

## Referral Tool for H-2A Employers

Agricultural employers who participate in the H-2A guest worker program are federally required to document their efforts in recruiting domestic workers for their H-2A job orders. Employers are required to submit a recruitment report to the U.S. Department of Labor's Chicago National Processing Center (CNPC), and must also retain all recruitment records and documents for at least three years, per federal H-2A regulations. Several H-2A employers contacted the NYS Department of Labor's Agriculture Labor Program earlier this year to inquire about a template for the recruitment report. Since CNPC does not currently have a template, the NYS Department of Labor responded to the needs of H-2A employers by creating a referral tool to assist employers in complying with this federal requirement. The tool was created as a service to agricultural employers, but they are not required to use it if they prefer to use their own methods for documenting their recruitment efforts.

The referral tool is intended to help employers accurately document their contact with domestic referrals and applicants, as well as with any U.S. workers they may have employed during the previous season. In addition, it is designed to assist employers in determining whether a domestic referral or applicant to their H-2A job order meets the minimum job requirements and should be hired for the position. During the interview process it is important for employers to keep in mind that it is unlawful to discriminate against employees and applicants for employment on the bases of age, race, color, religion, national origin, gender, sexual orientation, disability, marital status, military status, domestic violence victim status, arrest record, conviction record, predisposing genetic characteristics, and, in housing only, familial status.

The tool is user-friendly and consists of an instruction sheet and three forms - *Interview Form*, *Agricultural Employment Verification Form*, and *Contacting Former U.S. Workers*. Employers can read directly off both the interview and agricultural employment verification forms when conducting an interview of a domestic referral or applicant, or when contacting an applicant's previous employer. Employers who choose to use any or all of the forms should provide as much detail as possible when completing them, and should keep them with their recruitment records and documents for at least three years.

NYS Department of Labor Agriculture Labor Specialists are required to conduct unannounced field checks at H-2A farms where referrals of domestic workers were made prior to the 50% contract expiration date. During each field check, the Agriculture Labor Specialist must ask the employer if NYS DOL-referred individuals contacted him/her about the job opportunity and whether the individuals were interviewed and/or hired. The forms included in the referral tool may be handy to the employer in this instance.

For questions or comments regarding the referral tool, please contact the Agriculture Labor Specialist serving your county, or the Foreign Labor Certification Unit at [ForeignLaborCert@labor.ny.gov](mailto:ForeignLaborCert@labor.ny.gov). The referral tool, along with contact information for the Agriculture Labor Specialists and additional information on services for agricultural employers, can be found on the Agriculture Labor Program's website at <http://www.labor.ny.gov/immigrants/agriculture-labor-program.shtm>.

*This article was provided by the NYS Department of Labor's Agriculture Labor Program.*