DEPARTMENT OF LABOR

Employment and Training Administration


AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this Notice to announce: (1) The allowable charges for 2017 that employers seeking H–2A workers in occupations other than range herding may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2017 under the H–2A and H–2B programs. The Notice also includes a reminder regarding employers’ obligations with respect to overnight lodging costs as part of required subsistence.

DATES: Effective on April 13, 2017.

FOR FURTHER INFORMATION CONTACT: William W. Thompson, II, Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, 200 Constitution Avenue NW., Room PPH–12–200, Washington, DC 20210. Telephone: 202–513–7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The United States (U.S.) Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer’s petition for the admission of H–2A or H–2B nonimmigrant temporary workers in the U.S. unless the petitioner has received from the DOL an H–2A or H–2B labor certification. Both the H–2A and H–2B labor certifications provide that: (1) There are not sufficient U.S. workers who are qualified and who will be available to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 20 CFR 655.1(a)(H–2B); 20 CFR 655.100 (H–2A).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H–2A workers who are not engaged in range occupations are three meals a day or free and convenient cooking and kitchen facilities so workers may prepare their own meals.1 See 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. Id.

The Department establishes the methodology for determining the maximum amounts that H–2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. See 20 CFR 655.173(a). This methodology allows for annual adjustments of the previous year’s maximum allowable charge based upon updated U.S. Consumer Price Index for All Urban Consumers (CPI–U) data for Food, not seasonally adjusted. Id. The maximum charge allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food).2 Id. The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The percentage change in the CPI–U for Food between December 2015 and December 2016 was –0.2 percent.3 Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than $12.07 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The H–2A regulations (20 CFR 655.122(b)(1)) and the H–2B regulations (20 CFR 655.20(j)(1)(i)) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at

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1 H–2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. See 20 CFR 655.210(e).

2 The 12-month percent change in the CPI–U for Food for 2006 through 2016 is available through BLS’ Web site at https://www.bls.gov/cpi/.

3 In 2016, the maximum allowable charge under 20 CFR 655.122(g) was $12.09 per day. 81 FR 9885, 9886 (Feb. 26, 2016). As a result, the maximum allowable meal charge for 2017 has decreased only $.02.