



# Agricultural and Seasonal Workforce Services Advisory Committee

## Meeting details

**Date:** Wednesday, March 15, 2023

**Time:** 1:00 p.m. – 5:00 p.m.

**Location:** KDNA 121 Sunnyside Ave, Granger, WA 98932

### Committee members present

- Rosalinda Guillen
- Michele Besso
- Delia Peña
- Michael Gempler

### Committee members absent

- Victoria Ruddy
- Jon DeVaney
- Edgar Franks
- Jeff Perrault

### Non-voting agency representatives

- Juan Gamez, DOH

- Uriel Iniguez, LNI

### Non-voting members absent

- Ignacio Marquez, WSDA

### Agency Guests:

- Jill Satran, JLARC

### ESD staff

- Dan Zeitlin
- Bertha Clayton
- Petra Meraz
- Margarito Cabrera
- Tamara Johnson

## Summary

### Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked everyone to introduce themselves because the meeting was in person. Four voting members were present. February meeting minutes were tabled until the April meeting which will be held via Zoom.

### Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. (See Addendum I.)

### ASWS Office – Bertha Clayton, Director, ASWS Office, ESD (See Addendum II.)

ASWS Office update – Bertha Clayton, Director

- Petra Meraz new FLC Program Supervisor
- JLARC here doing comprehensive study of ESD including ASWS office.
- FLC Budget
- What's App update – working with IT & ELT to get approval for use.
- New H-2A Employers informational handout.

#### Action Items:

- Keep committee updated on What's App developments (Mike/Michele)
- Share virtual link to employer H-2A forum when ready (Michele)

FLC Applications update – Petra Meraz, FLC Program Supervisor (See pages 9-10)

ASWS Compliance Team update – Margarito Cabrera, Compliance Supervisor (See pages 11-13)

**Action Items:**

- Add issues that were resolved to complaint updates (Rosalinda)

**Committee Discussion Topic #1: Temporary Worker Housing** (See Addendum III.)

1. Issue: Increased use of motels without requiring them to meet TWH requirements. The issue is that under current DOH rules/policy, growers who use hotel/motel housing need only a Transient Accommodation (TA) license. TA licenses do not require the grower to meet TWH standards, which are arguably applicable to TA housing used to house seasonal workers. DOH should make a rule and/or policy change and require TA facilities to meet TWH standards. (Michele)
2. DOH needs to be able to conduct post-occupancy transient housing inspections to see whether it meets TWH standards; ESD has authority to do this (Michele).
3. DOH is looking into changing enforcement interpretation of rule or to change rule with state health board to require a dual license from hotel/motel. DOH is awaiting further guidance and recommendation from its Assistant Attorney General counsel. DOH will update the committee once that guidance is received. (Juan)
4. Hotels/motels should need to meet the core TWH standards (no overcrowding, burners on floor), but 100% alignment should not be the goal. (Mike)

**Summary of Topic #2: ASWS Committee Farmworker Engagement Recommendations** (See Addendum IV.)

- Need incentive for farmworkers to attend meetings, specific issues to be discussed and information sharing from agencies including those not represented on committee like Revenue/WOTC (Rosalinda/Michele)
- Tools: Radio PSAs and shows (LNI did 1 hour radio show); Facebook live (Rosalinda/Michele/Bertha/Petra/Uriel/Juan)
- Include costs when presenting options to committee (Mike)
- What can we learn about community organization outreach activities (started in COVID) and their impact? (Uriel)

**Action Items:**

- ESD will continue to consider options for farmworker engagement and will bring the topic back to the committee (Dan/Bertha)

**Committee Discussion Time / Future Agenda Items**

- MOU (See Addendum V)

**Public Comments**

None

**Adjourned**

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 5:00 p.m.

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**2022 Meetings**

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **April 19, 2023 – 1:00 p.m. to 3:00 p.m. – Zoom Meeting**

Addendums

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee  
 Wednesday, March 15, 2023 | 1:00 pm – 5:00 pm | KDNA 121 Sunnyside Ave, Granger, WA 98932

