 31, 1971, shall be located in a toilet room.
- ❖ Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.
- ❖ An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.
- ❖ Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.

SEWAGE DISPOSAL FACILITIES

- ❖ In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.

LAUNDRY, HANDWASHING, AND BATHING FACILITIES

- ❖ Laundry, handwashing, and bathing facilities shall be provided in the following ratio:
 - Handwash basin per family shelter or per six persons in shared facilities.
 - Shower head for every 10 persons.
 - Laundry tray or tub for every 30 persons.
 - Slop sink in each building used for laundry, hand washing, and bathing.
- ❖ Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

- ❖ An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.
- ❖ Every service building shall be provided with equipment capable of maintaining a temperature of at least 70 deg. F. during cold weather.
- ❖ Facilities for drying clothes shall be provided.
- ❖ All service buildings shall be kept clean.

LIGHTING

- ❖ Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet.
- ❖ Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture.
- ❖ Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

REFUSE DISPOSAL

- ❖ Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.
- ❖ Garbage containers shall be kept clean.
- ❖ Garbage containers shall be emptied when full, but not less than twice a week.

CONSTRUCTION AND OPERATION OF KITCHENS, DINING HALL, AND FEEDING FACILITIES

- ❖ In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965), which is incorporated by reference as specified in Sec. 1910.6.
- ❖ A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.

- ❖ No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

INSECT AND RODENT CONTROL

- ❖ Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

FIRST AID

- ❖ Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.
- ❖ Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

REPORTING COMMUNICABLE DISEASE

- ❖ It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.
- ❖ Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram, telephone, electronic mail or any method that is equally fast.

ONE-STOP CAREER CONTACT INFORMATION
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ADDITIONAL RESOURCES

- ❖ Foreign Labor Certification Program website: www.foreignlaborcert.doleta.gov.
- ❖ AEWL website: www.foreignlaborcert.doleta.gov/foreign/adverse
- ❖ Bureau of Citizenship: www.uscis.gov/
- ❖ One-Stops: hawaii.gov/labor/wdc/onestops.



Disability Compensation Division

- Workers' Compensation
- Prepaid Healthcare
- Temporary Disability Insurance

Mr. Gary Hamada, Administrator

830 Punchbowl St., Room 211

Honolulu, HI 96813

Phone: (808) 586-9161

Fax: (808) 586-9219

WC Email: dliir.workcomp@hawaii.gov

PHC Email: dliir.prepaidhealthcare@hawaii.gov

TDI Email: dliir.tempdisabilityins@hawaii.gov

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DISABILITY COMPENSATION

BACKGROUND OF DISABILITY COMPENSATION DIVISION

The Disability Compensation Division ("DCD") administers: the Workers' Compensation ("WC") law, the Temporary Disability Insurance ("TDI") law, and the Prepaid Health Care (PHC) law. All employers with one or more employees, whether working full-time or part-time, are directly affected.

If an employer fails to provide workers' compensation, temporary disability insurance, or prepaid health care insurance coverage for their employees, then the employer would become liable for any medical, wage loss, or permanent disability benefits.

WORKERS' COMPENSATION INSURANCE

Background:

The Disability Compensation Division administers the law to ensure that employers provide their employees who suffer an industrial injury or illness with medical care, wage loss replacement and permanent disability benefits

What's the law?

If an employee is injured on the job, the injured employee is provided with reasonable and necessary medical care, partial wage replacement if unable to return to work, and permanent disability benefits resulting from the work injury.

What you need to do?

The employer is required to provide workers' compensation benefits to their employees either by purchasing an insurance policy from an insurance carrier or by self-insurance. The employer pays the entire insurance premium.

The employer must file an Injury report (WC-1) within 7 working days of knowledge of the work injury. Employers should ensure that the injured employee is provided with immediate medical care. Employers report the injury to their insurance carrier and your insurance carrier will file the WC-1 Report of Injury form with the Department.

TEMPORARY DISABILITY INSURANCE

Background

Provides eligible employees with wage loss replacement for non-work related sickness or injury.

What is the law?

