

## H-2B Compliance: Make Sure Your Company is Prepared for an Audit

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Staying in compliance with record retention requirements as an H-2B employer can often seem like a daunting task. However, such compliance is crucial, especially in the case of an audit or investigation by the Wage and Hour Division or the Employment and Training Administration Division of the U.S. Department of Labor (“DOL”) or the Fraud Detection and National Security directorate of the U.S. Citizenship and Immigration Services (“USCIS”).

When assessing compliance with respect to appropriate record retention, please see Fact Sheet #78I: Records Retention Requirements under the H-2B Program, which is also available at <https://www.dol.gov/whd/immigration/h2b.htm>. Please note that the specified records must be maintained for a period of three years.

Set forth below are common errors often uncovered in an H-2B audit.

- No record of a copy of the job order being provided to the H-2B worker in a language understood by the H-2B worker no later than at the time the H-2B worker applies for the visa abroad. No record of a copy of the job order also being provided to U.S. workers in corresponding employment no later than on the day work commences.
- No record of inbound and outbound transportation and subsistence costs, such as copies of meal receipts and bus tickets, and reimbursement thereof, such as cancelled checks, which comply with the minimum daily amount set by the DOL, which is regularly updated and made available at

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### PRACTICE AREAS

Immigration

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[https://www.foreignlaborcert.doleta.gov/meal\\_travel\\_subsistence.cfm](https://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm).

- No record of a final recruitment report signed and dated no sooner than 21 days before the date of need, as well as copies of any resumes and applications received. Please note that the final recruitment report is separate and apart from the initial recruitment report submitted to the DOL following the H-2B recruitment period.
- Not including the employer's Federal Employer Identification Number ("FEIN") on paychecks.
- Not including the number of hours offered in addition to the number of hours worked on paychecks.
- Not obtaining written consent of any paycheck deduction not required by law, such as for the reasonable cost or fair value of board, lodging, and facilities furnished.
- No record of timely and appropriately notifying the DOL and the USCIS of the early departure of an H-2B worker or U.S. worker in corresponding employment.
- No record of a written contract with a recruiter or agent prohibiting the agent or recruiter from receiving prohibited payments, and including the list of identities and locations of persons working for the agent or recruiter.

If you have further questions about petitioning for H-2B workers, H-2B program compliance and document retention requirements, or other general questions about employment-based immigration, please contact one of the immigration specialists in Koley Jessen's Employment, Labor, and Benefits Practice Group.