

Monitor Advocate System

Employment Services Related to Temporary or Seasonal Farmwork

Council of State Governments-Eastern Regional Conference

April 29, 2023

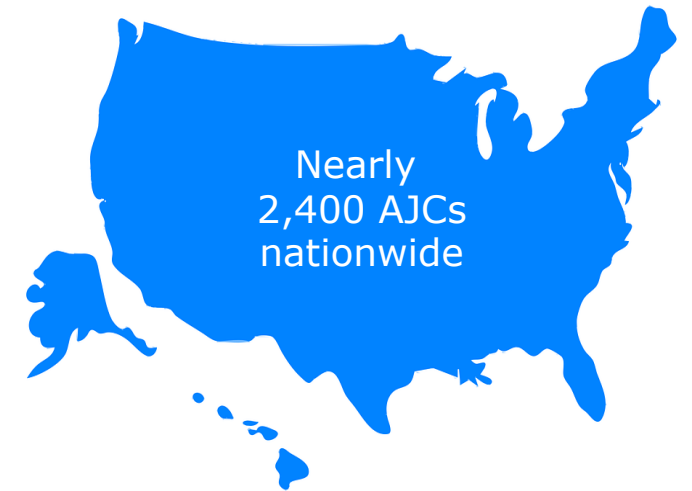


The United States Department of Labor, Employment and Training Administration

americanjobcenter[®]

Website search: <https://www.careeronestop.org/localhelp/americanjobcenters/financial-american-job-centers.aspx>

Telephone: ETA's toll-free help line
1-877-US-2JOBS (TTY: 1-877-889-5267)



AJC Services



Human Resource
Consultation

Referrals to Supportive
Services

Training to Learn New
Skills and Earn Credentials

Employment Service and
Employment-Related Law
Complaint System

Employment Services,
including Job Search
Assistance

Access to Tax Credits

Labor Market Information

*Not an exclusive list of services.

What is the Monitor Advocate System (MAS)?

MAS
operates within:

SWA
Wagner-Peyser ES
Programs

The Monitor Advocate System is a federal-state monitoring system, which reviews the provision of ES, benefits and protections to MSFWs, the functioning of state complaint systems, and compliance of state ES offices with applicable laws, regulations, and directives

NAACP v. BRENNAN (Civil Action No. 2010-72) →

B. Defendants Have Subjected Minority Farmworkers To Racial, National Origin, Sex and Age Discrimination, and Have Denied Minority Farmworkers the Employment Services to Which They Are Entitled.

The report to the Assistant Secretary for Manpower submitted by the Special Review Staff of the Manpower Administration documented extensive problems and inequities which existed in the RMS and ES. The Report was publicly adopted as the Department's official findings and made public on April 21, 1972, by the Manpower Administration of the Department of Labor. While counsel for the Defendants have argued that the Report contains statements and conclusions of the investigators which are not sufficient in themselves to establish the facts that various statutory and regulatory violations had occurred, it is inconceivable to the Court that any other interpretation could be placed upon the detailed and specific findings contained therein. In accordance with the materials delineated in the SRS Report, the Court finds that Defendants approved the program operations of and provided financial support for State RMS and ES agencies which engaged in the following practices:

1. Denied Minority farmworkers the full range of employment services including testing, counseling, and job training and up-grading services.
2. Subjected minority farmworkers to racial, national origin, sex and age discrimination in recruiting and referring applicants for local, intra- and interstate employment.
3. Provided only substandard day-haul placement services and facilities to minority farmworkers.
4. Processed interstate clearance orders that discriminated by allowing employers to predesignate farmworkers by race, national origin, sex and age.
5. Processed misleading, inaccurate and incomplete job orders for agricultural labor.
6. Referred migrant farmworkers to employers who violated minimum wage and child labor laws.
7. Referred farmworkers to employers who failed to make social security payments to the workers' accounts.
8. Referred migratory and seasonal farmworkers to jobs where the living and working conditions violated housing, health and sanitation laws.
9. Referred migratory farmworkers to segregated housing.
10. Referred farmworkers to unlicensed crewleaders or to crewleaders who operated illegally.
11. Failed to enforce the Federal Contractor Registration Act.
12. Failed to assist Federal officials charged with enforcing the Immigration and Naturalization Act and to follow their own regulations and directives that have been enacted to protect job opportunities, wages and working conditions of domestic farmworkers.
13. Been unresponsive to farmworkers' complaints. The Defendants approved, without modification based on the SRS Report, the State RMS and ES program operations for fiscal 1973 and refunded the State RMS and ES agencies in July of 1972, a time at which they had knowledge, through the SRS Report, of the findings cited above. The Thirteen Point Plan announced by then Assistant Secretary Lovell was not initially implemented until August of 1972.^[43] Through these actions, Defendants knowingly acquiesced in and helped to perpetuate the discriminatory and otherwise improper practices of the State RMS and ES agencies. Because of those actions, Defendants failed to fulfill their obligations under the Fifth Amendment, Title VI of the Civil Rights Act of 1964, and the Wagner-Peyser Act, and are responsible for the violations of Plaintiffs' rights under those laws.