If an eligible employee suffers a non-work related illness or injury, the employee is provided partial wage replacement (58%) after a 7 day waiting period, for a maximum period of 26 weeks. Employees must work 20 or more hours per week for 14 weeks during the past 52 weeks immediately preceding the disability to be eligible.

What you need to do?

The employer is required to provide temporary disability insurance either by purchasing an insurance policy from an insurance carrier or by self-insurance. The employer may charge their employees up to 50% of the insurance premium cost but not more than 0.5% of the employee's weekly wage not to exceed \$3.96 per week

If an employee suffers a non-work disability, employers must provide the employee with TDI-45 forms. The employee completes Part A and the doctor completes Part C. The employee returns the form to the employer who completes Part B and submits the form to the insurance carrier.

PREPAID HEALTH CARE INSURANCE

Background

Provides health care to all eligible employees for non-work related illnesses or injuries.

What's the law?

If an eligible employee suffers a non-work related illness or injury, the employee must be provided with medical care to treat the illness or injury. Employees must work at least 20 hours per week for 4 consecutive weeks to be eligible.

What you need to do?

The employer is required to provide health care insurance either by purchasing a health care policy from a health care contractor or by self-insurance. The employer may charge their employees up to 1.5% of their monthly wage to pay for insurance premiums.

If an employee requires medical care not related to work, they show their insurance card to their physician and the physician bills the insurance contractor. The employee would normally be responsible for a portion (co-pay) of the medical bill.

You may be exempt from providing health care insurance coverage if you qualify for seasonal employment. The seasonal exempt period can be up to 25 weeks. The man-hours during that period must exceed 150% of the average weekly man hours.

CONTACT INFORMATION

Oahu

Workers' Compensation Insurance	586-9166
Workers' Compensation Claims	586-9161
Temporary Disability	586-9188
Prepaid Health Care	586-9188

East Hawaii – Hilo 974-4000-69200 (Toll free to Honolulu)

West Hawaii – Kona 322-4808

Maui 984-2080

Kauai 274-3354



Unemployment Insurance Division

- Collect UI Taxes
- Determine Eligibility for UI Claimants
- Determine Application for Agricultural Exclusion

Ms. Linda Uesato, Administrator

830 Punchbowl St., Room 325

Honolulu, Hawaii 96813

Phone: (808) 586-9070

Fax: (808) 586-9077

UI Email: dliir.unemployment@hawaii.gov

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UNEMPLOYMENT INSURANCE

BACKGROUND OF UNEMPLOYMENT INSURANCE DIVISION

What is UI?

Unemployment Insurance is a program that provides temporary financial assistance to qualified workers who become unemployed through no fault of their own. The Unemployment Insurance program is a federal-state social insurance system established by the Social Security Act of 1935

Who Pays for UI Benefits?

Employers pay contributions into the UI Trust fund. There are no deductions made from the employee's wages. Employer contribution rates are determined each calendar year and are generally based on an employer's actual experience. Contribution rates could vary from 0% to 5.4%.

THE LAW

What is Agricultural Labor?

Section 383-9 defines Agricultural Labor as all service performed:

1. On a farm in the employ of any person in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and furbearing animals and wildlife;
2. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
3. In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

4. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;
5. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in 4 above, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;
6. The provisions of 4 and 5 above shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or
7. On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used above, "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Are All Agricultural Labor Subject to UI Coverage?

No. Agricultural labor is excluded from UI Coverage under Section 383-7 ((1) if the employer paid less than \$20,000 total cash wages during each calendar quarter in both the current and the preceding calendar years and if the employer had in each of the current and the preceding calendar years:

- (1) nine employees or less performing agricultural labor in any one calendar week, whether or not the same individuals did such labor in each week, or
- (2) 19 calendar weeks or less, whether consecutive or not, in which agricultural labor was performed by the employees.

For example, in each calendar quarter in 2006 and 2005, XYZ Company paid \$19,000 in total cash wages. XYZ Company's agricultural labor would be excluded if during any one calendar week in 2005 and 2006, there were nine employees or less. If XYZ Company had more than nine employees, (12 employees) the exclusion would still apply if the 12 employees performed 19 calendar weeks or less in agricultural labor.

