



## The Affordable Care Act and H-2A Agricultural Workers

# Frequently Asked Questions



Every year, between 50,000 and 100,000 foreign workers come to the U.S. to work in agriculture with temporary H-2A visas.<sup>1</sup> These “H-2A workers” are “lawfully present” in the U.S. and are therefore subject to certain rights and responsibilities under the Affordable Care Act (ACA). The following Frequently Asked Questions address some of the major provisions of the law that relate to H-2A workers.

### **What are the obligations of H-2A workers under the ACA?**

Because they are lawfully present for the purposes of the ACA, H-2A workers are subject to the minimum essential coverage provision (also known as the individual mandate). H-2A workers who do not have health insurance while in the United States and also do not qualify for one of a number of statutory exemptions may be assessed a tax penalty when they file their federal income tax returns.

### **What is the tax penalty for 2016?**

For tax year 2016, the tax penalty for non-exempt individuals who do not have health insurance is \$695/person or 2.5% of household income above the tax filing threshold, whichever amount is greater. This penalty is a substantial increase from prior years.

### **Are H-2A workers eligible for Medicaid?**

No. H-2A workers do not qualify for Medicaid because they are not considered a “qualified immigrant.” Qualified immigrants include Lawful Permanent Residents who have held this status for more than 5 years, refugees, and asylees, among others. Even in states that have expanded Medicaid to other immigrant categories, such as California, H-2A workers are not eligible due to their temporary status.

<sup>1</sup> U.S. Dept. of Labor, Office of Foreign Labor Certification, <http://www.foreignlaborcert.doleta.gov/performance/data.cfm>

## Are H-2A workers eligible to purchase health insurance in the Marketplaces?

Yes. As lawfully present individuals, H-2A workers are eligible to purchase health insurance via the Health Insurance Marketplaces.

## Are H-2A workers eligible for subsidies in the Health Insurance Marketplaces?

Yes. H-2A workers are eligible to receive subsidies in the Marketplaces if they earn between 0% and 400% of the Federal Poverty Level (FPL), or up to \$47,520 for an individual.

There are two types of subsidies available in the Marketplace: the Advanced Premium Tax Credit and cost-sharing reductions.

- Advanced Premium Tax Credit – a subsidy from the federal government that lowers a person’s monthly premium. The amount of the subsidy is based on the person’s income and the 2nd least costly “silver” plan in his area.<sup>2</sup> The lower the income, the higher a person’s subsidy. The subsidy can be used with any plan in the Marketplace.
- Cost-sharing reduction – a subsidy from the federal government that lowers a person’s out-of-pocket costs, including deductibles and co-pays for doctor visits and prescription drugs. Cost-sharing reductions are only available to people with incomes below 250% FPL (currently \$29,700 for an individual) and the person must enroll in a silver plan to qualify.

It is likely that H-2A workers who enroll in a bronze plan (which generally have the lowest premiums in the Marketplace) will pay minimal premiums for their health insurance after the Advanced Premium Tax Credit is applied. However, if these workers enroll in a bronze plan, they will not be eligible for reduced cost-sharing, which is only available under silver plans.

## Are H-2A workers eligible for exemptions from the minimum essential coverage provision?

Yes. H-2A workers may be eligible for exemptions from the minimum essential coverage provision. There are a total of 9 exemptions.<sup>3</sup> H-2A workers will likely qualify for one of the following exemptions:

- Below the income filing threshold
- Short coverage gap – the worker is without health insurance for fewer than 3 continuous months during a calendar year
- Affordability – the worker’s contribution to health insurance is more than 8% of his household income
- Hardship – the worker is unable to pay for health insurance due to a natural or human-made disaster or a life event that impacts the worker’s ability to afford health insurance
- Certain non-citizen — the worker files his taxes as a non-resident alien; the worker will also claim this exemption for the months that he is not in the U.S.

<sup>2</sup>There are four “metal” tiers of insurance plans available in the marketplace: platinum, gold, silver and bronze. These plans must offer a basic set of services. The main difference between the metal tiers is the cost of premiums and deductible amounts. Platinum plans have the highest premiums but the lowest deductibles. Bronze plans offer the lowest premiums but have the highest deductibles.

<sup>3</sup>The other 4 exemptions are: member of a recognized Indian tribe, member of a healthcare sharing ministry, religious conscience, and incarcerated individuals. The certain non-citizen exemption also includes individuals who are not lawfully present. For more information about the ACA’s health insurance requirement, see Farmworker Justice’s [ACA Guide to the Health Insurance Requirement](#).

Exemptions for earnings below the tax filing threshold, short coverage gap, affordability, and certain non-citizen are claimed at the time of filing a federal income tax return. The hardship exemption is claimed through an application to the state or federal Health Insurance Marketplace.

### **Will H-2A workers be liable when they are not in the U.S.?**

No. H-2A workers are only required to have health insurance during their time in the United States. Workers need to cancel coverage prior to their return to their home countries. If a worker purchased a health insurance plan in the Marketplace, he can log into his Marketplace account and select the red “Terminate/end all coverage” button.<sup>4</sup> You can contact an in-person assister or the Marketplace for more information or for help terminating coverage.

