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LABOR BRIEF

USING HOTELS TO HOUSE H-2A WORKERS

Issue:

Sometimes employers need to use hotels or motels to house workers, either because it is a short season or because the housing you are building is not completed. This briefing discusses the benefits and challenges of using a hotel to house H-2A workers.

Executive Summary: Motels are acceptable and a viable alternative.

It is acceptable to use a motel or other public accommodation to house H-2A workers. The federal department of labor (DOL) will determine whether housing is acceptable for H-2A workers by relying on the local or state housing law that governs that form of accommodation. For example, motels in Washington State are licensed by the state department of health. DOL also relies on the State Workforce Agency (SWA) for assistance. In Washington, the SWA is the Employment Security Department (ESD), while in Oregon the SWA is the Oregon Employment Department (OED).

When submitting your application, include information that clearly indicates to the regulator that properly licensed housing has been secured. The best practice is a letter from the building owner/manager specifying the number of rooms reserved, the maximum occupancy for each room, and the dates of the reservation. Employers may substitute other housing when it is completed. Wafila can work directly with the SWA to make the change when employer owned housing becomes available.

The employer is responsible to provide meals or cooking facilities. In some cases, the hotel/motel room is equipped with cooking facilities. A separate regulation, listed below, provides the requirements for cooking facilities, and they are not overly onerous. The employer may also provide meals using a commercial cooking facility such as a local restaurant or even a food truck. If the employer provides meals, the regulation permits a daily deduction of approximately \$12.00 per day from worker pay.

Background: What Laws Govern this Process?

Employers are required to provide housing, and further must provide either cooking facilities or meals for the workers if cooking facilities are not available. The applicable regulation is 20 CFR §655.122, especially section (d)(1)(ii), *Rental and/or public accommodations*.

20 CFR §655.122 Contents of job offers

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(d) *Housing*. (1) Obligation to provide housing. The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. Housing must be provided through one of the following means:

(i) *Employer-provided housing.* Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at §§654.404 through 654.417 of this chapter, whichever are applicable under §654.401 of this chapter. Requests by employers whose housing does not meet the applicable standards for conditional access to the interstate clearance system, will be processed under the procedures set forth at §654.403 of this chapter; or

(ii) *Rental and/or public accommodations.* Rental or public accommodations or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards will apply. In the absence of applicable local or State standards, DOL OSHA standards at 29 CFR 1910.142 will apply. Any charges for rental housing must be paid directly by the employer to the owner or operator of the housing. The employer must document to the satisfaction of the CO that the housing complies with the local, State, or Federal housing standards.

In addition, employers must provide meals. 20 CFR §655.122(g) provides:

(g) *Meals.* The employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. The amount of meal charges is governed by §655.173

Finally, there are special regulations for the State Workforce Agent (SWA) governing farmworkers. 20 CFR §654.413 provides:

§654.413 Cooking and eating facilities

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

- (1) A cookstove or hot plate with a minimum of two burners;
- (2) Adequate food storage shelves and a counter for food preparation;
- (3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;
- (4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and,
- (5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

- (1) Stoves or hot plates, with a minimum equivalent of 2 burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;
- (2) Adequate food storage shelves and a counter for food preparation;
- (3) Mechanical refrigeration for food at a temperature of not more than 45 °F;
- (4) Tables and chairs or equivalent seating adequate for the intended use of the facility;
- (5) Adequate sinks with hot and cold water under pressure;
- (6) Adequate lighting and ventilation; and
- (7) Floors must be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the

capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment, and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

To summarize, employers may use a motel to house workers. The number of workers permitted in each room will be determined by the occupancy provided for that facility, or a determination of the licensing authority. The employer is responsible to provide meals or a cooking facility.

Each entity – DOL, the SWA, and the state department of health, have procedures which govern the use of hotels.

Procedures: What are the procedures or positions of the various agencies?

DOL Procedure

The ultimate approval authority for your H-2A application is the federal department of labor (DOL). DOL follows the regulation cited above, which it has clarified through a “Frequently Asked Question” (FAQ) on its website as follows:

September 15, 2011, FAQ Number 7: Essential Information that must be listed on the ETA 790:

- Item 3 - Housing location(s) and directions must be clear and complete. ***If the employer is providing rental housing or public accommodations, an assurance must be submitted stating that all rental housing or public accommodations will meet all local, State or Federal housing standards.***

The State Workforce Agent (SWA) provides the “assurance” that DOL is seeking.

SWA Procedure

In Washington, the SWA requires applicants to list the name of the hotel, the state license number, the dates that the units are reserved, the number of units that will be rented, and the number of workers in each unit. This information should be provided in a spreadsheet, with a cover letter signed by the facility owner/manager, confirming that the reservation is in place, and further confirming that the hotel is properly licensed for the number of workers per unit.

Oregon follows a similar procedure. In both states, the SWA reserves the right to make an independent inspection of the hotel.

Meals and Cooking Facilities

The challenge is that hotels generally lack appropriate cooking facilities. If the hotel permits cooking and meets the standards, you should submit pictures demonstrating that the facility meets the standards from 20 CFR 654.413 which are listed above. A best practice is to meet with a representative from the SWA at the hotel to review compliance with the cooking standard. In the state of Washington, the department of health provides inspections, while in Oregon housing inspections are conducted by Oregon OSHA.