

Time to Prepare: Pre-Season Compliance Checklist

CJ Lake, LLC

Spring is right around the corner, but before your seasonal workers arrive and planting kicks into high gear, now is the perfect time to do a self-check of your HR procedures and records. While there is still snow on the ground for most of the country, take the opportunity to improve your practices and avoid costly audit findings down the road. Know the law, follow the rules, and be able to prove it.

Thorough and accurate records are your best defense when investigators from WHD, ICE, OSHA, ETA, IRS, or any of the other alphabet agencies knock on your door. Here is a general checklist for employers to follow as the season begins (with a tip of the hat to Maureen Torrey for her Tool Box presentation).

Before Your Workers Arrive

- Check your prior years' records – looking for any missing documents, flagging any Form I-9s with expiring documents, and shredding documents outside the document retention period
- File copies of your H-2A paperwork – application, advertising, and housing inspections
- Have practices in place for how you will handle each of the following: potential workers responding to advertisements, employee complaints, audit requests
- Make contacts with your Members of Congress, state workforce officials, and employer and trade associations
- Have a plan for the Affordable Care Act for 2015 if you have 100 or more full-time equivalent employees and start thinking about 2016 if you have 50 or more

When the Workers Are Hired and Arrive

- Carefully prepare a Form I-9 for all new employees and any employee who has had a break in service of more than 13 weeks – do not prepare an I-9 or use E-Verify before a worker is hired
- Issue a healthcare exchange notice within 14 days of hire, stating whether the employer does or does not offer health care coverage
- Give all H-2A workers and corresponding U.S. workers a copy of the job order as soon as they arrive

- Bring H-2A workers to the Social Security Administration office to get a SSN; SSA may not issue one until the workers have been in the country for 10 days and will not issue one within 14 days of when the workers will be leaving
- Have all U.S. workers complete and return a Form W-4 for income tax withholding, and determine if H-2A workers wish use income tax withholding
- If you are located in the Eleventh Circuit (Alabama, Florida, or Georgia), or Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, or Washington), be sure to reimburse for in-bound travel costs within the first pay period to the extent that such costs would push worker wages below the \$7.25/hour Federal minimum wage

During the Season

- If you have H-2A workers, be sure that all pay stubs include the required information – FEIN, hours offered and hours worked, any deductions from pay, rate of pay, piece-rate information (if applicable)
- Have your designated HR point person handle any referrals or potential workers responding to advertisements during first 50% of job period; have the same person receive and respond to employee HR-related complaints
- Watch for any changes to the AEWWR if your season extends through December
- Be aware of 3/4 guarantee issues – tracking the hours offered compared to the hours listed in the job order
- If you are offering health care coverage, be certain to make the offer within 90 days of when a new worker (or one with 13+ weeks away) is hired; many employers structure this as the first day of the second month after hire to be safe

End of the Season and Off-Season

- Reimburse any return travel for workers
- Meet with your managers to de-brief any HR issues that arose during the year and make a plan to deal with them in the future
- Review all of your documents to be sure that you have complete files
- Get ready to do it all again next year!

Taking these steps – knowing your rights and your responsibilities under the law, having a well-trained staff that follows the law, and documenting everything to prove that you have complied with the law – will be your strongest defense when you are eventually audited. Putting good practices in place takes time at first, but will soon become second nature and may save your farm.