

THE QUARTERLY HARVEST

AUGUST 2022, ISSUE VIII

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Welcome to our latest edition of the *Quarterly Harvest*! It has been a busy summer, the harvest is soon starting, and we are continuing to work hard to meet and educate as many agricultural workers as possible about their labor rights. Since June 2022, we have met more than 420 workers throughout Minnesota and North Dakota!

Have a great harvest season!

Griselt Andrade, Lead Attorney

BEWARE OF ILLEGAL H-2A RECRUITMENT FEES

Some H-2A employment agencies, employers, and/or individual recruiters illegally charge recruitment fees to participating workers. The organization Centro De Los Derechos Del Migrante, Inc. (CDM) surveyed hundreds of Mexican H-2A workers about this illegal practice. Fifty-eight percent (58%) of respondents reported having paid a "recruitment fee" to a recruiter. The CDM notes that \$590 USD is the average amount paid.

After paying such fee, some workers arrive in the U.S. only to discover that the employment was falsely promised and/or that they are in debt before the start of the H-2A employment period. Illegal recruitment fees may also force workers to work in unsafe conditions due to financial responsibility to pay back the debt. Some H-2A workers rely on this program as a main source of income. These workers make significant sacrifices traveling to the U.S., sometimes being away from their homes and families annually for up to 10 months at a time. It is important for H-2A workers to know their rights and avoid paying illegal recruitment fees.

RED FLAGS

H-2A workers can face many employment contract violations as early as the recruitment stage. It is important to know what signals to look out for that may lead to illegal recruitment fees and/or other forms of violations.

An H-2A worker should be aware that any recruitment fees charged are a violation of the H-2A program. For example, H-2A employers and their agents generally advertise and promote work in the U.S., but not everything stated may be true. For example, a "Mexican Recruiter" recruited hundreds of workers to come to the U.S., but those workers became victims of fraud ("Recruitment Revealed," CDM). Each worker paid the "recruiters" about \$800 USD in recruitment fees. Yet when the fraud scheme was revealed, the workers were left without work, and many were in debt.

Here is a list of signals provided by the CDM that may alert you of fraudulent activity in recruitment fees:

- You are charged an amount more than the cost of the work visa (Please note, it is the responsibility of the H-2A employer to pay for the visa fee.).
- You are guaranteed a U.S. work visa. Only an official representative of the consulate makes that final decision.
- You are promised a significantly higher wage than the minimum or average wage for agricultural work, including higher than the adverse effect wage rate of the U.S. state where you will work.
- You are offered an H-2A visa but are told that you will not be doing agricultural work.
- You are not informed where exactly you will be working at (employer, state, etc.).
- You are told that through the H-2A visa you will be able to become a permanent resident in the future.
- You are told you will not be required to attend a U.S. consulate interview.

If you experience any of these signals, please avoid paying a recruitment fee and disclosing personal information. If you are charged an illegal recruitment fee, if possible, keep the names of those who charged you and receipts of the recruitment fee payment(s).

Please also visit www.contratados.org/en to learn more about your recruitment rights. If you are or were an H-2A worker in Minnesota or North Dakota and have questions or concerns about illegal recruitment fees, call us at 1-800-652-9733.

TRAVEL REIMBURSEMENTS FOR H-2A WORKERS

If you are a farmworker with an H-2A visa, your employer may be required to pay for some or all of your travel costs. Travel costs include transportation costs (bus or airplane ticket or gas, for example) and meals incurred from the place of recruitment to the employer's worksite.

Employers must reimburse inbound travel costs for any H-2A worker by the 50% mark of the employment contract period. If the H-2A worker completes the entire contract, the employer must also reimburse them for travel costs to get back home. The employer must also pay these costs if the worker is terminated without cause and has no immediate, subsequent H-2A employment. If the worker has subsequent H-2A employment, and the subsequent employer has not agreed to pay the worker's travel costs to get to the new job site, the first employer must cover those travel expenses.

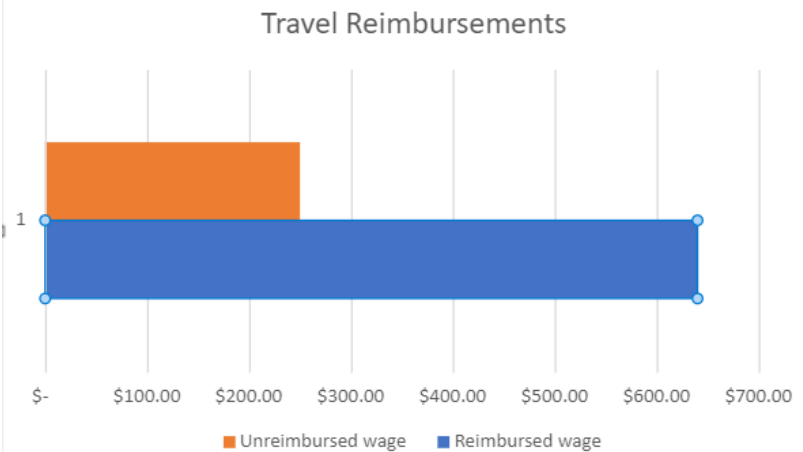
If an H-2A worker is displaced from their employment by a U.S. agricultural worker before completing 50% of the employment contract, the employer must pay the H-2A worker's transportation and food costs to return home from the worksite.

