



Frequently Asked Questions

1. Question: **How many workers can I request for?**

Answer: For construction industry applications, the rule of thumb to determine the number of workers that we may approve is:

Project Contract Amount divided by \$55,000.00 = Number of Workers Allowed

For Non-Construction, ALPCD will look at the employer's need and financial solvency to determine if the number of workers requested by the employer is appropriate.

2. Question: **What are the costs associated with importing H-2B workers?**

Answer: There is currently no filing fee for an Application for Temporary Labor Certification on Guam. Normal costs are as follows:

- The employer is required to post surety bonds guaranteeing payment of wages and the repatriation of workers. These costs vary based on the employer's projects and size of workforce requested.
- The employer must publish newspaper advertisements as a part of the labor market testing process.
- The employer will shoulder the fees charged by the USCIS for the filing of I-129 petitions and Fraud Prevention Fees.
- The employer shoulders the cost of round-trip airfare for the workers.
- Once the workers arrive, the employer must register the workers with the Guam DOL and pay a \$1,091.00 fee annually, per worker.

These costs may not be passed on to the workers and are a cost of doing business. Should employers be caught passing the fees on to the workers, the employer may be required to pay back any funds illegally deducted from the workers.

3. Question: **Where do I file for a temporary labor certification?**

Answer: For employment of H-2B workers in Guam, employers must first file for a Temporary Labor Certification with the Governor of Guam through the Guam Department of Labor at least 40 days prior to the need for the workers' services.

Since the Governor of Guam is the certifying officer for the Guam area, Guam has its own rules and procedures for the processing of labor certifications, separate from those administered by the U.S. Department of Labor.

4. Question: **Do I have to hire an immigration attorney?**

Answer: No. Although it is allowable for an employer to file for a temporary labor certification and petition with the USCIS on their own, we recommend that employers seek legal counsel when navigating the H-2B process. We have seen many instances where employers process documents incorrectly and receive denials when they would have gotten approvals otherwise.

5. Question: **What countries can I bring in H-2's from?**

Answer: The Secretary of Homeland Security in consultation with the Secretary of State has published a list of approved countries who may easily participate in the H-2B program. The list is updated every year in January. Please refer to the GDOL or USCIS websites for the current listing.

6. Question: **Do I have to provide housing for the H-2B worker?**

Answer: Any employer importing 5 or more workers must arrange for employer provided housing. The employer may deduct up to \$320.00 per month for board and lodging. The employer is entitled to recover up to their actual cost for board and lodging, but any amount in excess of \$320 per month must be justified to the DOL's satisfaction.

Housing accommodations are regulated and monitored by Government of Guam agencies and are subject to OSHA scrutiny.

7. Question: **Are there any health screening requirements for incoming H-2B workers?**

Answer: No. There is no existing health screening requirement by the federal government with regards to H-2B workers prior to their arrival into Guam. Some countries, like the Philippines, required their outbound workers to undergo screenings. Local requirements may be enacted soon which will require some type of screening. These requirements will be posted on our website as the situation develops.

8. Question: **Are there any local rules an employer must follow and are there penalties for non-compliance?**

Answer: Yes. Employers in Guam must comply with all Guam Labor laws and in many cases there are civil penalties for non-compliance. Labor Laws regarding the H-2B program are in the Guam Administrative Rules (GAR) Title 17, Chapter 7. Wage & Hour regulations are also contained in the Guam Fair Labor Standards Act (FLSA).

These documents are available on the Guam DOL website.

9. Question: **How long can I employ H-2B Workers?**

Answer: Approvals for H-2B workers are normally good for a year and renewable up to 3 years. After 3 years, the alien must depart the U.S. and be continuously outside of the country for at least 3 consecutive months before they can be brought back under an H-2B visa. Employers are urged to file for extensions 60-90 days before expiration in order to avoid having to repatriate the worker for re-issuance of the visa. If extensions are filed properly, the alien may remain on Guam while the petition is adjudicated by USCIS.

10. Question: **Can H-2B workers transfer to different companies?**

Answer: Yes. Workers may transfer to another company provided that the receiving employer has obtained their own labor certification and secured approvals from the USCIS. The worker would likely be required to return to the country of origin and be re-issued a visa for the new employer.