Monitoring | Advocacy | Reporting | Liaison

Ongoing review of services and protections to MSFW by the SWA and ES offices.

- Without delay, must advise the SWA and local offices of problems, deficiencies, or improper practices and may request a corrective action plan.
- Must advise the SWA on means to improve the delivery of services.
- Review and comment on proposed MSFW- related ES directives, manuals, and operating instructions

On-Site reviews on a regular basis using procedures at 20 CFR 653.108(g)(2).

- If the review results in findings of noncompliance, the ES office manager must develop and propose a written **corrective action plan**.
- All significant MSFW one-stop centers not reviewed onsite by Federal staff must be reviewed at least once per year. If necessary, ES offices with significant problems must be reviewed as soon as possible.

Serve as an advocate to improve services for MSFWs

- Ongoing liaison with National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations
- Participate in appropriate regional public meetings

Annual Summary of Services to MSFWs for the State Administrator, ETA Regional Monitor Advocate, and the National Monitor Advocate describing how the State provided ES to MSFWs

What do SMAs do?

1. Monitor the SWA's outreach
2. Advocate for improved services
3. Report on services provided

SMAs conduct field visits to discuss ES and employment-related programs with MSFWs, crew leaders, and employers.

*SMAs discuss *how* the SWA is serving MSFWs and *how* the SWA may improve. SMAs do not provide direct outreach services.

[20 CFR 653.108](#)

What do Outreach Staff do?

Explain to MSFWs:

1. Services available at the local one-stop center
2. The Employment Service and Employment-Related Law Complaint System
3. Other organizations serving MSFWs in the area
4. Basic summary of farmworker rights

Urge MSFWs to go to the local one-stop center to for the full range of services

Provide Onsite Assistance with:

1. ES applications
2. Referrals to current and future employment
3. Preparation and referral of complaints
4. Referral to supportive and/or career services
5. Making appointments and arranging service-related transportation

[20 CFR 653.107\(b\)](#)



ETA REGIONAL MONITOR ADVOCATES (RMA)

1. Review the effective functioning of the SMAs in their region
2. Review the performance of SWAs in providing the full range of ES to MSFWs
3. Take steps to resolve ES-related problems of MSFWs which come to their attention
4. Recommend to the Regional Administrator changes in policy towards MSFWs
5. Review the operation of the Complaint System, and
6. Serve as advocates to improve service for MSFWs within the ES

[20 CFR 658.603\(f\)](#)

Contact Information for
Federal
Monitor Advocates:

<https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/contact>

ETA NATIONAL MONITOR ADVOCATE (NMA)

1. Reviews the effective functioning of the RMAs and SMAs
2. Reviews the performance of SWAs in providing the full range of ES to MSFWs
3. Takes steps to resolve or refer ES-related problems of MSFWs which come to their attention
4. Takes steps to refer non ES-related problems of MSFWs which come to their attention
5. Recommends to the Administrator changes in policy toward MSFWs, and
6. Serves as an advocate to improve services for MSFWs within the ES system

[20 CFR 658.602\(f\)](#)

Link to NMA Annual Reports: <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/performance>

The Agricultural Recruitment System (ARS)

A system for connecting U.S. workers to employers who need temporary agricultural labor.