TIME	TOPIC
1:00 pm	Welcome – Dan Zeitlin, Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> <li>• Roll Call &amp; Committee Member Sharing – Tamara Johnson</li> <li>• Agenda Review – Dan Zeitlin</li> </ul>
1:20 pm	Administration – Dan Zeitlin <ul style="list-style-type: none"> <li>• Recording Meetings</li> <li>• Farmworker Engagement</li> <li>• Charter Approval</li> </ul>
1:40 pm	ASWS Office Update – Bertha Clayton, Director, ASWS Office, ESD <ul style="list-style-type: none"> <li>• ASWS Office – Bertha Clayton</li> <li>• FLC Applications – Petra Meraz, FLC Lead Program Coordinator</li> <li>• ASWS Compliance Update – Margarito Cabrera, Compliance Unit Supervisor</li> </ul>
1:50 pm	Introduction of ASWS Staff – Bertha Clayton
2:00 pm	Break
2:10 pm	Committee Discussion Topic #1: Temporary Worker Housing <ul style="list-style-type: none"> <li>• Summary of Topic</li> </ul>
3:10 pm	Break
3:20 pm	Continuation of Discussion Topic #1 (if needed) <i>or</i> Committee Discussion Topic #2: Inter-Agency Coordination <ul style="list-style-type: none"> <li>• Summary of Topic</li> </ul>
4:00 pm	Break
4:10 pm	Discuss Future Agenda Items
4:20 pm	Public Comment
4:50 pm	Good of the Order
5:00 pm	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

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ADDENDUM II.

## ASWS Office Update



Bertha J. Clayton, ASWS Director, ESD

## Office update – March 2023



- Staffing – Changes
  - Foreign Labor Certification Lead Position → Supervisor Position
  - Compliance Team → Compliance Specialist Vacancy (Okanogan)
  - State Monitor Advocate → Leave of Absence
- JLARC Audit – H2A Study
  - Field Work phase starting March 2023
  - Includes detailed examination of FLC application process, compliance, training and outreach, domestic recruitment
  - Final report is targeted for 2024

## Office update – March 2023



- FLC Budget Update
  - President Biden’s budget for FY 2024 released 3/9/2023
  - ESD annual agency appropriations request completed for the WA Congressional Delegation
  - ESD asked Congress to provide \$28.6 mil for state grants
  - ESD received \$602,678 in FY 2022. (\$400k base; \$202,678 one time supplemental allocation)
- ASWS-Customer texting capability
  - ASWS has requested WhatsApp capability to communicate with workers
  - Request before internal IT committee next week
- New ASWS Flyers
  - Foreign Labor Certification flyer
  - Compliance flyer

# Agricultural & Seasonal Workforce Services (ASWS) Office



The ASWS office was created in 2019 to provide adequate protections for foreign and domestic workers and provide education and outreach opportunities to help growers maintain the stable workforce they need.



## The ASWS office is composed of two teams: Foreign Labor Certification Team (FLC) and Compliance Team.

### Foreign Labor Certification Team

*Processes foreign labor applications from employers and creates job orders for domestic workers to apply to the job. Additionally, the FLC team provides technical assistance to filers.*

Phone: (509) 440-2442  
Email: [wcdh2a@esd.wa.gov](mailto:wcdh2a@esd.wa.gov)

### Compliance Team

- Conducts in-person site visits to H-2A employers and provides education regarding program requirements.
- Shares compliance resources and provides compliance technical assistance.
- Informs workers of their rights and contract assurances under the H-2A regulations.
- Conducts Field Checks to employers where ESD has made a placement on a job order, as is required by law.
- Receives and helps workers resolve complaints informally with employers.



## Compliance areas & phone numbers

Yakima .....	(509) 412-2601
Columbia Basin .....	(509) 222-8049
Walla Walla .....	(509) 221-8405
Central Basin .....	(509) 403-0424
Wenatchee Valley .....	(509) 423-0178
Okanogan .....	(509) 222-4539
Auburn / Skagit .....	(206) 536-0424

Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711

Updated: 01.26.2023

What growers should know about the  
**Foreign Labor Program**



## The H-2A Temporary Certification for Agricultural Workers program

The federal H-2A program allows you to temporarily hire foreign agricultural workers if you anticipate a shortage of workers.

When you apply to the H-2A program, you will work with both the U.S. Department of Labor (USDOL) and the Washington State Employment Security Department (ESD).

### ESD's Office of Agricultural and Seasonal Workforce Services

ESD's ASWS ensures that the H-2A program is administered properly in Washington. We support both H-2A growers and workers.

We:

- Educate growers about the H-2A certification process.
- Provide guidance about the H-2A housing certification process.
- Provide technical assistance and compliance resources.
- Help workers and employers to informally resolve complaints.
- Help employers comply with program requirements.

Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711

Additional H-2A certification instructions at:

[foreignlaborcert.doleta.gov](https://foreignlaborcert.doleta.gov)



## The H-2A certification process

1. Grower submits a job order through the USDOL Foreign Labor Application Gateway (FLAG) between 60 and 75 days before you need workers.
2. ASWS reviews the job order and responds within seven days. We will either accept it or ask for corrections.
3. Once ASWS accepts the job order, it refers qualified domestic workers to the grower. Grower must:
  - Start to recruit domestic workers.
  - Comply with federal and state licensing requirements for housing where workers will reside during the work contract.
  - Submit recruitment information to USDOL.
4. USDOL reviews application. To give you permission to hire foreign workers, USDOL must determine that:
  - There are not enough domestic workers who are able, willing, qualified and available to do the work.
  - Hiring temporary foreign workers will not harm the wages and working conditions of domestic workers similarly employed.

## What does H-2A require of growers?

**Recruitment:** Offer employment to all eligible domestic applicants until 50% of the work contract period has passed.

**Wages:** Pay the highest of the adverse effect wage rate (AEWR), the prevailing wage, the prevailing piece rate, and the federal or state minimum wage. Contact Washington's ASWS for this year's rate.

**Housing:** Provide free housing that meets federal and state health and safety standards. You must provide housing to all foreign workers and to all domestic workers unable to return to their residences within the same day.

**Meals:** Provide all workers either three meals per day or cooking facilities.

**Transportation:** Provide free daily transportation between the workers' housing and the employer's worksite.

**Inbound and outbound travel:** Reimburse workers for reasonable costs of traveling to and from the U.S.

**Tools and supplies:** Supply workers with tools and necessary equipment.

**Insurance:** Must provide workers' compensation insurance for all workers.

Need help with H-2A? Contact Washington ASWS at: 509-440-2442 | [wcdh2a@esd.wa.gov](mailto:wcdh2a@esd.wa.gov)

## Office update – March 2023



- USDOL WHD H-2A employer forum
  - April 13, 2023 in Pasco, WA
  - Agencies attending: WSDA, WA DOH, ASWS, USDOL ETA CNPC, USDOL WHD, USCIS, CDC, US Consulates (Tijuana, Monterrey, Guadalajara).
  - Organized in coordination with WSDA and industry member planning committee.

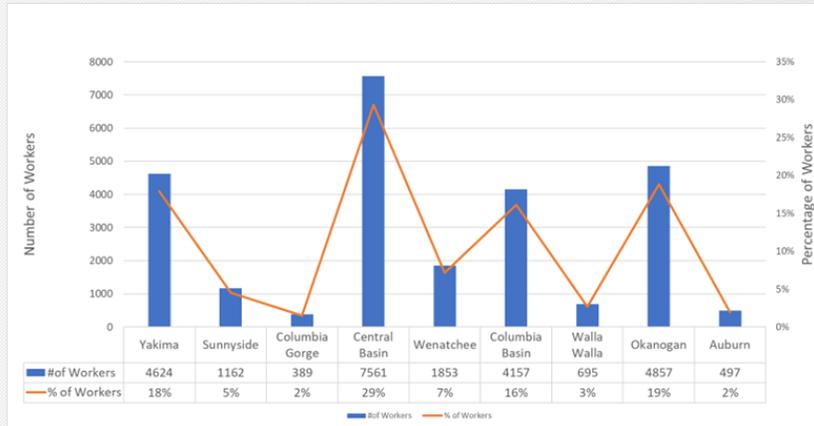
## FLC Applications update



H-2A Applications & Workers Report				
	PY 2023 H-2A Data		PY 2022 H-2A Data	
	10/1/2022	3/10/2023	10/1/2021	3/10/2022
	Applications	Workers requested	Applications	Workers requested
Total processed to date	265	25831	234	23643
Withdrawn/Denied	16	2358	15	2084
Contracts Commenced	128	13024	113	9132
Contract Impossibility	0	0	2	254
Active Cases	147	13458	109	8054

