

# PUBLICATION

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## FLSA Applies to H-2B?

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**The Fifth Circuit Court of Appeals has applied the Fair Labor Standards Act to H-2B employees' claim for reimbursement of travel and visa costs.**

H-2B rules require that the employer offer to U.S. workers and pay H-2B workers at least the "prevailing wage."

It is not uncommon for H-2B employers to leave costs of transportation, visa, recruitment and other expenses up to the workers to pay. H-2B rules in themselves do not require otherwise.

Plaintiffs in a recent case claimed that they had spent \$3,500 to \$5,000 each on such expenses that they claimed were for the primary benefit of the employer. They said these costs were in effect a deduction from wages, reducing their pay below the minimum wage. They claimed they are covered by the Fair Labor Standards Act (FLSA).

The workers pointed to a 2002 case that found H-2A workers covered by the FLSA. That case was *Arriaga v. Florida Pacific Farms, L.L.C.*, 305 F.3d 1228 (11th Cir. 2002). The workers asked the court to extend the concept to H-2B. The court did so, denying the H-2B employer's motion to dismiss, leaving for another day whether the employer actually violated the FLSA. This case points out the importance of having a clear written agreement with H-2B workers before they accept recruitment and apply for visas. Quality recruiters are essential. And FLSA analysis is now necessary.

The case is *Castellanos-Contreras v. Decatur Hotels, L.L.C.*, 2007 WL 1460928 (E.D. La. May 16, 2007).