

H2A workers are by definition non-immigrant, temporary foreign workers. As such they receive special treatment in regard to social security, medicare and federal withholding requirements. The IRS clarified how they wanted such compensation reported by the employer and effective beginning in 2011 H2A compensation should be reported on form w-2 and form 943. On both of these forms the compensation should be reported as wages for income tax and state, perhaps local, but not social security or medicare.

If the worker fails to give you a social security number, the employer should withhold at 28% until a social security number is provided. This amount should be reported, according to the IRS, on a 1099 and form 945. Assumedly only the amount of compensation with withholding should be reported in this manner. After the social security number is provided, those wages should be reported on the w2 and 943.

Otherwise, if a social security number is provided the employer is NOT required to withhold federal income taxes on H2A compensation. But you should not confuse the requirement to withhold income taxes to that compensation being taxable to the worker.

The H2A compensation is subject to workers compensation. But it is not subject to Kentucky unemployment. The H2A worker's wages DO factor into the filing threshold for Kentucky Unemployment Insurance. Depending on the locality they may also consider this compensation taxable to the local taxing authority.

It is the workers responsibility to file annual income tax returns for Federal and state if applicable. The H2A worker should first determine if he is a resident or non-resident alien. This determination needs to be assessed on an individual basis. In some situations where the worker is present in the US less than 183 days they are clearly a non-resident. When their US presence exceeds the 183 days in a year then they will usually be resident aliens. The deadlines are the same as US citizens. Due date is April 15th or if on extension October 15th. See the IRS link for assistance in determining the employee residency status.

<http://www.irs.gov/taxtopics/tc851.html>

Many Mexican H2A workers will qualify to claim their spouse and dependents on their income tax returns, even if they were not in the U.S. If they are resident aliens from Mexico they may qualify for the personal exemption for their spouse on a Married Filing Separate return if the spouse had no gross income for U.S. tax purposes and was not the dependent of another taxpayer. They may also claim an exemption for each person who qualifies as a dependent according to the rules for U.S. citizens. The dependent must be a citizen or national of the United States or be a resident of the United States, Canada, or Mexico for some part of the calendar year in which your tax year begins.

<http://www.irs.gov/Individuals/International-Taxpayers/Aliens---How-Many-Exemptions-Can-Be-Claimed%3F>

Dependents may qualify as for a dependency exemption but in most situations will not qualify the worker for earned income credit (EIC) or dependent care credits. They may qualify for the child tax credit (CTC) if under 17 but consider the requirement of living with the taxpayer for half the year if the worker is considered residing in the US for more than six months. All the above is oversimplifying the resident vs non-resident status and I cannot stress enough the need to evaluate the workers circumstances on an individual basis.

In order to claim a dependent on their US income tax return the dependent must obtain an individual taxpayer identification number (ITIN) by filing form W-7. The W-7 and original supporting documentation must be filed with an original tax return to Austin Texas. The IRS is very strict on what supporting documentation is required, depending upon the applicants age, and who can sign the W-7. The IRS link below explains the documentation requirements and these must be followed to the letter or the ITIN application will be rejected.

<http://www.irs.gov/instructions/iw7/ch01.html#d0e196>

<http://www.irs.gov/pub/irs-pdf/iw7.pdf>

<http://www.irs.gov/pub/irs-pdf/iw7sp.pdf> in Spanish

The workers will likely get IRS deficiency notices in the future if they do not file income tax returns. The IRS will eventually file a lien and employers will get notices to garnish future wages. It is unclear if the IRS will share non-compliance with immigration in the effort to prevent issuance of Visa's or stopping workers at the border if they have outstanding taxes.