

## ARE YOU READY FOR AN AUDIT?

With the new rule in place for a year, it is likely that Wage and Hour will once again be conducting investigations of employers of herders.

There are two types of audits/investigations. The most common is conducted by the Chicago National Processing Center and focuses on the documentation employers are required to keep. The most thorough is conducted by the Wage and Hour Division and looks into every aspect of an employer's business...and includes a site visit.

Although these audits can be highly subjective in regards to investigators enforcing regulations, there are a few basic steps that help to ensure your compliance.

First, MPAS works to keep you up to date on the current requirements, make sure you are reading all MPAS correspondence. **IF your agent is sending information out to you, it is IMPORTANT.** Every effort is made to present information in an easily understood format. Suggestions for improvement are always welcome.

Second, it is recommended that employers conduct a self-audit. Assume that you will be audited and take preparatory steps. Review your employment policies, procedures, record keeping and retention practices to determine your compliance. Self-auditing allows an employer to correct mistakes and omissions.

All employers in the H2A program are required to give preference to domestic workers. MPAS tracks this information for the employer, if the applicant is referred to MPAS.

An investigator will want to know about employees in corresponding employment and ensure they are paid correctly. This would involve any employee that performed the same tasks as the foreign H2A workers. It is important to remember, USDOL approves the job duties that each employer submits, and the worker is limited to those duties.

Dan Bremer of AgWorks, recommends that each employer have a plan in place for when an investigator initiates an investigation, designate a spokesperson to interact with investigators, have your documentation well organized and available upon request and be familiar with the program requirements.

The purpose of this handout is to provide general guidance on the requirements of the H2A program. This is not a legal document and should not be relied upon exclusively to determine requirements.

## SELF-AUDIT CHECKLIST

- Have you read the contract? Are you fulfilling the contract terms that were approved/required by DOL?
- Have you and your worker completed the contract process on the first day of employment? This process is outlined in the worker packet emailed at the beginning of certification.
- Are your I-9 forms completed correctly and kept in a separate I-9 file?
- Have you kept a record of all reimbursements for worker travel, visa costs and subsistence? Did you reimburse at the correct rate?
- Are your earnings/payroll records sufficient? DOL requires employers to issue an earnings statement **each** pay period (**at least twice monthly**) to the worker and keep a copy on file. This statement **MUST** include:
  - Employer Name, Address and FEIN
  - Worker Name, HOME address and I-94#
  - Nature of work/job title, i.e. shepherd
  - Rate of Pay
  - Dates of Pay Period
  - Total days' work offered in pay period
  - Actual Days worked in pay period
  - Explanation of all deductions made
  - Total pay for period
- Have you reported ALL worker exits to DOL and USCIS? DOL and USCIS require all terminated contracts to be reported. MPAS sends these reports for you when the office is notified in writing.
- Is your worker's compensation policy current and do you have proof of continuous coverage in your files?
- Do you have a valid housing inspection and is that housing maintained to meet the requirements set by DOL? Mobile housing inspection may be issued for up to 36 months if the inspector wishes, employer can then submit a self-inspection each year.
- Is your Range v. Ranch work journal up to date?
- Is there a copy of the Employee Rights poster prominently displayed?
- Have you kept all required documentation for at least three years?