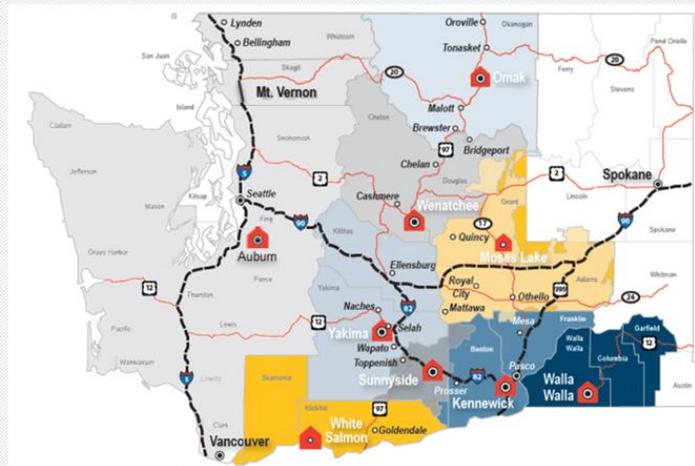
\*The numbers reported are not reflective of the number of foreign workers that arrive in Washington State.

# Main Application Holding Offices



Confirmed by 4 Employers – 110 workers are in Washington

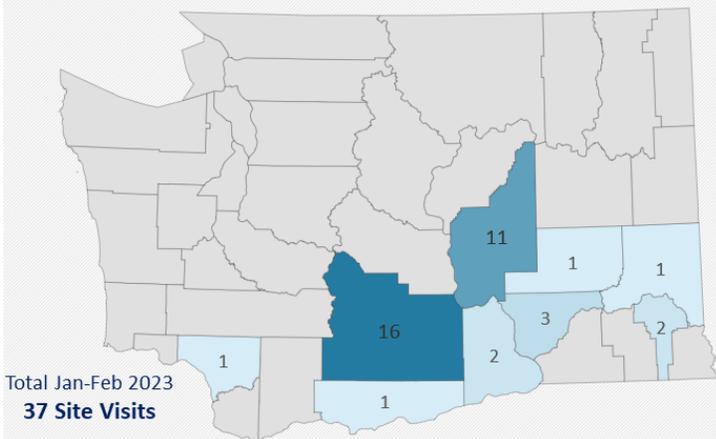
# Main Application Holding Offices Map



# Site Visits



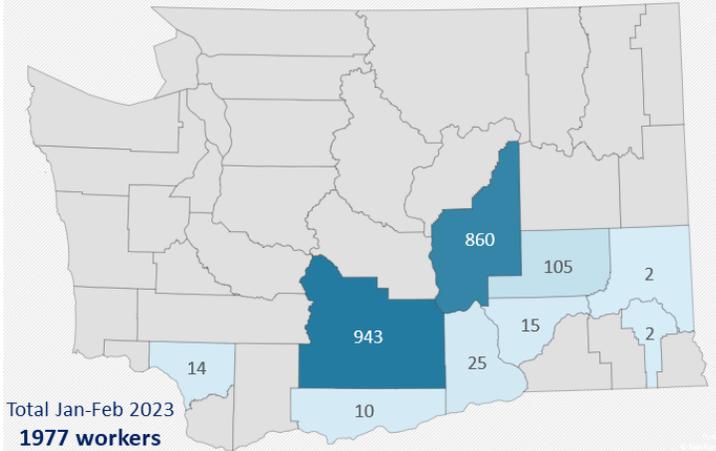
By County from Jan-Feb 2023



# Approximate Workers Contacted



By County from Jan-Feb 2023



## Field Checks – 2023



### 20 CFR 653.503 Field Checks

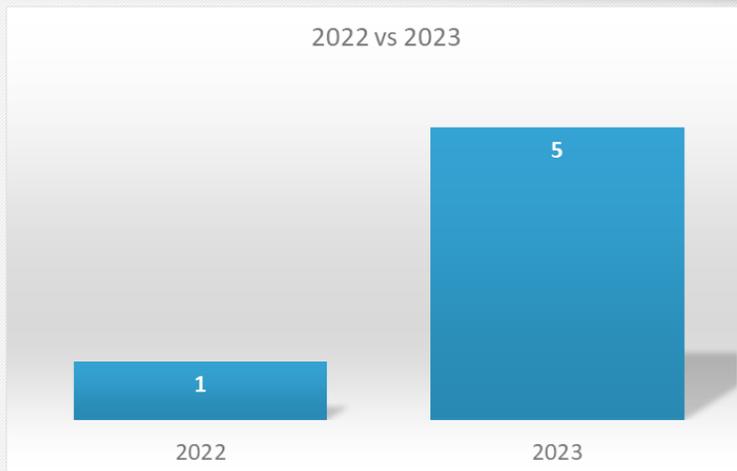
(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

