

## **Q & A About H2AUSA and “No Match” Provisions**

**First, tell us a little about H2A USA.**

**We serve the labor interests of our clients by providing documented legal seasonal migrant workers from foreign countries in accordance with the U.S. government provisions for H-2A workers. In keeping with regulations, if the employer has expended all required efforts as defined by Congress for finding workers nationwide, then we are happy to supplement his labor requirements with foreign workers in order for him to keep his operation running. By the way, the American workers have to be paid equal to or more than the foreign workers.**

**What changes will be taking place with the "No Match" letter policy?**

**The “No Match” letter will now have teeth and the bite can be severe. In the past, employers threw the letters in the trash with no penalty. Now, in order for employers to be protected from future fines and prosecution, the Department of Homeland Security has clarified a “Safe Harbor” provision. In order to avoid fines of up to \$10,000 and possible criminal penalties per “No Match” letter, the employee will have to go to the Social Security Office and get a Social Security number that matches his name. If he cannot do that within 90 days of receipt of the letter by the employer, then he must be terminated. If he is not terminated, then the employer may have to face the possibility of paying a \$10,000 fine per letter.**

**There is also a criminal provision in the regulation. The employer may find themselves criminally liable and face jail time if it is determined that they had constructive knowledge of the illegal status of the worker and did not take advantage of the “Safe Harbor” provision described above.**

**If you get a good Social Security number or fire the employee, then you are protected by the “Safe Harbor” provisions. If not, then you face grave consequences.**

**How will the no match policy affect employers, who rely on agricultural labor?**

**For those employers who use H-2A workers there will be no impact on the employers. The employees are given a Social Security number by the Social Security Office. And thereby the employer, farmer or labor contractor will receive no “No Match” letter. For those farmers who have received a “No Match” letter, they can take advantage of the “Safe Harbor” provision and face no penalties. In other words, they would have to give a copy of the “No Match” letter to the employee, then the employee would**

then have to go to the Social Security Office and get a good, verifiable Social Security number.

If he were not able to do that within 90 days, he would have to be terminated.

It also has been reported that the Administration will publish a smaller list of documents that employers can accept to confirm identity. What documents are most likely to be removed from this list and what documents are most important for employers to verify?

They know that when you get a “No Match” letter that the documents you gave them originally were bogus. So, what did they give them originally? You gave them what’s on the I-9, which could include a Social Security card, maybe an Alien Resident card, or even a driver’s license.

Now, either they want a passport if you are an alien, a state-issued birth certificate (and they may ask for an original stamp with a seal on it) and other documents issued to “Lawful permanent residents of the United States” or aliens with a passport visa option.

The Department of Homeland Security says it will raise civil fines by 25% on employers who "knowingly" hire illegal immigrants. What constitutes "knowingly"?

#1-You have gotten more than one “No Match” letter from the people working for you and you have not taken advantage of the “Safe Harbor” provisions.

#2-The person tells you they are illegal.

#3-If you get a call or letter from a government agency such as I.C.E., indicating that you may have illegals in your employ, you can consider yourself obligated to verify that the Social Security numbers match by calling the telephone number of the Social Security Office to see if the employee is legal or not. Not to do so would be putting yourself in a position of having constructive knowledge of illegal status. The number of the Social Security Office for verification is: 1-800-772-6270.

Doing so will be availing yourself of the “Safe Harbor” provision.

The Department of Labor says it will reform the H2A Agricultural Seasonal Worker Program. What might we expect to come out of this reform?

Two things are utmost in reformers’ minds at this juncture:

**They are going to expedite the processing of the H-2A workers so that it goes faster. Right now it goes from 90 to 120 days, and it takes too long. Secondly, they are going to consider some type of housing allowance so that the farmer doesn't have to provide housing, but will give them an allowance.**

**How will the failure to achieve meaningful labor reform by Congress affect agricultural employers in the coming months and years?**

**In my opinion, employers can get as many H-2A workers as they need right now. I personally, other than for a housing allowance for agricultural purposes, believe the H-2A program satisfies the need.**

**The only other major change I would suggest is that in an emergency situation such as occurred in California last year or hurricane or other Act of God, we should be able to bring in workers with 5-to-10 days notice.**