WHAT YOU NEED TO DO

Employer Record Keeping Requirements

Records are required by law and must be kept for at least five years after the calendar year in which the remuneration was earned, and must show:

1. Beginning and ending date of each payroll period
2. Total wages paid for payroll period and date paid
3. Employee's name, social security number and rate of pay
4. Date the employee was hired, separated and reason for separation
5. Dates employee worked
6. State in which services were performed

In addition, separate entries must be made to record money wages, cash value of remuneration, and special payments like bonuses, prizes or gifts.

Posters and Notices Required

Employers are required to post the "Official 2006 State Labor Law" poster at each work place. This poster gives information to workers on their benefit rights and the Hawaii Tele-Claim phone number to file their claim

Employer Reporting Requirements:

1. Employers are required to pay contributions on a quarterly basis on Form UC-B6, "Quarterly Wage, Contribution and Employment and Training Assessment Report". Employers must complete and submit Form UC B-6 and pay the contributions that are due by the last day of the month following each calendar quarter. If the last day of the month falls on a weekend or holiday, the report is due on the next working day. Employers are assessed a 10% penalty on any delinquent contributions that are due . An employer who disagrees with an assessment or penalty, after first paying the amount assessed, may file an appeal within 20 days after the date the assessment notice was mailed. If you cannot pay the contributions that are due you must still file Form UC B6 to avoid being assessed the maximum tax rate of 5.4%. You must also contact the UI Division to setup a pay plan to avoid possible legal action.
2. Employers are able to file their quarterly wage information using Hawaii Unemployment Insurance (HUI) Express. You may register to use HUI Express at <http://hui.ehawaii.gov>. Download a FREE and easy to use QWRS software program to create an electronic quarterly wage file, which you can send over the internet without any fees. Watch for future announcements as HUI Express will soon be available to file your Form UC-B6 and pay your contributions via e-Check without any fees.
3. Employers must complete Form UC-25 with any status changes for your company (name change, address change, termination of business.

CONTACT INFORMATION

UI BRANCHES/LOCAL OFFICES	PHONE	FAX
<hr/>		
OAHU BRANCH		
830 PUNCHBOWL ST RM 324		
P O BOX 4278		
HONOLULU, HI 96812-4278		
MANAGER, JAMES HOM	586-8946	586-8958
 HONOLULU OFFICE	 586-8970	 586-8980
830 PUNCHBOWL ST RM 110	586-8971	
P O BOX 4090		
HONOLULU, HI 96812-4090		
 KANEOHE OFFICE	 233-3677	 233-3684
45-1141 KAMEHAMEHA HWY RM 201		
KANEOHE HI 96744-3224		
 WAIPAHAU OFFICE	 675-0030	 675-0025
94-275 MOKUOLA ST RM 301		
WAIPAHAU HI 96797-3369		
 EMPLOYER SERVICES SECTION	 586-8913	 586-8929
830 PUNCHBOWL ST RM 437		
P O BOX 700		
HONOLULU HI 96809-0700		
 LIABLE (INTERSTATE) CLAIMS	 586-8960	 586-8980
BENEFIT OVERPAYMENT	586-8947	
UNEMPLOYMENT ABUSE	586-8947	
STATEMENT OF CHARGES	586-8951	
EMPLOYER REGISTRATION	586-8913	
CONTRIBUTION ASSESSMENT	586-8917	
<hr/>		
HAWAII BRANCH		
MANAGER, ALVIN INOUE	974-4316	974-4085