Number of Placements <i>(seeker referred and started working)</i>	3
Number of Field Checks Performed by ASWS	1
Number of Field Checks currently scheduled	2

*We had 3 placements on February, 1 Field check conducted on March and we have 2 schedule*

## Complaints / Apparent Violations – 2022 vs 2023



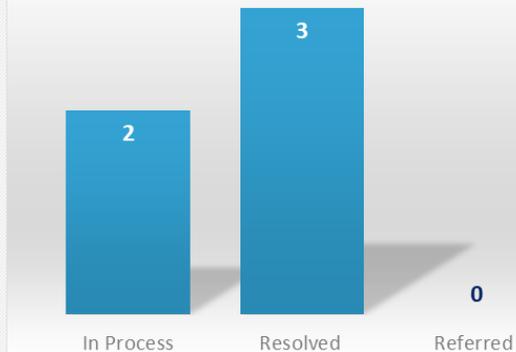
## Complaints / Apparent Violations – 2023



Type of Allegations



Status of Complaints



## ASWS Advisory Committee Meeting attendees – March 15, 2023.



From Left to Right:  
Alberto Isiordia, Dan Zeitlin, Mike Gempler, Amador Madera, Delia Pena, Juan Gamez, Mireya Prieto, Olivia Gutierrez, Margarito Cabrera, Carlos Sandoval-Larios (in back), Uriel Iniguez, Bertha Clayton, Michelle Besso, Rosalinda Guillen, Petra Meraz, Tamara Johnson

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**ADDENDUM III.**
**TOPIC 1: TEMPORARY WORKER HOUSING FACT PAGE****I. Background**

Employers must provide free housing to foreign workers and domestic workers in corresponding employment who cannot reasonably return to their homes within the same day. As the SWA, ESD must verify that a pre-occupancy housing inspection occurs and that the housing assured by the employer is in fact available and meets the full set of standards set forth in applicable local, state, and federal regulation. The housing must be licensed by the applicable licensing agency. ESD must then verify this information to the USDOL Chicago National Processing Center (CNPC).

**II. Licensing agencies****1. WA Department of Health**

- a. DOH is responsible for licensing and enforcement of Temporary Worker Housing (TWH) consisting of five or more dwelling units or spaces that house ten or more occupants.

**2. WA Labor and Industries (DOSH)**

- a. LNI is responsible for licensing and enforcement of TWH consisting of less than 5 units and fewer than 10 occupants.

The inspection and compliance process required for licensure by each agency is described in the 2020 Memorandum of Understanding between ESD, DOH, and LNI.



Contract K4067-1  
MOU TWH H-2A Pro

**III. ASWS verification of housing**

- a. In instances where ASWS becomes aware of a potential housing issue (overcrowding, workers residing in locations not approved by DOL, inadequate access to cooking facilities); ASWS compliance specialists are utilized to do an on-site visit to verify that housing compliance. When housing is not in compliance, ASWS communicates with DOH and LNI regarding compliance enforcement.

**IV. TWH and TA Housing****a. Temporary Worker Housing:**

- i. RCW 70.114A(10): "a place, area or piece of land where sleeping places of housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy".
  - 1. Hallmarks of TWH License: Limits on occupancy, post-occupancy inspections permitted, minimum square footage requirement per occupant, requires personal storage, cooking facilities and laundry, new inspection and license required annually.

**b. Transient Accommodations ("Hotels/Motels")**

- i. RCW 70.62.210(1): "any facility such as a hotel, motel, condominium, resort or any other facility or place offering three or more lodging units to travelers and transient guests".
  - 1. Hallmarks of TA License: No limit on occupancy, no post-occupancy inspection permitted, no minimum square footage per occupant, does not require personal storage, cooking facilities, or laundry, new inspection and license required every three years.

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ADDENDUM IV.

