



Do's and Don'ts of Hiring Foreign Workers

Introduction

To fill job vacancies, many employers decide to hire foreign workers. Working closely with a recruitment agency gives you a leg up on the entire process because you have a trusted team of professionals who understand the intricacies of each visa type and which foreign visa holders will best fit your organization's workforce needs.

When you first start to navigate the intricacies of the U.S. visa program, the first thing you'll notice is that there are several visa types. Each one has its own unique requirements and complexities. Before you can determine which foreign workers to hire, you'll need to figure out which visa type fits the needs of your organization.

This guide will explore the **dos and don'ts** of hiring foreign workers while taking a look at the most popular visa programs used by U.S. employers.

CHAPTER ONE:

TN Nonimmigrant Visa Program

- **Do** use the TN visa if you require a skilled professional to fill your organization's job vacancy.
- **Do not** hesitate to seek help navigating the intricacies of the TN visa process by partnering with knowledgeable recruitment agencies specializing in foreign workers.

The TN Visa is a nonimmigrant visa that let's U.S. employers tap into the pool of skilled professionals in Canada and Mexico to meet their job opening needs.

Using the TN visa, foreign professionals can enter the U.S. for three-year periods which are fully renewable.

One of the main perks of the TN visa is that, unlike other visa types, there is no annual cap on the number of visas issued every year. However, the foreign workers must have a college degree, professional certificate or license that shows they meet the requirements of the job opening.

Simply finding a qualified foreign professional can prove difficult for a U.S. employer if they

don't know where to look. In order for the Canadian or Mexican professional to obtain a TN visa, they must have a valid offer of employment from a U.S. employer. Employers often find it challenging to find a qualified professional to meet their organization's needs and join the team.

Many employers hesitate in using the TN visa program due to the complexity and costs involved. The entire process often proves confusing and frustrating for both employers and applicants.

When you work with a foreign labor job recruiter, such as AW Labor Solutions, their team of professionals will help you navigate the process, so you don't face excessive paperwork and potential errors during the filing processes.



CHAPTER TWO:

H-2A Visa Program

- **Do** use the H-2A visa program if you require agricultural laborers to meet your seasonal needs.
- **Do not** overlook the steps needed to show you have advertised for U.S. workers to fill the job openings. Ensure that you have followed the visa program's required procedures to save time and streamline the process.

The H-2A visa is a seasonal, nonimmigrant visa designed to meet the needs of U.S. agricultural employers.

Small family farms or large agricultural producers can all benefit from H-2A seasonal laborers to meet their harvest, processing, or planting needs. Many would-be employers seeking seasonal help fail to factor in the length of time that the processing takes.

The H-2A visa process can take from two to four months (in some situations longer) to successfully navigate the paperwork filing complexities if you don't make any mistakes. However, if you work with a skilled recruitment agency, such as AW Labor Solutions, the process averages 75 days.

U.S. agricultural employers often don't realize that they must take steps to demonstrate that they advertised the position to U.S. workers and, due to a shortage, were unable to fill the position.



CHAPTER THREE:

H-2B Visa

- **Do** use the H-2B visa program to meet your seasonal temporary one-time occurrence or intermittent non-agricultural labor needs.
- **Do not** take too long to start the H-2B visa process because the program does have a cap of 66,000 per fiscal year and there is no guarantee that the DHS or DOL will increase the cap limit.

The H-2B visa program was developed to fill seasonal, temporary, one-time occurrence, or intermittent non-agricultural labor needs. Using the visa program often proves challenging and time consuming for most employers.

The employer is required to carry out a series of steps such as:

- Provide the Department of Labor with certification that clearly shows an insufficient number of U.S. qualified U.S. workers willing or available to meet the demand.

- Show that employing an H-2B worker will not impact the working conditions or wages of U.S. workers performing similar work.

In addition to dealing with paperwork requirements, an employer also faces a cap on the number of H-2B visas issued each fiscal year. There exists a cap of 66,000 visas per fiscal year.

On January 28, 2022, the Department of Homeland Security and the Department of Labor temporarily increased the cap limit by 20,000 additional visas to meet the demand of U.S. employers facing a labor shortage. Out of the 20,000 H-2B visas, 13,500 were allocated to returning workers.

The limitations and legal requirements of the H-2B visa make it confusing for most employers and time consuming. Partnering with a skilled recruitment agency will save you time and money while feeling confident that you'll have the required laborers needed to meet your workforce demands.

The H-2B visa is valid for only three years with no extensions. At the end of the three years, the visa holder must return to their country of origin and remain for at least six months before they.

CHAPTER FOUR:

Interviewing Prospective Foreign Workers

- **Do** begin the process of interviewing prospective job candidates early because it can take up to nine months to complete the process in some situations.
- **Do not** always count on the candidate gaining admittance into the country because sometimes they are denied the visa.

If you opt to partner with AW Labor Solutions, the process of hiring foreign workers is remarkably easy. We can typically secure H-2A and TN workers within weeks to a couple of months.

When starting the process to hire for the H-2B visa, you'll want to file the petition for the workers at least 60 days in advance but do not exceed 120 days before the workers are needed to start work on the project.

Remember, it takes an average of six times longer to hire a foreign worker than a U.S. job candidate.

Even if an employer has all their paperwork in order, a visa holder might have immigration issues



to clear before they can enter the country.

On rare occasions, even a TN professional might be turned back if they have had past immigration problems or there is any doubt about their experience.