HILO OFFICE 974-4086 974-4085
1990 KINOOLE ST
HILO HI 96720

KONA OFFICE 322-4822 322-4828
81-990 HALEKII ST RM 2090
ASHIKAWA BLDG
P O BOX 167
KEALAKEKUA HI 96750-0167

EMPLOYER SERVICES SECTION 974-4095 974-4085

KAUAI BRANCH
MANAGER, MARILYN YAMAGUCHI 274-3040 274-3046
3-3100 KUHIO HWY STE 12
LIHUE HI 96766-1153

EMPLOYER SERVICES SECTION 274-3025 274-3046

MAUI BRANCH
MANAGER, FAITH NAGATA 984-8407 984-8444
54 S HIGH ST RM 201
WAILUKU HI 96793-2198

MOLOKAI OFFICE 553-1750 553-1753
55 MAKAENA PL RM 4
KAUNAKAKAI HI 96748-1858

EMPLOYER SERVICES SECTION 984-8410 984-8444



Wage Standards Division

- Wages and Hours
- Deductions from Wages
- Child Labor
- Vacation, Sick Leave

Ms. Pamela Martin, Administrator

830 Punchbowl St., Room 340

Honolulu, Hawaii 96813

Phone: (808) 586-8777

Fax: (808) 586-8766

WSD Email: dllr.wages@hawaii.gov

JULY 2006

WAGE AND HOUR

BACKGROUND OF WAGE STANDARDS DIVISION

The Wage Standards Division ("WSD") administers and enforces labor laws relating to minimum wage; overtime; unpaid wages; illegal deductions; child labor; family leave; work injury termination; prevailing wages and hours on public works construction projects; and lie detector tests.

H2-A WORKERS

- ❖ H2-A Workers are foreign nationals with temporary visas authorized to work on a specific agriculture farm. The laws outlined here apply to all H2-A Workers working on your farm in addition to US citizen workers.
- ❖ Questions about the status or the Adverse Effect Wage Rate (AEWR) of an H2-A worker should be made to the Workforce Development Division, Hawaii Department of Labor and Industrial Relations at (808) 586-8877

PAYMENT OF WAGES LAW

PAYMENT OF WAGES AND OTHER COMPENSATION LAW

- ❖ Must be paid at least twice a month, and within 7 days after the end of the pay period
- ❖ Must be paid by cash or checks convertible to cash on demand; payment with debit cards allowed only if voluntary and no fee is charged to employee to ensure the receipt of full wages
- ❖ Must include a detailed pay statement with amount paid, hourly wage, pay period, and reasons and amounts of any withholding.
- ❖ For employees who are **discharged**, wages are to be paid in full on the date of discharge, or if not possible, no later than the next work day
- ❖ For employees who **quit**, wages are to be paid in full on the next regularly scheduled payday

Withholding from an employee's wages are not allowed for:

- ❖ Fines
- ❖ Cash shortages in a shared or common money till

- ❖ Fines, penalties, or replacement cost for breakage
- ❖ Losses due to faulty workmanship, lost or stolen property, damage to property, default of customer credit or nonpayment for goods or services received by customer, unless such losses are due to the willful or intentional disregard of employer's interest

Company Benefits:

- ❖ **Vacation, sick leave and holidays** are **NOT** required by law, but if provided, must be in writing and issued to employees or posted in an accessible place
- ❖ **Breaks** are **NOT** required by law, except for 14 and 15 years old, and minors 10-14 years old in coffee harvesting

FARMS WITH 20 OR MORE WORKERS

- ❖ Must pay at least **MINIMUM WAGE**, currently \$6.75 per hour; and will be \$7.25 as of Jan. 1, 2007.
- ❖ Must pay **OVERTIME** compensation for hours worked over 40 per work week. Under certain conditions, may pay overtime after 48 hours per workweek for 20 weeks per year commencing July 1.

SPECIAL RULES

- ❖ Coffee farms are not required to pay Hawaii minimum wage and overtime to employees engaged in coffee harvesting.
- ❖ Aquaculture farms are not required to pay Hawaii minimum wage or overtime to employees engaged in the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge seaweed, or other aquatic forms of animal or vegetable life.

CHILD LABOR LAW

Requirements for the certification of working minors under age 18 prior to the start of employment

- ❖ **10-14 years old** in coffee harvesting only. Must obtain a certificate, be under the direct supervision of parent or guardian, limit hours to non-school days from 6 am to 6 pm with a 15 min. rest period each 2 hour work period and a 1 hour meal break. Not more than: 6 hours a day; 30 hours a week; or 5 consecutive days. Prohibited from working in hazardous occupations or environments. Under 12 are

prohibited from using any harvesting equipment. Form for certificate available on-line.

