



## Guide for the H-2A Visa Program Users Frequently Asked Questions on Recent Court Rulings

This information has been prepared by AmericanHort with support from JPH Law counsel.

### What is the difference between an injunction and a stay?

An **injunction** is a court order that tells someone to **do something** or **stop doing something**. In the Georgia case, the court issued an injunction to the plaintiffs (Arkansas, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, and Virginia—and two organizations – Miles Berry Farm and Georgia Fruit and Vegetable Growers Association), exempting them from having to comply with the Final Rule.

In Kentucky, the Court granted a preliminary injunction to the plaintiffs (West Virginia, Alabama, Ohio, and Kentucky) for having to comply with the following provisions of the Final Rule: mandatory piece-rate pay, seatbelt requirements, personal information collection requirements, and providing public access to employer property.

In short, an injunction directs or stops behavior: in this case, the injunctions direct the plaintiffs not to comply with certain provisions of the Final Rule as noted in the Kentucky and Georgia rulings.

A **stay** is a court order that **pauses** or **delays** a legal action or decision. In the AmericanHort lawsuit against DOL, the Mississippi court issued a *nationwide* stay, temporarily stopping DOL from enforcing the Final Rule, as DOL has overstepped its authority to regulate labor relations for H-2A workers.

## **What changes have been made to the FLAG System regarding the submission of H-2A job orders and Applications for Temporary Employment Certification?**

The DOL has removed the preliminary “Yes/No” question from the FLAG System, which was originally implemented to comply with the Kansas Order. Employers preparing and submitting H-2A job orders and Applications for Temporary Employment Certification will now use the pre-Farmworker Protection Rule forms.

## **Why were certain H-2A job orders and Applications for Temporary Employment Certification deleted from the FLAG System?**

On Nov. 27, all initiated but unsubmitted H-2A job orders and completed Applications for Temporary Employment Certification in the FLAG System, which used the forms linked to the Farmworker Protection Rule, were deleted. This action was taken to prevent accidental submissions with incorrect form versions and to ensure compliance with the court orders.

## **What actions will OFLC take regarding pending H-2A job orders and Applications for Temporary Employment Certification submitted using Farmworker Protection Rule forms before November 27, 2024?**

All H-2A job orders and Applications for Temporary Employment Certification submitted using the forms under the Farmworker Protection Rule on or before November 27, 2024, that are still pending review and have not yet received a determination from the NPC Certifying Officer (CO) regarding approval or denial of temporary labor certification, will no longer be processed in the FLAG System by OFLC.

In accordance with 20 CFR 655.124 and 655.136, employers may request the withdrawal of their pending H-2A job orders or Applications

for Temporary Employment Certification either by using the online withdrawal function in the FLAG System or by submitting a written request to OFLC at [tlc.chicago@dol.gov](mailto:tlc.chicago@dol.gov), including the unique FLAG case number in the subject line of the email.

**Under what circumstances will the NPC Certifying Officer grant a waiver of the regulatory time period for filing new H-2A job orders and Applications for Temporary Employment Certification?**

In accordance with 20 CFR 655.134(a), the NPC Certifying Officer will grant a waiver of the regulatory time period for filing new H-2A job orders and Applications for Temporary Employment Certification using the forms applicable under the version of 20 CFR part 655, subpart B in effect on June 27, 2024, for employers affected by the suspension of processing required for DOL to comply with these court orders.

**AmericanHort will continue to provide updates on these matters as they unfold.**

If you have any questions, please contact AmericanHort via phone at 614-487-1117 or via email at: [Hello@AmericanHort.org](mailto>Hello@AmericanHort.org). Or, contact Matt Mika, Vice President Advocacy & Government Affairs at phone: 202-789-2900, or via email at [MattM@AmericanHort.org](mailto:MattM@AmericanHort.org).