### **Can H-2A workers claim dependents outside of the U.S. in the marketplace application?**

Dependents outside the U.S. are not eligible for health insurance coverage. However, if the dependent meets IRS definitions, then the H-2A worker can claim the dependent as part of his household size when applying for health insurance in the Marketplace.

According to the IRS,<sup>5</sup> a child can generally qualify as a dependent for tax purposes if the child:

- Is a U.S. citizen or resident of the U.S., Canada or Mexico;
- Lives with the worker for more than half the year;
- Is under the age of 19 at the end of the year OR under 24 if the child is a full-time student for at least five months of the year OR is permanently and totally disabled at any time during the year; and
- Does not provide more than one-half of his or her own support for the year.

If a worker claims a dependent in the Marketplace application, he must also claim the dependent when he files his federal income tax return.

### **If H-2A workers arrive after the end of the open enrollment period, can they still apply for health insurance in the Marketplace?**

Yes. A worker’s move to the U.S. triggers a special enrollment period or “SEP”. Upon arrival in the U.S., the worker will have 60 days to apply and enroll in health insurance in the Marketplace.

### **What are the obligations of employers under the ACA?**

All employers are required to provide written notice to their new hires about health insurance options in the Marketplace in a manner that will be understood by the employee.<sup>6</sup> Employers with more than 50 full-time equivalent (FTE) employees are, with limited exceptions,<sup>7</sup> required to offer health insurance to their full-time employees, or else pay a fine. A full-time employee is defined as an employee who works 30 hours or more a week.

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<sup>4</sup> [www.healthcare.gov](http://www.healthcare.gov)

<sup>5</sup> FS-2005-7, IRS, January 2005, <http://www.irs.gov/uac/A-%E2%80%9CQualifying-Child%E2%80%9D>

<sup>6</sup> FLSA Section 18B. See U.S. Department of Labor, FAQs About the Affordable Care Act Implementation Part XVI, available at <http://www.dol.gov/ebsa/faqs/faq-aca16.html>

<sup>7</sup> Large agricultural employers with seasonal workforces may be exempt from the employer-shared responsibility provision (more commonly referred to as the employer mandate) under the seasonal worker exemption. The seasonal worker exemption states that if a large employer’s workforce over the 50 FTE threshold is composed of seasonal workers who work for fewer than 120 days in a calendar year, then the employer does not have obligations under the employer mandate. More information about the seasonal worker exemption can be found at <https://www.irs.gov/Affordable-Care-Act/Employers/ACA-and-Employers-How-Seasonal-Workers-Affect-Your-ALE-Status>

## Does workers' compensation insurance qualify as minimum essential coverage?

No. Under H-2A rules, all employers who hire H-2A workers must provide workers' compensation insurance for all occupation-related injuries and illnesses. Workers' compensation coverage is not comprehensive enough to qualify as minimum essential coverage under the ACA.

## Does foreign health insurance qualify as minimum essential coverage?

For health insurance to qualify as minimum essential coverage, it must meet certain standards. Foreign health insurance does not automatically qualify as minimum essential coverage.

## Where can H-2A workers get more information about insurance coverage once they are in the U.S.?

Community health centers and many community-based organizations have in-person enrollment assisters who can answer workers' questions and help them enroll in health insurance. These individuals are trained and certified by the Marketplace in their state. You can find enrollment assistance in your community by visiting the Marketplace website at [localhelp.healthcare.gov](http://localhelp.healthcare.gov) (English) or [ayudalocal.cuidadodesalud.gov](http://ayudalocal.cuidadodesalud.gov) (Spanish). There is also a help line that provides assistance in multiple languages. For states using the federal marketplace, the phone number is 800-318-2596. Workers can also visit their country's consulate for more information.

## Where can I get more information about H-2A workers and the ACA?

### Federal resources:

- [www.healthcare.gov](http://www.healthcare.gov) – federal marketplace website
- <http://marketplace.cms.gov/> – CMS educational resources
- [www.dol.gov/ebsa/healthreform/](http://www.dol.gov/ebsa/healthreform/) - U.S. Department of Labor's Employee Benefits Security Administration's webpage on the Affordable Care Act

### State or local resources:

- Community health centers. [Find the health center near you.](#)
- [localhelp.healthcare.gov](http://localhelp.healthcare.gov) (English) [ayudalocal.cuidadodesalud.gov](http://ayudalocal.cuidadodesalud.gov) (Spanish) – allows you to type in your zip code or city and state to find the location of enrollment assisters in your area.
- State marketplace website. The following states have their own marketplace: CA, CO, CT, DC, HI, ID, KY, MD, MA, MN, NY, RI, VT, and WA.

### Farmworker Justice:

- ACA Guide for H-2A Workers, available in [English](#), [Spanish](#), and [Haitian Creole](#)
- Contact Alexis Guild at [aguild@farmworkerjustice.org](mailto:aguild@farmworkerjustice.org)
- Visit our website at [www.farmworkerjustice.org](http://www.farmworkerjustice.org)