TOPIC TWO: INTER-AGENCY COORDINATION FACT PAGE

- I. Background

RCW 50.75.020(2)(c) (Office of agricultural and seasonal workforce services -Creation-Duties) states that ASWS duties include: “(c) Conducting field checks and field visits, as required by the United States department of labor. **When conducting a field check, the office shall coordinate, to the extent possible,** with the department of labor and industries, department of health, and department of agriculture in order to limit disruption to agricultural employers and efficiently use government resources.
- II. Current State: ASWS coordination with other agencies
  1. LNI – Community Relations
    - a. Monthly meeting between teams to discuss regional coordination.
    - b. Developing inter-agency agreement regarding outreach and education (not field check)
  2. LNI Dept. of Occupational Safety and Health (DOSH)
    - a. Monthly meeting between teams to discuss active cases and potential issues.
    - b. Will explore developing an inter-agency agreement for field check coordination.
  3. WA Department of Health
    - a. Monthly meeting between teams to discuss active cases and potential issues.
    - b. Monthly meeting between Juan Gamez and Bertha Clayton to discuss improvements to operational processes.
  4. WA Department of Agriculture
    - a. Communication is ad hoc.
  5. USDOL Wage and Hour Division (USDOL WHD)
    - a. Bi-weekly meeting to discuss active cases and potential issues.
    - b. Exploring an inter-agency agreement for field check coordination.
  6. Equal Employment Opportunity Commission (EEOC)
    - a. Communication is ad hoc.
  7. Mexican Consulate (Seattle)
    - a. Communication is ad hoc.
  8. ESD Employment Connections (MSFW Program)
    - a. Monthly agricultural outreach call to discuss updates.
    - b. Regional level coordination and information sharing.

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ADDENDUM V.

**MEMORANDUM OF UNDERSTANDING**

**Between**

**The State of Washington Department of Health**

**And**

**The State of Washington Department of Employment Security**

**And**

**The State of Washington Department of Labor and Industries**

This **Memorandum of Understanding (MOU)** is made and entered into by and between the Department of Health (DOH), the Department of Employment Security (ESD) and the Department of Labor and Industries (L&I), relating to Temporary Worker Housing (TWH) and the H-2A program.

The purpose of this Memorandum of Understanding ("MOU") is to specify the process in Washington State to ensure that federal and state requirements for Temporary Worker Housing ("TWH") are met when TWH will be provided in conjunction with a temporary labor certification application for the H-2A program. 8 U.S.C. § 1188.

**The parties to this MOU are:**

- The Employment Security Department of Washington State ("ESD"), which is responsible to coordinate with the United States Department of Labor ("USDOL") on H-2A applications received by the state. As part of its duties, ESD is required to verify that a preoccupancy housing inspection occurs and that housing assured by the employer is in fact available and meets the full set of standards set forth in applicable federal regulations.
- The Washington State Department of Health ("DOH"), which is responsible for licensing and enforcement of TWH consisting of five or more dwelling units or spaces that house ten or more occupants.
- The Washington State Department of Labor & Industries (L&I), which is responsible for enforcement of TWH consisting of less than 5 units and fewer than 10 employees.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF WORK**

This MOU outlines the performance of the work, set forth in Attachment A and incorporated herein.

**PERIOD OF PERFORMANCE**

The period of performance for this MOU has been amended to begin upon the Date of Execution, which is the latest date of signatures noted below, and shall remain in effect until modified or terminated upon written notice by either agency.

AMENDMENT 1  
DOH MOU Contract # N21919  
L&I MOU Contract # K4067-1

**PAYMENT**

Each party shall be liable only for those costs incurred by that party.

**RECORDS MAINTENANCE**

Each party to this contract shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by that party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of all parties, other personnel duly authorized by each party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this MOU will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this MOU to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other parties are not erroneously disclosed to third parties.

**INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this MOU shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other parties.

**CONFIDENTIALITY**

Each party will comply with confidentiality statutes as they apply to the licensing, operation and inspection of temporary worker housing and enforcement of related regulations. The use or disclosure by any party of any information obtained through activities covered by this MOU shall be subject to the applicable provisions for each agency under chapter 49.17 RCW, chapter 70.02 RCW, and 50.13 RCW, as well as any other applicable federal and state statutes and regulations.

**LIMITATION OF AUTHORITY**

Only the directors of the Departments of Health, Employment Security and Labor and Industries or his/her delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract on behalf of the department. No alteration, modification, or waiver of any clause or condition of this MOU is effective or binding unless made in writing and signed by a party authorized to obligate that party.

AMENDMENT 1  
DOH MOU Contract # N21919  
L&I MOU Contract # K4067-1

**HOLD HARMLESS**

Each party to this MOU shall defend, protect and hold harmless the other parties from and against all claims, suits or action arising from any intentional or negligent act or omission of the other party or subcontractor, or agents of either, while performing under the terms of this contract. Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice.

