

TRAINING AND EMPLOYMENT NOTICE	NO. 19-21
	DATE January 31, 2022

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AMERICAN JOB CENTER DIRECTORS

FROM: ANGELA HANKS *AH*
Acting Assistant Secretary

SUBJECT: American Job Center Role in Connecting U.S. Job Seekers to Job Opportunities Available with Employers Seeking to Employ H-2B Nonimmigrant Foreign Workers Certified for Work Starting in the First Half of Fiscal Year (FY) 2022

1. **Purpose.** To ensure State Workforce Agencies (SWA) are aware that employers seeking to hire foreign workers for temporary employment under a supplemental H-2B visa cap for work certified to commence in the first half of FY 2022 must contact an American Job Center (AJC) for assistance in recruiting U.S. workers for their job opportunities.
2. **Action Requested.** The Department of Labor (DOL) reminds SWA staff responsible for administering foreign labor certification activities and Title I of the Workforce Innovation and Opportunity Act requirement to use established recruitment practices at AJCs to help connect job seekers with job opportunities from employers seeking to employ foreign workers on supplemental H-2B visas.
3. **Summary and Background.**
 - a. Summary – A number of employers may contact AJCs seeking help in recruiting U.S. workers due to a change in H-2B regulations. This Training and Employment Notice explains the role of AJCs in the recruitment of U.S. workers for temporary or seasonal job opportunities available with employers seeking to hire foreign workers on supplemental H-2B visas made available by a Temporary Final Rule (TFR) jointly published by DOL and the Department of Homeland Security (DHS) on January 28, 2022.
 - b. Background – In response to strong demand for H-2B visas, Congress authorized a supplemental H-2B visa allocation¹ for additional H-2B visas for FY 2022 for eligible employers whose employment needs for FY 2022 cannot be met under the general fiscal year statutory cap. Accordingly, DOL and DHS jointly published a TFR to exercise this authority to implement a supplemental visa allocation of 20,000 H-2B visas.

¹ See section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), and sections 101 and 106(3) of Division A of Public Law 117-43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117-70, Further Continuing Appropriations Act, 2022 through February 18, 2022.

When applying for an H-2B visa, employers first recruit U.S. workers by posting the job in SWA job banks or job listing systems. The TFR includes a provision at 20 CFR 655.64(a)(5)(ii) requiring employers to contact, by email or other electronic means, the nearest AJC serving the area of intended employment to request staff assistance to advertise and recruit U.S. workers for the job opportunity. Because some AJCs may continue to offer virtual or remote services due to the pandemic, the TFR requires employers to use electronic methods for the nearest AJC to meet the contact and disclosure requirements in this rule. This means that many employers may contact AJCs. When contacting the AJC(s), the employers must provide the job order number or, if the job order number is unavailable, a copy of the job order placed on the SWA job listing system. The TFR directs employers to find AJCs using the DOL-sponsored website <https://www.careeronestop.org/LocalHelp/local-help.aspx>.

- 4. AJC Role and Responsibilities.** After locating the nearest AJC, the employer will contact the AJC using an electronic method and will provide the AJC a job order identification number or copy of the job order, which contains information necessary to apprise U.S. job seekers of the job opportunity. Once contacted by the employer, WIOA title I and Wagner-Peyser Employment Service (ES) staff at the AJC should make every effort to broadly disseminate information about the job vacancies to jobseekers, to the AJC partner network, and to any other organizations including labor unions and those organizations serving disadvantaged populations, where potentially qualified U.S. workers may be available for the employer's job opportunity.

These recruitment activities may include, for example, leveraging the state unemployment insurance program to disseminate the job opportunity to unemployed workers seeking employment and/or sharing H-2B and other job postings with community-based organizations in the geographic area providing employment and training services. SWAs must circulate a copy of the job order to appropriate union offices or hiring halls, consistent with 20 CFR 655.33(b)(5), when the job opportunity is in an occupation or industry that is traditionally or customarily unionized. The employer has a separate obligation to accept for consideration all referrals of U.S. applicants regardless of the source of referral. It is unlawful for employers to engage in discriminatory hiring practices; jobs must be truly open. Complaints received by, or on behalf of (e.g., worker advocates, unions, or hiring halls), U.S. applicants must be taken seriously and appropriately handled using the SWA complaint system. Where appropriate, staff at AJCs should refer or direct interested U.S. workers to apply directly with the SWAs if the workers require assistance applying for the job opportunity.

Staff at AJCs or SWAs that receive complaints from jobseekers against an employer about a specific H-2B job order to which U.S. workers were referred should use the Employment Service complaint system established under 20 CFR 658, Subpart E, and should notify jobseekers about the complaint system. SWAs should handle complaints about job orders and referrals for the supplemental visa in the same manner as they would handle complaints about referrals made to job orders for traditional H-2B recruitment.

- 5. Inquiries.** Please direct questions to the appropriate ETA regional office.

6. **References.**

- a. Section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), and sections 101 and 106(3) of Division A of Public Law 117-43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117-70, Further Continuing Appropriations Act, 2022.
- b. Exercise of Time-Limited Authority to Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers at 87 FR 4722, January 28, 2022.

7. **Attachments.** Not applicable.