



PABIAN LAW

In-country Recruiting and Pitfalls to Avoid

In-country recruitment is when you hire H-2B workers that are currently employed in the U.S. at other seasonal organizations with opposite seasons from yours. H-2B workers can continue transferring back-and-forth between summer- and winter-season employers for up to three (3) years before they must return to their home country for at least sixty (60) consecutive days.

Some benefits of in-country recruiting:

- **The H-2B cap:** In-country workers are not subject to the H-2B numerical cap, and therefore, can be a great option, especially for summer-season organizations where the H-2B cap is such a difficult obstacle to out-of-country recruiting.
- **Partnerships:** Building partnerships with other seasonal employers could give you peace of mind and significantly reduce your recruiting efforts each year.
- **Workers in U.S. year-round:** Allows your H-2B workers to remain in the U.S. on a year-round basis, which gives piece of mind that they are being treated well by an employer you trust, that they are receiving additional experience and training, and that they may be more likely to return to you next year than workers that leave the country at the end of your season.
- **Lower flight costs:** Finally, when workers transfer to another employer at the end of your season, the subsequent employer is responsible for flight costs. Therefore, in-country recruiting can save both employers significantly on flight costs.

Pitfalls to avoid with in-country recruiting:

- **Gaps in employment periods:** When recruiting in-country H-2B workers, be sure to recruit only from other businesses for which the employment end date matches up with your employment start date (or overlaps slightly). If there is a gap between the current employer's end date and your start date, the government may not approve the transfer between employers. For example, if Employer B's start date is April 1st, Employer B would ideally recruit from Employer A only if Employer A's end date is between March 31st and April 15th (i.e., an exact match up to a two-week overlap). Although it may be possible to obtain approval of an in-country transfer for a worker with an employment gap, it adds risk to the petition process. For more details regarding Gaps and Grace Periods, please enjoy this webinar:
https://us06web.zoom.us/rec/share/jAKKUyfyd5JTqjL_-vmMhgU4BrdtSTi_JePxjZ_VgM9SsZvcKY-YUgj3Ov3u5W0m.XfvdCtHZdbD3iRqi
Passcode: xLI+u16U
- **Overlaps in employment periods:** Recruiting from an employer with an end date two (2) weeks or later from your start date would create a situation in which either: (1) your employees are beginning work significantly after your requested start date; or (2) Employer A's employees are leaving Employer A significantly early.
 - Regarding #1, the government labels this as "staggering" of employees, which is not permitted under H-2B regulations.
 - Regarding #2, Employer A certified to the government a need for a certain number of employees through its end date, but then released those employees early, which would call into question whether Employer A was truthful regarding its period of need for temporary workers.



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- **Three-year limit:** H-2B status is limited to three (3) years. Therefore, USCIS will not approve a petition for an individual who began H-2B status within three (3) years of the end date of the requested employment period, unless the individual has left the U.S. for at least sixty (60) consecutive days¹ since the first entry in H-2B status. A trip abroad for a continuous 60-day period “resets” the three-year period. **The safest way to move forward is to recruit workers who will not hit their three-year limit during your employment period.**
 - **Note re. online Travel History:** – Our team uses U.S. Customs and Border Protection’s (CBP)’s online database to pull each worker’s travel history and to flag any three-year limit issues. If for some reason we are not able to pull a worker’s information from the online database, we may ask you to send copies of the worker’s arrival and departure stamps. Using the stamps, we will cross-check the worker’s past travel to ensure there is no three-year limit issue.
- **Experience requirements:** H-2B workers must be able to prove that they provide the necessary experience for the position in which you would like to hire them. As such, we provide our clients with a template experience support letter for each position. Your H-2B workers should ask their previous employers to complete and sign the template letter to document that the worker possesses the required experience. **If a worker does not possess the required experience and/or cannot prove that they possess it, they may not be able to be included on the in-country petition.**
 - **Note re. experience requirements:** Although not always the case, the experience support letter provided to the government will ideally follow our template verbatim. When this is not possible, it is important to ensure that the letter provided outlines relevant experience and very clearly demonstrates the number of months of experience. For example, a Housekeeper may have job experience working at a motel, but the H-2B position we are petitioning for requires experience “at a high-end resort, hotel, or private club.”
- **Paystubs:** We ask our clients to provide copies of three (3) recent paystubs from each beneficiary that we will submit to the government with the in-country petition. Each worker’s paystubs should include the worker’s name, the employer’s name, and the pay period date. **Importantly, the employer name listed on the provided paystubs should match the employer name listed on the worker’s current visa or I-797.** If these names do not match, you will need to provide an explanation regarding the discrepancy (i.e. the employer’s payroll is managed by a third party management company, etc.). **Additionally, the paystubs must be dated within six (6) weeks of the petition filing date.**
- **Managing the partnership relationship:** If expectations between the two employers are not clear, sometimes there may be tension in terms of Employer A wanting to keep the worker longer than Employer B expected (i.e., after Employer B wanted the workers to start work).

For more details regarding H-2B recruitment, please enjoy this recently recorded webinar:
https://zoom.us/rec/share/zkwjPv1K07kuyQgyW0SjQJU_tII8cxPBuOtc-4KYsqmKb-Qypks_zVxIQPxmtYM.v-Qi4tXhlv2iasxG Passcode: \$f1?5iF#

¹ This was recently updated from 3 months to 60 days per the H-2 Modernization Rule that goes into effect in January 2025.