**MOU ALTERATIONS AND AMENDMENTS**

This MOU may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**TERMINATION**

Each party may terminate this MOU upon 30 days prior written notification to the other parties. If this MOU is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this MOU prior to the effective date of termination.

**TERMINATION FOR CAUSE**

If for any cause, a party does not fulfill in a timely and proper manner its obligations under this MOU, or if any party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this MOU may be terminated immediately by written notice of the aggrieved party to the other.

**DISPUTES**

In the event that a dispute arises under this MOU, the parties will make every effort to resolve the disagreement. If those efforts are not successful, disputes shall be determined by a Dispute Board. Each party to this MOU shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, any of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

AMENDMENT 1  
DOH MOU Contract # N21919  
L&I MOU Contract # K4067-1

**GOVERNANCE**

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this MOU shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this MOU, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the MOU, including materials incorporated by reference.

**ASSIGNMENT**

The work to be provided under this MOU, and any claim arising thereunder, is not assignable or delegable by any party in whole or in part, without the express prior written consent of the other parties, which consent shall not be unreasonably withheld.

**WAIVER**

A failure by any party to exercise its rights under this MOU shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this MOU unless stated to be such in writing, signed by an authorized representative of the party and attached to the original MOU.

**SEVERABILITY**

If any provision of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision. If such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOU, and to this end the provisions of this MOU are declared to be severable.

**ALL WRITINGS CONTAINED HEREIN**

This MOU, and Attachment A, contain all the terms and conditions agreed upon by each party. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any party, hereto.

**CONTRACT MANAGEMENT**

The contract manager, or program manager or designee for each party shall be responsible for and shall be the contact person for all communications regarding the performance of this MOU.

AMENDMENT 1  
DOH MOU Contract # N21919  
L&I MOU Contract # K4067-1

**The Program Manager for DOH is:**

Kimberly Gierach (or successor)  
Washington State Department of Health  
Office of Health Professions and Facilities  
PO Box 47824  
Olympia, WA 98504-7824  
(360) 236-3366

**The Program Coordinator for ESD is:**

Norma Chavez (or successor)  
Department of Employment Security  
212 Maple Park Ave SE  
Olympia, WA 98501  
(360) 890-3467

**The Program Manager for L&I is:**

Teri Neely (or successor)  
Department of Labor and Industries  
Division of Occupational Safety and Health  
(DOSH)  
PO Box 44610  
Olympia, WA 98504  
(360) 902-6652

**IN WITNESS WHEREOF, the parties have executed this MOU.**

  
\_\_\_\_\_  
Contracting Officer  
Washington State Department of Health

**Frank Webley**  
Contract Specialist III

12/24/19  
Date

  
\_\_\_\_\_  
Daniel Zeitlin, Director,  
Policy, Data, Performance and Integrity Division  
Washington State Department of Employment Security

12/30/19  
Date

  
\_\_\_\_\_  
Anne F. Soiza, L&I Assistant Director  
Washington State Department of Labor and Industries  
Division of Occupational Safety and Health

12/20/19  
Date

AMENDMENT 1  
DOH MOU Contract # N21919  
L&I MOU Contract # K4067-1

**ATTACHMENT A**

**DOH, ESD and L&I (DOSH)  
TEMPORARY WORKER HOUSING AND H-2A PROGRAM MOU**

**STATEMENT OF WORK**

**GOVERNING AUTHORITIES**

When offered under an H-2A job order, TWH is governed by 8 U.S.C. § 1188(c)(4); 29 C.F.R. § 1910.142; and 20 C.F.R. Part 654, Subpart E. All TWH in Washington State is governed by RCW 70.114A, RCW 43.70, and RCW 49.17.

**INSPECTION AND COMPLIANCE PROCESS FOR TWH REQUIRED TO BE LICENSED BY DOH**

**A. Employer-Provided Housing (20 C.F.R. § 655.122(d)(1)(i))**

**Process upon Receipt of an H-2A Application by ESD**

1. Within 5 business days after receiving notice of an H-2A application from ESD, DOH will notify ESD in writing of the following:
  - a. If the site is licensed and the date of licensure;
  - b. If a license has been issued, whether the license was issued with a Letter of No Deficiency, or whether the license was issued subject to a Notice of Correction and approved Attestation of Correction;
  - c. If no license has yet been issued, whether a pre-occupancy inspection for the site has occurred or is scheduled, and the date the inspection occurred or is scheduled to occur;
  - d. If a license application for the site was denied, the date of denial;
  - e. If a license application for the site has been received, but approval is pending due to uncompleted deficiencies, the anticipated schedule for completion.
2. In all cases in which a TWH license has not yet been issued at the time ESD notifies DOH of an H-2A application, DOH will update ESD on the status of the TWH application approval process for the site if and when it changes.
3. ESD will notify USDOL when the site is fully compliant with the requirements set forth in 20 C.F.R. § 655.122(d)(1)(i).