- ❖ **14 -15 years old:** Must obtain a certificate per job and employer (form available online). Minors must not work during school hours, and not after 7 p.m. on a school night, and not after 9 p.m. on during school breaks. Minors are prohibited from working with power tools and equipment or in hazardous occupations or environments. (See attached “Restrictions for Minors”)
- ❖ **16 -17 years old:** Must obtain a certificate of age card. Minors must not work during school hours, and must not work with certain power tools and equipment, or in hazardous occupations or environments. Employer must record certificate number and check minor’s proof of age document. Can obtain certificate on-line at website.

CONTACT INFORMATION

<u>Office</u>	<u>Address</u>	<u>Phone No.</u>	<u>Fax No.</u>
Oahu	830 Punchbowl Street Suite 340 Honolulu , HI 96813	(808)586-8777	(808) 586-8766
Kauai	State Building Room 202 3060 Ewa Street Lihue , Hawaii 96766-1887	(808) 274-3351	(808) 274-3355
Maui	State Office Building #2 2264 Aupuni Street, Room 106 Wailuku , HI 96793	(808) 243-5322	(808) 984-2071
Hawaii (Hilo)	State Building Room 108 75 Aupuni Street Hilo , HI 96720	(808) 974-6464	(808) 974-6460
West Hawaii	Post Office Building Room 2087 81-990 Halekii Street Mailing: P. O. Box 49 Kealakekua , HI 96750	(808) 322-4808	(808) 322-4813

RESTRICTIONS FOR MINORS IN AGRICULTURE WORK

Hazardous Occupations:

§12-25-57 Occupations involved in agricultural operations. The following occupations in agriculture are declared **hazardous** for minors **under sixteen** years of age:

- (1) Transporting, transferring, or applying anhydrous ammonia;
- (2) Any occupation, including handling, applying, cleaning, or decontaminating equipment, associated with any pesticide restricted by the rules of the state department of agriculture or the occupational safety and health standards of the department;
- (3) Operating a tractor of over twenty PTO (power take-off) horsepower or connecting or disconnecting an implement or any of its parts to or from such tractor;
- (4) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any work involving physical contact associated with the operation of) any of the following machines:
 - (A) Corn picker, rotary flailing type forage harvester;
 - (B) Feed grinder, crop dryer, silo filler, roughage blower, auger conveyor, or the unloading mechanism of a non-gravity type self-unloading wagon or trailer;
 - (C) Non-walking-type rotary tiller, post-hole digger and post-driver;
 - (D) Earthmoving, trenching;
 - (E) Fork lift, potato combine; and
 - (F) Power-driven circular, band, or chain saw;
- (5) Working in a yard, pen, or stall occupied by a bull, boar, stud horse, cow with newborn calf, or sow with newborn pig;
- (6) Working from a ladder or scaffold at a height of over twenty feet;
- (7) Felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than six inches; and
- (8) Working inside any storage of a gas-tight type nature, inside a silo within two weeks after silage has been added, inside a silo when a top unloading device is in operating position, or inside a manure pit.

[Eff. Oct. 5, 1981] (Auth: HRS §§390-2, 390-6) (Imp: HRS §390-2)

§12-25-59 Non-hazardous occupations for minors fourteen years of age and over in retail, food service, and gasoline service establishments. The following occupations in retail, food service, and gasoline service establishments shall not be deemed hazardous for minors who have attained the age of fourteen:

- (1) Office and clerical work, including the operation of office machines;
- (2) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;
- (3) Price marking and tagging by hand or by machine, assembling orders, packing, and shelving;
- (4) Bagging and carrying out customers' orders;
- (5) Errand and delivery work by foot, bicycle, and public transportation;
- (6) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers or cutters;
- ...
- (9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from those where goods are manufactured or processed or stored in warehouses. [Eff. Oct. 5, 1981] (Auth: HRS §§390-2, 390-6) (Imp: HRS §390-2)