Additionally, U.S. agricultural workers doing the same work as H-2A workers are generally entitled to the same benefits as H-2A workers.

An employer may not charge an H-2A worker for visa application fees, consulate interviews, fingerprinting, or border crossing fees.

An employer may need to reimburse an H-2A worker before the 50% mark of the employment contract if the worker's travel costs reduce their first week's pay below the federal minimum wage of \$7.25 per hour. For example, if an H-2A employee works 40 hours during the first week at \$15 per hour, \$600 is earned. Consider if that employee has already spent \$350 to travel from the place of recruitment to the worksite. That means the real earnings are \$250: the \$600 earned minus the \$350 of travel expenses.

WEEK 1 WAGES EARNED REIMBURSED VS UNREIMBURSED



AN EMPLOYER MAY NEED TO REIMBURSE AN H-2A WORKER BEFORE THE 50% MARK OF THE EMPLOYMENT CONTRACT IF THE WORKER'S TRAVEL COSTS REDUCE THEIR FIRST WEEK'S PAY BELOW THE FEDERAL MINIMUM WAGE OF \$7.25 PER HOUR.

FOR EXAMPLE, IF AN H-2A EMPLOYEE WORKS 40 HOURS DURING THE FIRST WEEK AT \$15 PER HOUR, \$600 IS EARNED.

CONSIDER IF THAT EMPLOYEE HAS ALREADY SPENT \$350 TO TRAVEL FROM THE PLACE OF RECRUITMENT TO THE WORKSITE. THAT MEANS THE REAL EARNING IS \$250: THE \$600 EARNED MINUS THE \$350 OF TRAVEL EXPENSES.

NEXT, \$250 IS DIVIDED BY THE 40 HOURS WORKED AMOUNTING TO AN HOURLY RATE OF ONLY \$6.25. THAT IS \$1 PER HOUR BELOW THE FEDERAL MINIMUM WAGE.

\$1 MULTIPLIED BY 40 HOURS IS \$40, WHICH MEANS THAT THE EMPLOYER WOULD OWE \$40 MORE FOR THAT FIRST WEEK TO ENSURE THE H-2A WORKER RECEIVES AT LEAST MINIMUM WAGE.

TRAVEL REIMBURSEMENTS FOR H-2B WORKERS

As with H-2A workers, H-2B employers must provide or reimburse H-2B workers for travel costs. The employer is required to keep accurate records of the costs of transportation and meals incurred by the worker, the amount reimbursed, and the date(s) of reimbursement.

The employer must pay the worker at the time of departure for their travel costs if the worker completed the period covered by the job order (not including extensions).

This is also true if the worker is dismissed for any reason prior to that period and has no immediate, subsequent H-2B employment. If the worker does have subsequent employment but the subsequent employer has not agreed to pay for the worker's transportation to the new job site, the previous employer must pay for such transportation and meals.

All employer-provided transportation for H-2A and H-2B workers must comply with all applicable federal, state, or local laws and regulations.

If you are or have been an H-2A or H-2B (forestry) worker in Minnesota or North Dakota and have questions about travel reimbursements, contact us at 1-800-652-9733. You do not need to be in the U.S. to contact us.

STAFF SPOTLIGHT: EMILY

Name of staff member: Emily Sanchez

Length of time at AWP: July - October 2022

I joined SMRLS because I am passionate about helping others and want to make a difference for all the hard-working agricultural workers.



Staff pictured: Emily Sanchez

Coming from immigrant parents, I want to make sure that immigrant workers are receiving the information they need to succeed and feel heard. I also enjoy participating in outreach and events meeting new people as well as informing them about their rights. I love working with my team as well because of how helpful and supportive they've been.

I love going out to farms and ranches, it is a nice break from the city. The long outreach drives are also full of great conversations, beautiful views and quick restroom breaks. I enjoy the feeling of appreciation people have as well when they realize we have driven from far away to inform them about their rights. I am grateful that I am available to direct them to a great team if they have issues.

ABOUT THE AWP

Are you working or have you recently worked in agriculture in Minnesota or North Dakota? Do you have a legal question or concern related to that work? If so, SMRLS' Agricultural Worker Project may be able to help. We assist agricultural workers with employment-related legal issues and are committed to improving the working and living conditions of agricultural workers in Minnesota and North Dakota.

CONTACT THE AWP



Intake line: 1-800-652-9733



Call or send a text/WhatsApp: 507-475-0804 (Minnesota) or 701-212-2642 (North Dakota)



Email: awp@smrls.org



[Fb.com/AgWProject](https://fb.com/AgWProject)



Hours: Monday–Friday
8 a.m.–5 p.m.



We speak English and Spanish and have interpreters available in other languages.