Agricultural Worker Rights Program

Katie Samples Dean-Staff Attorney
Legal Aid of Nebraska

• Non-profit law firm
  • Variety of civil cases
• 8 offices across the state
Our Program

• Agricultural, migrant and seasonal workers
• Cover entire state
• Representation and outreach
  • Advice through litigation
H-2A Guestworker Program
H-2A Visa Requirements

- Guestworker
  - No path to stay
- Temporary Work Visa
  - 9 out of 12 months
  - Can renew 3 times
H-2A Program Requirements

• No US workers able, willing, qualified and available at TIME and PLACE needed
  • MUST hire US referrals from NDOL if within first 50% of contract period
    • Can displace foreign worker
  • Cannot expect more
H-2A Program Requirements

• Must pay AWER: $14.38 per hour

• 3/4ths Guarantee
  • If employer doesn’t have work, must still pay workers for ¾ of contract value
H-2A Job Requirements

• Bona fide and necessary
  • Prominent in industry
  • Applied uniformly

• Examples
  • Language
  • Skill and education in skilled jobs like repro
H-2A Employer Requirements-BEFORE

- Apply with DOL
- Complete Contract
  - This is the most important document!
- Work with Office of Foreign Labor
- Certify housing
- Advertise
  - Some asking to use Facebook
  - Some on DOL website
H-2A Employer Requirements - DURING

• Housing
  • Meet standards
    • Certified by DOL beforehand
    • Within 100 miles of worksite
• Free tools, supplies and equipment
• Meals
  • Provide 3 meals a day (can be at a charge-if reasonable)
  • OR kitchen facility
H-2A Employer Requirements-DURING

- Transportation (in country)
  - Inspected
  - Licensed
  - Insured

- Travel to and from country
  - Transportation and meals
  - Inbound: Must pay when get to 50% of contract
    - Unless takes below min. wage
  - Outbound: Must pay if complete work
H-2A Employer Requirements-DURING

• Worker’s Compensation
  • MUST be carried for H-2A

• 3/4ths Guarantee
  • Even if don’t have the work, must pay the workers for ¾ of the value of the contract
H-2A Employer Requirements-DURING

• Personnel records
  • If fire, must be for cause

• Payroll records
  • Start and stop time each day
  • Days worked
H-2A Employer Requirements-DURING

- Pay stubs
  - Total earnings
  - Hourly rate or piece rate
  - Hours total offered and worked
  - Wage amount
  - Itemized Deductions
    - Can be transportation and food (if in contract)
  - Beginning and end dates of pay period
  - Name and information of employer and employee
H-2A Worker Requirements-DURING

- What listed on contract
  - Type of work
  - Hours
H-2A Issues

• Requirements
  • What can be required
  • Explicit vs. implicit

• NE is one of the favorite states
  • Employers
  • AWER

• Can use FLC
Katie Samples Dean

kdean@legalaidofnebraska.org
308-641-2173