



Standards for Hotels, Motels, and Other Accommodations Under 2022 H-2A Rule

On October 12, 2022, the US Department of Labor (DOL) [published a final rule](#) amending the regulations of the H-2A temporary agricultural work visa program (the “2022 H-2A Rule”). Farmworker Justice welcomes the final rule’s limited improvements to worker protections and its rejection of harmful changes proposed by the previous administration.

Farmworker Justice’s summary fact sheet on the 2022 H-2A Rule is [available here](#).

The H-2A program is notorious for egregious housing violations. Workers on a farm in Arizona, for example, were [forced to live in school buses](#), while another group of workers in Georgia were forced to [live in roach-infested housing](#) without heat, hot water, or working toilets. Among the positive changes in the 2022 H-2A Rule is the adoption of specific health and safety standards that employers must meet when they rely on rental accommodations to fulfill the housing requirements of the H-2A program.

For years, advocates have raised specific concerns about the increasing reliance on hotels, motels, and other short-term accommodations for the long-term housing needs of H-2A workers. Too often, these rental accommodations are insufficient to meet the needs of workers, but the legal standards that applied to assessing the accommodations were unclear. The 2022 H-2A Rule aims to provide clarity by (1) specifying the areas of health and safety concern that are relevant for H-2A rental accommodations, (2) creating a framework for determining which legal standards apply, and (3) setting forth documentation requirements for employers.

What are the relevant health and safety concerns for H-2A rental accommodations?

The 2022 H-2A Rule refers to the Occupational Safety and Health Administrations standards for temporary labor camps ([29 CFR 1910.142](#)) to determine the areas of health and safety regulation that are relevant for H-2A rental accommodations. It lists the following provisions:

- (b)(2) - Minimum square footage required for rooms used for sleeping
- (b)(3) - Requirement of beds, cots, or bunks, and suitable storage facilities in rooms used for sleeping
- (b)(9) - Minimum square footage in a room where workers cook, live, and sleep
- (b)(10) - Requirement of stove(s) and sanitary kitchen facilities (when the employer is not providing three meals a day)
- (b)(11) - Proper installation of eating, cooking, and water heating equipment; requirement of heating during cold weather

- (c) - Water supply for drinking, cooking, bathing, and laundry
- (d)(1) - Adequate toilet facilities
- (d)(9) - Adequate toilet paper
- (d)(10) - Toilet facilities are kept in sanitary condition and are cleaned at least daily
- (f) - Laundry, handwashing, and bathing facilities
- (g) - Lighting
- (h)(2) - Garbage containers kept clean
- (h)(3) - Garbage containers emptied when full, but at least twice a week
- (j) - Insect and rodent control

Which legal standards apply for the relevant health and safety concerns?

Under the H-2A statute, federal labor camp standards only apply *in the absence of state and local regulations for rental accommodations*. Prior to the 2022 H-2A Rule, some employers would point to the existence of a single local regulation, such as a fire code, to argue that none of the OSHA standards applied to the rental accommodations they were using.

The 2022 H-2A Rule clarifies that the applicable legal standard determination is made for each individual health and safety regulation. For example, if state or local regulations govern square footage for rental accommodations but they are silent on toilet facilities, the state or local regulation will apply to square footage requirements, but the OSHA regulation will apply to the toilet facilities. If both the state and the locality have regulations on a particular area of health and safety concern, the local regulations will govern.

Note that, under the 2022 H-2A Rule, state and local regulations will supplant the OSHA regulations in any area of health and safety concern even if the state or local regulation is less stringent than the OSHA regulation.

How will employers prove compliance with the new rental accommodation rules?

Employers relying on rental accommodations to meet the H-2A housing requirements must provide DOL with a signed and dated written statement that:

- Attests that the accommodations are compliant with the applicable legal standards for the listed areas of health and safety concern;
- Attests that the accommodations are sufficient to accommodate the number of workers requested;
- Includes the number of bed(s) and room(s) that the employer will secure for the worker(s); and
- If applicable local or state rental accommodation standards do not require an inspection, includes confirmation that no inspection is required.

If any of the applicable local or state rental accommodation standards do include an inspection requirement, the employer also must submit to DOL a copy of the inspection report or other official documentation from the relevant authority. These requirements for employer attestations are a significant improvement over the previous regulation and will help to ensure that employers do the work necessary to identify the applicable standards and verify housing compliance.