Wagner-Peyser Act

GOAL

To improve functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

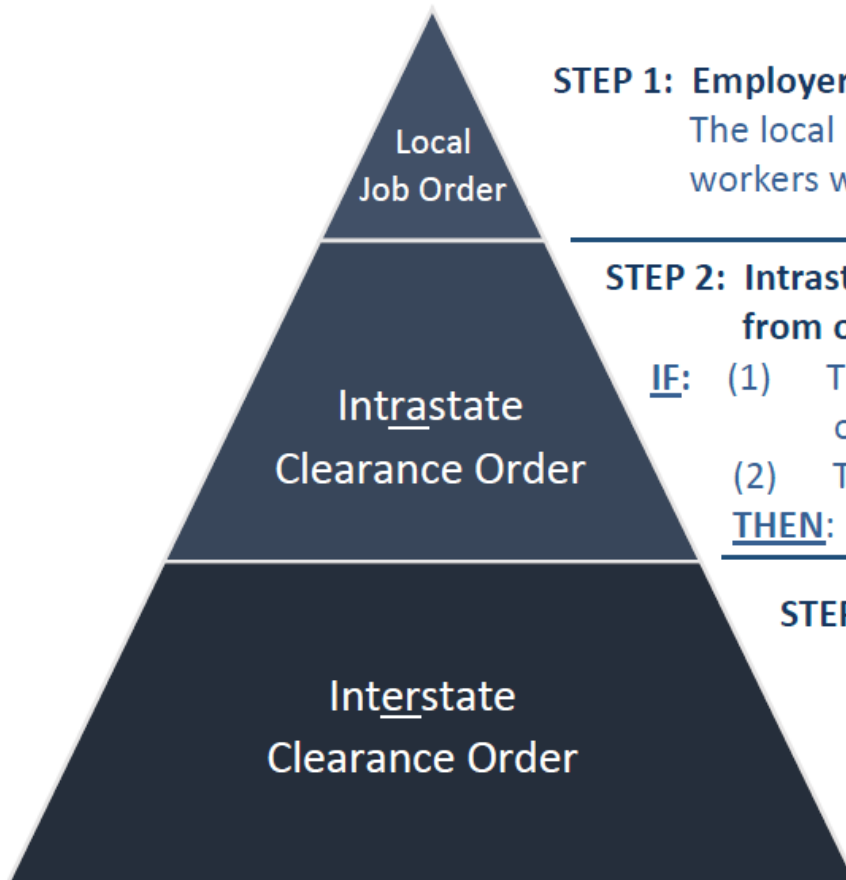


ARS

METHOD

A system for acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis.

The Agricultural Recruitment System (ARS)



STEP 1: Employer makes a local job order.

The local ES office and employer attempt to find enough workers within the local labor market area.

STEP 2: Intrastate Clearance requests recruitment assistance from other ES offices within the State.

- IF:** (1) The ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area; **OR**
(2) The ES office anticipates a shortage of local workers
THEN: The job order may be placed into intrastate clearance.

STEP 3: Interstate Clearance requests recruitment assistance from other states

If labor needs are not met statewide, the State Workforce Agency (SWA), with employer authorization, submits the intrastate order to ETA for clearance as an Interstate Clearance Order.

Note: Clearance orders attached to applications for temporary foreign agricultural workers (H-2A) are cleared through the Chicago National Processing Center (CNPC), instead of the ETA Regional Office.

Each H-2A application must be placed in connection with an ARS clearance order and recruitment still takes place at the local, intrastate, and interstate levels. H-2A related clearance orders require active recruitment by the SWA(s) and referral of qualified workers who wish to apply.

What is H-2A?

The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Employment of a seasonal nature is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations. Employment is of a temporary nature when the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

The Department must determine that:

1. There are not sufficient able, willing, and qualified United States (U.S.) workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire temporary foreign workers (H-2A workers); and
2. The employment of the H-2A worker(s) will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

The statute and Departmental regulations provide worker protections and employer requirements concerning wages and working conditions. The Employment and Training Administration's Office of Foreign Labor Certification (OFLC) has responsibility for administering the Department's H-2A program, including reviewing applications and issuing temporary labor certifications. The [Department's Wage and Hour Division](#) has responsibility for investigating and enforcing obligations applicable to the employment of H-2A workers and workers in corresponding employment, including obligations to offer employment to eligible U.S. workers. Please refer to 29 CFR Part 501 for additional information.

See <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>

What is H-2B?

The H-2B temporary **non-agricultural** program permits employers who meet the program requirements to hire nonimmigrant workers to temporarily come to the U.S. and perform non-agricultural services or labor based on the employer's temporary need.