Peruse the resumes closely because international resumes are different from traditional resumes. The resume often includes information that is not typically found on a U.S. resume.

Also, the person you feel is the best candidate for the position might not be approved for the visa and you'll have to start the hunt for a worker all over again.

A candidate cannot enter the US until they obtain a visa. If you want to interview a foreign worker, then you'll have to rely on Skype or Zoom to carry out an 'in-person' interview.

CHAPTER FIVE:

Examining the Dos and Don'ts of Hiring Foreign Workers

Below are a few dos and don'ts of hiring foreign workers that all would-be employers should consider.

Do for Employers Hiring Foreign Workers:

Always ensure that you take the necessary steps to hire legal foreign workers with valid work visas.

Take the legal steps needed to bring in foreign workers to meet your organization's needs.

Promptly inform USCIS whenever you terminate or the employment of a foreign worker.

Maintain all relevant documents.

Don'ts for Hiring Foreign Workers:

After deciding that you want to hire foreign workers for your workforce, don't wait too long to start the process. Because it can become lengthy from start to finish.

Don't handle hiring for foreign workers alone. The process is complex and lengthy. Instead consider partnering with a foreign worker recruitment agency.



CHAPTER SIX:

Hiring a Short-Term Foreign Worker

Employers often have to tap into the pool of foreign labor to meet their workforce needs if there is a shortage of U.S. workers. Depending on the circumstances, U.S. immigration law lets an employer file a Form I-129 with the USCIS for a prospective foreign worker. Once approved, the foreign worker can apply for admission into the country to temporarily work.

In some situations, an employer might also have to file a Labor Condition Application or Application for Temporary Employment Certification with the Department of Labor (DOL).

Sometimes the employer is in dire need of

laborers and simply cannot wait an extended time for approval. They can request expedited adjudication of their Form I-129 by also filing a Form I-907 (Request for Premium Process Service) and pay an additional fee to obtain speedy processing.

Employers must notify USCIS if they fire, layoff or terminate the foreign visa holder.

Immigration law requires an employer to pay the reasonable return transportation costs for an employee on an H-2B visa if the employer should dismiss the worker before the expiration date on their visa.



CHAPTER SEVEN:

FAQs About the TN, H-2B and H-2A Visas

Below are a few of the most common frequently asked questions about the TN, H-2B and H-2A visa:

- **Why Would a TN Visa be Denied?**

Denial of a TN visa may occur at the border if the credentials of the visa application do not match the job requirements. Also, a visa applicant's past activities during prior visits may reflect poorly on the individual and cause a CBP official to deny the visa. Actions such as violating prior visa terms, remaining past the visa's time limits, or working without authorization can all cause a denial.

- **How Many Times Can a TN Visa be Renewed?**

You can renew the TN visa without limit. In order to renew the visa, start the process at least six months before the expiration date.

- **Do H-2A visa workers' pay taxes?**

Yes, H-2A visa workers' pay U.S. federal income tax.

- **Can an H-2B Visa Holder Obtain a**

- **Green Card?**

No. The H-2B visa is classified as a nonimmigrant visa. There is no path toward permanent residency for an H-2B visa holder.

- **Can an H-2B Visa Holder Change Employers?**

No, an H-2B visa holder cannot change employers. In fact, they can only remain in the U.S. if they continue working for their employer.

- **What Happens if a TN Visa Holder Loses their Position?**

A TN professional may remain up to 60 days after voluntary or involuntary termination (or until the end of the visa time span if shorter).

- **Can a TN Visa Holder Obtain a Green Card?**

Yes, a TN visa holder can obtain permanent resident status.

- **How long is the H-2A visa valid?**

An H-2A worker can stay employed with a qualifying employer for up to one year. The visa holder can request additional time by filling out an extension request. The maximum length of stay with extensions is three years.

CHAPTER EIGHT:

Why You Should Partner with AW Labor Solutions.

The entire process of hiring a foreign employee can quickly become a nightmare if an employer does not properly follow procedure. They could end up missing the opportunity to meet their seasonal or temporary labor needs if they do not conduct each of the steps accordingly.

Partnering with AW Labor Solutions streamlines the process from start to finish. We focus on immigration laws that concern

employers. Our focus is always on problem-solving by finding actionable solutions to help you with all of your hiring needs.

Our skilled team of immigration specialists will help you determine the correct visa category that fits your needs. We will take care of the tedious and time-consuming application process to free you to carry out more important work.

Additional services provided by AW Labor Solutions includes:

- Finding workers to meet your needs.
- Hiring qualified workers
- Assisting with any audits required by DOL
- Assistance with multiple visa applications
- Teach employers about the H-2a and H-2b visa programs
- Help reduce audit vulnerability

Our team helps with the entire hiring process from start to finish and we are here to answer

any questions you may have about all of the necessary steps.

Conclusion

If you are seeking talented professionals or laborers to meet our workforce needs, why not consider employing foreign workers? With nationwide labor shortages, many U.S. companies are taking a closer look at foreign workers visa programs to meet their needs.

The foreign worker visa programs provide you with access to an entirely new pool of skilled and unskilled workers to meet your organization's needs.

Navigating visa compliance is not an easy

task. Partnering with AW Labor Solutions will help you streamline your workforce needs while assuring that you meet all local, state, and regional requirements.

Unsure about which visa program will work the best for your organization's needs?

There are a lot of **dos and don'ts** to consider when opting to employ hire foreign workers.

Our skilled team will go over the H-2A, H-2B and TN visa compliance to ensure you gain the workers you seek to meet your business needs.

