

**U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule FAQs**

**Round 15: Obligations and Job Order Content for
Employers of a Mobile Workforce**

JOB OFFERS AND EMPLOYER OBLIGATIONS

Mobile Workforce Lodging

- 1. My job opportunity requires workers to be mobile, performing work in various locations according to a planned itinerary to perform the work (e.g., carnival or tree planting and reforestation). Am I required to provide workers with lodging and, if so, must I provide it without charge to the worker?**

Yes, for itinerant workers, an employer is required to offer lodging and must pay for such lodging to the extent the cost would bring a worker's wages below the offered wage rate. The H-2B regulations require an employer to "ensure that the wage offer equals or exceeds the highest of the prevailing wage or the Federal, State, or local minimum wage," 20 CFR 655.18(b)(5), and the wages must be paid "free and clear." 20 CFR 655.20(a)(1), (b), (c). As the Secretary has determined, if an employer needs a mobile workforce, such as those in the carnival or forestry industries, where workers are in an area for a short period of time, need to be available to work immediately, and may not be able to procure temporary housing easily, the lodging is primarily for the employer's benefit and convenience. 80 Fed. Reg. 24042, 24063 (Apr. 29, 2015). The cost of maintaining a mobile workforce, which may be necessary due to the nature of the business, is a business expense to be borne by the employer. Employers are reminded that the principles applied in determining whether deductions are reasonable and payments are received free and clear are explained in more detail in 29 CFR part 531. See 20 C.F.R. 655.20(b); see also 80 Fed. Reg. 24042, 24062 (explaining that the Department relies on Fair Labor Standards Act principles to explain the meaning of similar requirements in the H-2B program).

The cost of providing facilities (e.g., lodging) determined to be primarily for the employer's benefit cannot be charged to workers to the extent it would reduce the worker's pay below the offered wage rate for the area of intended employment. This means that an employer who pays its mobile workers the offered wage in its H-2B application and job order for work performed in each area of intended employment would not be permitted to charge any part of the cost of lodging to those workers, because doing so would effectively reduce the worker's actual pay below the offered wage rate. There is no difference between

shifting the cost to the employee to pay for lodging or deducting the cost from the employee's wages, because both would result in the worker earning below the offered wage, thus violating the H-2B regulations. See 80 Fed. Reg. 24042, 24063; see also 20 CFR 655.20(c).

Reminder: The employer must disclose in the job order the provision of lodging and the assurance that the employer will pay the cost of that lodging to the extent it would reduce the worker's pay below the offered rate. 20 CFR 655.18(b)(5), 20 CFR 655.18(b)(10). The Department has provided standard text for this disclosure in a separate FAQ, which will be deemed acceptable if used, and is found in the "Job Orders and Application Filing and Processing" section under the subheading *Job Orders*.

JOB ORDERS AND APPLICATION FILING AND PROCESSING

Job order

- 2. My job opportunity requires workers to be mobile, performing work in various locations according to a planned itinerary (e.g., carnival or tree planting and reforestation). What text must be included in the job order to appropriately disclose my obligation related to lodging?**

In order to appropriately apprise prospective applicants of the terms and conditions of a mobile job opportunity, the job order prepared in connection with an *H-2B Application for Temporary Employment Certification* must include text that discloses the employer's obligation regarding lodging for its mobile workforce. Under 20 CFR 655.18(b)(5), an employer must "ensure that the wage offer equals or exceeds the highest of the prevailing wage or the Federal, State, or local minimum wage," and under 20 CFR 655.18(b)(10), if an employer provides the worker with board, lodging (the provision of which is required for itinerant jobs), or other facilities, or intends to assist workers to secure such lodging, the employer must disclose these terms and conditions in the job order as well as the associated cost related to such provision of board, lodging or other facilities. Such costs cannot bring the worker's wages below the offered wage rate.

Although each employer may disclose in the job order differing methods of providing assistance to workers to secure lodging, the Department provides the following standard text that every employer with a mobile job opportunity may use in their job orders to disclose their obligation to pay for lodging, and which will be deemed acceptable if used:

"The employer will pay the cost of lodging to the extent such costs would reduce pay below the offered wage rate for the area of intended employment."

Note: An employer's obligation to pay lodging costs for mobile job opportunities is discussed in a separate FAQ, which is found in the "Job Offers and Employer Obligations" section under the subheading *Mobile Workforce Lodging*.