

# THE WALL STREET JOURNAL

- You commit 3 felonies a day Article written by L. Gordon Crovitz September 27, 2009
- Many Industries Including H-2B Forestry have a mine field or regulations to step through.....**NO CONTRACTORS ARE 100% COMPLIANCE**

# H-2 PROGRAM CHANGES

Housing Requirement for H-2B Itinerate Employers

Level 3 of 1-4 Forest & Conservation Worker (Mean Wage)

Three Quarter Wage Guarantee *STILL ALIVE* and Well based on 120 day span of time. DOL will not audit an Employer on this point due to Appropriation cuts, but an individual or second party can take action on behalf of workers

# WAGE RATES VERIFICATION

- <http://www.flcdatcenter.com>
- 1. Choose State
- 2. Area
- 3. Enter Code: 45-4011 Forest & Conservation Worker

You selected the All Industries database for 7/2016 - 6/2017.

Your search returned the following: [Print Format](#)

<b>Area Code:</b>	10540
<b>Area Title:</b>	Albany, OR MSA
<b>OES/SOC Code:</b>	45-4011
<b>OES/SOC Title:</b>	Forest and Conservation Workers
<b>GeoLevel:</b>	2
<b>Level 1 Wage:</b>	\$11.99 hour - \$24,939 year
<b>Level 2 Wage:</b>	\$13.51 hour - \$28,101 year
<b>Level 3 Wage:</b>	\$15.04 hour - \$31,283 year
<b>Level 4 Wage:</b>	\$16.56 hour - \$34,445 year
<b>Mean Wage (H-2B):</b>	\$15.04 hour - \$31,283 year

This wage applies to the following O\*Net occupations:

**45-4011.00 Forest and Conservation Workers**

## INLAND NW WAGE RATES

- Oregon            \$15.04 to \$17.05
- Idaho             \$15.12 to \$15.45
- Washington     \$12.59 to \$15.12
- Montana          \$12.45 to \$12.96

# **DOL STATES “WIDE SPREAD ABUSE HAS LEAD TO HISTORIC DENIALS OF H-2B APPLICATIONS”**

- This season (in the past 3 weeks) 4 West Coast Contractors TO DATE have either lost the opportunity to gain certification or been denied their application by USCIS after the USDOL Certified their need
- These 4 contractors represent approximately 220 workers
- Since 1994 I (Alpha Services) had my(our) first Certification denied last summer for here in the Inland NW

# LOSS OF THE RETURNING WORKER EXEMPTION

- September 30, 2016 we lost the returning worker exemption
- With the elections last year our industry was not able to get the support to renew the exemption. Most of our Washington DC Representatives ran from providing any assistance for fear of political fall out
- Efforts are still being made to reinstate it but the out look isn't the best for this spring and summer

# H-2B CAP COMPARED

- January 31, 2016 First half of the cap was met
- January 10, 2017 First Half of the cap was met **21 Days Earlier**
- Second Half of the Cap
- May 12, 2016 Cap was met last season
- March 7, 2017 Approved 22,016 Pending 12,075 Total Beneficiarys 34,091 Cap is expected to be hit this week **47 Days Earlier than last year**

**The loss of the Returning worker Exemption is taking a very real toll**

# CONFLICTING REGULATIONS

- The Government (DOL, USCIS, OSHA, US DOL WAGE and Hour) presently has the ability to put any contractor out of the program at will for cause.
- I now ask the Government for grace and understanding, “Please be gentle and kind and allow us to work, provide for our family's and exist”

# **H-2B PROCESS**

**&**

## **TIME LINES**

# PRE-APPLICATION INFORMATION

- Request a PWD Prevailing Wage Determination Up to 60 Days
- MSPA License(FLC) 30 Days if renewal applications are received 1 month before expiration of a License
- MSPA inspected and Licensed Vehicles(FLC)
- MSPA Licensed Driver(FLCE)

**H-2B APPLICATION ETA 9142  
APPLICATION CAN ONLY BE STARTED  
BETWEEN 90 TO 75 DAYS BEFORE YOUR  
START WORK DATE**

Items included with the ETA 9142 application

PWD with an Itinerary for the requested crews/workers

MSPA License FLC (Farm Labor Contractor Orange License)

Licensed MSPA drivers enough to transport the number of workers being requested (Each driver must have his Blue FLCE Farm Labor Contractor Employee License)

Licensed MSPA vehicles enough to transport the number of workers being requested (Vehicles must be listed on the Orange FLC license)

Proof of Insurance

# DOL MAY ISSUE A NOD

- DOL has up to 7 days to issue a NOA (Notice of Acceptance)
- DOL has up to 10 days to issue NOD (Notice of Deficiency)
- If you receive a NOD you can respond immediately (depending on the information requested)  
After a response you can wait up to 15 days for a response
- Upon receiving the NOA (Notice of Acceptance you are able to begin your IR (Initial Recruitment)
- Advertising takes place with the SWA (State Workforce Agencies) and requires DOL approval  
(2) News Paper advertisements (Sunday & any other day of the week)
- Total IR (Initial Recruitment) time (15) business days
- After the IR is completed the employer submits a report to DOL outlining each potential U.S. applicant(s), if he or she was hired and if not, why. There is no time limit for DOL to certify after the report is submitted but it generally takes approximately 10 Days
- For each U.S. applicant that takes the offering position a corresponding visa is reduced from the application

# USCIS ADJUDICATION

- DOL certification is sent to USCIS for Adjudication (Issuance of the visas)  
It can take another 10 days before USCIS receipts the application
- Applicant includes \$1,700.00 for premium processing, and USCIS has 15 days to Adjudicate after receipt or issue an RFE (Request for Evidence)
- You can respond immediately to an RFE depending on how long it takes to compile the evidence. After responding to an RFE you can wait another 15 to 20 days It is possible to receive multiple RFE's on an application
- Once USCIS Adjudicates the visas on your behalf it takes 3 to 7 days to get the original I-797 in the mail



# START TO FINISH TIME LINES

- DOL/USCIS restricts an applicant to apply no more than 90 days before date of need
- Best case scenario with no NOD's or RFE's 85 days plus 14 more days to get workers into the US..... Total 99 Days
- Add 1 NOD and 1 RFE and you are out to 139 days
- 2015/2016 fiscal year the quickest cases took 135 or more days (LCI Statistic)
- Alpha had a timely certification for the SE that ran from Oct 15, 2015 through March 31, 2016
- Alpha Started a NW certification November 26, 2015 and eventually received a denial 235 days later on July 18<sup>th</sup> with the requested time period being April 1<sup>st</sup> through July 31.

# 2016-2017 SEASON WHAT TO EXPECT

- Alpha has 2 certifications presently being processed for the SE both are at the DOL level the first was sent back with 2 separate NOD's and we have finally moved on to IR after 45 days. The Second application has received 1 NOD so far and presently waiting for a response.
- Bottom line expect delays from your Contractors if they are using the H-2B Guest worker program