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Inspection Process When DOH Issues a TWH License with a Notice of Correction/Approved Attestation of Correction

1. If DOH issues a TWH license for a site associated with an H-2A application subject to a Notice of Correction/Approved Attestation of Correction, ESD will review the required corrections and follow up with DOH as necessary. In such case:
  - a. **Minimal risk or moderate isolated risk** - ESD staff will inspect the site when the Notice of Correction identifies violations which are minimal risk or moderate isolated risk.
  - b. **Pattern of moderate risk or higher** - DOH staff will inspect when the Notice of Correction identifies violations which demonstrate a pattern of moderate risk or greater pattern of moderate risk. DOH shall make staff available within 10 business days of receiving the signed Attestation of Correction.
2. If DOH completes the follow-up inspection, DOH will provide written notice of the inspection results to ESD within 5 business days;
3. If ESD completes the follow-up inspection and finds that not all issues specified in a Notice of Correction are resolved, ESD will provide written notice of the inspection result to DOH within 5 business days.
4. ESD will notify USDOL when the site is fully compliant with the requirements set forth in 20 C.F.R. § 655.122(d)(1)(i).

Process for Conditional Access Applications

1. When a prospective H-2A employer's housing does not meet the applicable standards at the time the H-2A application is submitted and conditional access to the job clearance system is granted by USDOL under 20 C.F.R. § 654.403, ESD and DOH shall undertake the following:
  - DOH shall conduct a pre-occupancy inspection of the site by the date of the inspection specified by the employer which shall be at least 30 days prior to the date of intended occupancy (DOH needs at least 21 calendar days' notice prior to the specific date of inspection);
2. In cases where the housing fails to meet full compliance on the date designated by the employer, DOH and ESD shall confer and develop a plan to ensure the site is inspected and meets full compliance at the conclusion of the 5-day correction period afforded to the employer under 20 C.F.R. § 654.403.

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**B. Rental and/or Public Accommodations (20 C.F.R. § 655.122(d)(1)(ii))**

ESD will coordinate with DOH to ensure rental or public accommodations provided by the employer meets applicable local or state standards set forth in 20 C.F.R. § 655.122(d)(1)(ii).

**INSPECTION AND COMPLIANCE PROCESS FOR TWH AS REQUIRED BY L&I**

Process upon Receipt of an H-2A Application by ESD

1. Within 2 business days of receipt, ESD shall notify L&I of the receipt of an H-2A application in which TWH is required to be inspected by L&I.
2. Within 15 business days after receiving notice of an H-2A application from ESD, L&I will notify ESD in writing of the results of the TWH housing inspection.
3. L&I will not approve any TWH sites until full compliance under WAC 296-307-161 is achieved.
4. ESD will notify USDOL when the site is fully compliant with the requirements set forth under WAC 296-307-161.

**COMPLAINT INVESTIGATION PROCESS**

Complaints relating to TWH housing and rental and/or public accommodations provided under H-2A contracts are investigated by DOH or L&I respectively, depending upon which agency has jurisdiction on the site at issue, as set forth in governing law and as outlined above.

ESD shall refer all housing-related complaints it receives, or of which it becomes aware, to DOH or L&I as appropriate, depending on which agency has jurisdiction of the site at issue.

The parties acknowledge that ESD also has authority to inspect housing occupied by employees under H-2A contracts and make appropriate referrals to USDOL or other governing or regulating entities.

Within 5 business days of completion, DOH and L&I shall provide copies of results of complaint investigation reports relating to housing supplied under H-2A contracts to ESD upon request.



Agricultural and Seasonal Workforce Services  
ADVISORY COMMITTEE



**ASWS Advisory Committee Meeting**  
**ZOOM**

Wednesday, April 19, 2023

1:00 p.m. – 3:00 p.m.

**Contact information**

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*Employment Security Department • Policy, Data, Performance and Integrity*