The employer applicant must establish that its need for non-agricultural services or labor is temporary in nature, regardless of whether the underlying job is permanent or temporary.

Temporary need must be established as one of the following:

1. One-time occurrence;
2. Seasonal need;
3. Peakload need; or
4. Intermittent need.

With the exception of a one-time occurrence need which can last up to three years, temporary need will not be approved for longer than nine months.

See: <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b>

Business Services through the One-Stop Delivery System

[20 CFR 678.435\(b\)](#)

Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:

- 1) Customized screening and referral of qualified participants in training services to employers;
- 2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;
- 3) Customized recruitment events and related services for employers including targeted job fairs;
- 4) Human resource consultation services, including but not limited to assistance with:
 - i. Writing/reviewing job descriptions and employee handbooks;
 - ii. Developing performance evaluation and personnel policies;
 - iii. Creating orientation sessions for new workers;
 - iv. Honing job interview techniques for efficiency and compliance;
 - v. Analyzing employee turnover;
 - vi. Creating job accommodations and using assistive technologies; or
 - vii. Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;
- 5) Customized labor market information for specific employers, sectors, industries or clusters; and
- 6) Other similar customized services.

The Employment Service (ES) and Employment- Related Law Complaint System

U.S. Department of Labor Employment and Training Administration		OMB Approval No. 1205-0039 Expiration Date: 07/31/2023
For Official Use Only Complaint/Apparent Violation Form ¹		
Complaint/Apparent Violation No.		Date Received
Part I. Contact Information²		Respondent's Information³
1. Name of Complainant (Last, First, Middle Initial) ⁴		4. Name of Person, Company, or Agency the Complaint is Made Against
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer (if different from Part I (4) above) (One-Stop Office)
b. Temporary Address (if Appropriate)		6. Address of Employer (One-Stop Office)
3a. Permanent Telephone	b. Temporary Telephone	7. Telephone Number of Employer (One-Stop Office)
8a. Description of Complaint or Apparent Violation (if additional space is needed, use separate sheet(s) of paper and attach to this form)		
8b. <input type="checkbox"/> I hereby give authorization to _____ to act on my behalf regarding this complaint. Phone #: _____ Address: _____		
Certification I CERTIFY that the information furnished is true and accurately stated to the best of my knowledge. I AUTHORIZE the disclosure of this information to other enforcement agencies for the proper investigation of my complaint. I UNDERSTAND that my identity will be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of my complaint.		
9. Signature of Complainant ⁵		10. Date Signed
<small>¹ For information regarding complaints that are covered through the Employment Service and Employment-Related Law Complaint System see 20 CFR 658 Subpart E. ² If the Complaint/Apparent Violation Form is used to submit an Apparent Violation, the name of the Complainant is not necessary and may remain anonymous. Parts 2a and 2b also do not need to be filled out if the form is used for an Apparent Violation. ³ For definition of "Respondent" see 20 CFR 655.110. ⁴ Pursuant to ESR-6000(d), "a complainant may designate an individual to act as his/her representative." If the complainant has a designated representative, the name and contact information of the designated representative must be provided in 8b. ⁵ No signature is required at Part 9 if this form is submitted as an Apparent Violation. If the form is submitted as a complaint and a designated representative is acting on behalf of the complainant, the designated representative must sign here.</small>		

The Complaint System Handles:

- **ES Related Complaints**

Complaints that:

1. Are against an employer about a specific job to which the applicant was referred through the ES, and
2. Involve failure to comply with Employment Service regulations

- **Complaints Involving Employment-Related Laws**

Employment-Related Laws: Laws that relate to the employment relationship, such as those enforced by USDOL WHD, OSHA, or other Federal, State, or local agencies.

Who can File a Complaint?

↳ *individuals, employers, organizations, associations, or other entities*

Apparent Violations:

If a State agency, ES office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer... the employee must document the suspected violation and refer this information to the ES office manager.

Resources

Laura Tramontana, National Monitor Advocate:

NMA@dol.gov

[Monitor Advocate Directory](#) (contact your SMA, who is your resident expert)

[Monitor Advocate System Webpage](#)

[WorkforceGPS Agricultural Connection Community](#)

[Direct link to NMA Annual Report for PY 2020](#)

[Webpage with NMA Annual Reports for PY 2010 to PY 2020](#)