



Montana Legal Services Association

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LOW INCOME TAX CLINIC (LITC)

Federal Tax & Healthcare FAQs for H-2A Workers

1) *Are an H-2A worker's wages subject to U.S. federal income tax?*

Answer: **Yes.**

2) *Are an H-2A worker's wages subject to U.S. Social Security and Medicare (FICA) taxes?*

Answer: **No.** If an employer mistakenly withholds FICA taxes from an H-2A worker's wages, the H-2A worker should request a refund from the employer. If the employer does not provide the H-2A worker with a refund, the H-2A worker may file a Form 843 with the IRS to request a refund. Form 843 is available here: <https://www.irs.gov/pub/irs-pdf/f843.pdf>.

3) *Does an H-2A worker have to file a tax return with the IRS for wages earned in the U.S.?*

Answer: **It depends on the H-2A worker's residency, income, marital status and number of dependents.**

The table below provides general information about whether a single person without dependents should file a 2015 tax return. More information about filing requirements for married H-2A workers and/or H-2A workers with dependents can be found in IRS Pub. 501 (Residents) and IRS Pub. 519 (Non-residents) (see links below).

Time in U.S.	Income	Are You Required to File?
Resident	Less than \$10,300	No.
	\$10,300 or more	Yes.
Non-resident	Less than \$4,000	No.
	\$4,000 or more	Yes.

Note: Filing requirements change each year. Even if an H-2A worker is not required to file a tax return based on income, the H-2A worker may *need* to file to maintain health insurance coverage or may *want* to file to receive a refund check if any taxes have been withheld from her or his paycheck.

Determining residency: An H-2A worker is generally an U.S. "Resident" if the H-2A worker passes the Substantial Presence Test. The test is available online here: <https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>.

4) *Is an H-2A worker's employer required to deduct income taxes and social security taxes from the H-2A worker's wages?*

Answer: **No,** generally an employer is not required to deduct federal income taxes or Social Security and Medicare taxes from an H-2A worker's wages, however an H-2A worker can request that an employer withhold income taxes. Additionally, an employer must withhold 28% from a worker's wages if the worker does not supply a SSN or ITIN and the worker's wages are at least \$600.

This document is meant to provide only general information and does not provide legal advice. As a result, you should not rely on this document to resolve your specific legal problem. Please consult an attorney for your legal questions.

Administrative Office

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Websites:
www.MontanaLawHelp.org
www.mlssa.org

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5) Which workers are required to buy their own health insurance? How can they get insurance when the Marketplace requires a SSN to apply?

Answer: **“Lawfully present” immigrants must have minimal essential health coverage.** Since H-2A workers qualify as “lawfully present” in the U.S., they must have health insurance unless they qualify for an exemption. Common exemptions include income below the filing threshold, hardship, or affordability (i.e., the worker’s contribution to health insurance is more than 8% of her or his household income). Employers should provide written notice to new hires about health insurance options via the Marketplace in a manner that will be understood by the worker.

An H-2A worker does not need a SSN to enroll in health insurance, but the H-2A worker must use a SSN to file taxes in the subsequent year. The H-2A worker may use an I-94 arrival/departure number and other visa information to enroll in health insurance. H-2A workers should seek assistance from MLSA or HealthCare.gov customer service if they have difficulty obtaining health insurance.

Generally H-2A workers are eligible for a SSN. If an H-2A worker has problems with receiving a SSN, they should seek assistance from MLSA or the Social Security Administration.

6) If an H-2A worker's employer deducts social security taxes from her pay, then can she receive a retirement check each month from social security in her home country after she retires?

Answer: **Not exactly.** Generally countries require a worker to contribute toward a public retirement system for a certain number of years before that worker becomes eligible to draw retirement benefits upon retirement. The U.S. Social Security Administration has **“Totalization”** treaty agreements with 17 countries that can help citizens of those countries who contribute to U.S. Social Security count those contribution years toward their home country’s minimum eligibility requirements. Workers should consult an expert in their home country to determine the extent to which any payments to U.S. Social Security will count toward the worker’s eligibility for retirement in her or his home country.

More resources:

- HealthCare.gov, “Coverage for Lawfully Present Immigrants,” <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/>
- IRS Publication 5144, “Federal Income Tax & FICA Withholding for Foreign Agricultural Workers with an H-2A Visa,” <https://www.irs.gov/pub/irs-pdf/p5144.pdf>
- IRS Publication 501, “Exemptions, Standard Deduction, & Filing Information,” <https://www.irs.gov/pub/irs-pdf/p501.pdf>
- IRS Publication 519, “U.S. Tax Guide for Aliens,” <https://www.irs.gov/pub/irs-pdf/p519.pdf>
- North Carolina Justice Center, “Questions & Answers: H-2A Workers, Taxes, & the Affordable Care Act,” http://www.ncjustice.org/sites/default/files/H-2A%20workers%20and%20taxes%20and%20ACA_FINAL.pdf
- Northwest Justice Project, “Basic Income Tax Information for H-2A Workers (for 2014),” <http://www.washingtonlawhelp.org/resource/video-basic-income-tax-information-for-h-2a-w?ref=OuOyk>

Do you need legal help?

Call Montana Legal Services Association’s HelpLine at 1-800-666-6899 Monday-Thursday 8:30 am to 5:30 pm and Friday 8:30 am to 4:30 pm or apply for help anytime online at www.mtlsa.org.

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