

FOREIGN LABOR CERTIFICATION JOB ORDERS

Foreign Labor Certification (FLC) can be obtained by an employer to fill vacancies when they are unable to find qualified applicants locally. This certification is obtained from U.S. DOL by certifying there are no qualified workers available in the United States willing to accept the job.

FLC Coordinator

The DLR FLC Coordinator ensures employers and DLR staff understand the requirements of FLC job orders. When a temporary FLC application is filed with U.S. DOL, the employer must place a job listing in SDWORKS for the required amount of time.¹ Employers are required to advertise and list a FLC job order in SDWORKS with the job service office in the service area of intended employment

TEMPORARY FLC JOB ORDERS

Temporary FLC job orders, as indicated by either an Agriculture Temporary (H-2A) or Non-Agriculture Temporary (H-2B), are entered, serviced, and closed by a designated job service office as assigned by the FLC Coordinator. Temporary FLC job orders are not to be updated, closed, or otherwise modified by DLR staff due to compliance with federal rules and regulations.

DLR relies heavily on the job service office staff to report any issues with FLC job orders. These issues may include:

- Uncooperative employers.
- Employers indicating to applicants that they do not have an opening, etc.

Job service office staff assigned to FLC should manage the referral procedures for FLC job orders as indicated and approved by the FLC Coordinator.

H-2A – Agriculture Temporary

For H-2A applications, after approval from the FLC Coordinator, a request will be sent out from either the FLC Coordinator or FLC Program Assistant to the assigned Employment Specialist to post the job order. H-2A job orders must be written within 1-2 business days whenever possible and should be opened immediately when written. If a delay of more than three days is anticipated, the FLC Coordinator must be notified and provided a reason for the delay. Delays are reported to the Chicago National Processing Center (CNPC).

DLR does not enter H-2A job orders received from other states into SDWORKS. The job order information received from other states will still be collected by the FLC Coordinator for reporting purposes. If a request for out of state job order is received it should be sent to the FLC Coordinator.

When the South Dakota H-2A job order is placed into SDWORKS, ensure the H2 field in “Other Information” and “Staff Information” is properly marked as a H-2A job order

If an applicant from another state contacts a job service office regarding a South Dakota H-2A job order, any information outlined in the copy of the [ETA Form 790](#) may be provided to the individual. If an applicant has an inquiry about a job order from a state other than South Dakota, please have the individual contact that respective state.

Job service office staff should schedule and inspect housing units requested by the FLC Coordinator or Program Assistant and provide housing inspection information as required under federal statute.

¹ The FLC Program Specialist will advise offices of mandatory listing times per current federal FLC regulations for H-2A and H-2B job orders.

H-2B – Non-Agriculture Temporary

The South Dakota State Workforce Agency (SWA) has an established a self-service system that allows agents and law firms to write their job order and view all necessary information.

<https://www.southdakotaworks.org/vosnet/Default.aspx>

The agent or law firm will need to create a Third Party Agent (TPA) account and then add all of the applicable employers to be authorized along with uploading proof of authorization (G-28 or authorization statement/contract) for each employer.

If assistance is needed with the SDWORKS system to place your job order, the DLR Job Service office covering the area of employer's worksite may be contacted. <https://dlr.sd.gov/localoffices/location.aspx>

H-2B job orders will be automatically opened by the self-service system. It is the responsibility of the employer or TPA to place the job order into the appropriate status based on regulations and guidance provided by OFLC.

Job orders found in SDWORKS that are questioned to be H-2B but not indicated in the "Other Information" section, the FLC Employment Specialist will need to contact the employer to verify and educate the employer on this requirement.