

**MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED  
MEXICAN STATES CONCERNING LABOR MOBILITY AND THE PROTECTION OF  
PARTICIPANTS IN TEMPORARY FOREIGN WORKER PROGRAMS**

The Government of the United States of America (United States Government), through the U.S. Department of State (DoS) and the U.S. Department of Labor (DoL), and the Government of the United Mexican States (Government of Mexico), through the Ministry of Foreign Affairs (SRE) and the Ministry of Labor and Social Welfare (STPS) through the National Employment Service (SNE), both hereinafter referred to as “the Participants”:

**AFFIRMING** their commitment to the rule of law and to the protection of workers’ and applicants’ rights, including the wages and working conditions of host-country and foreign workers, including Mexican temporary workers in the United States; and the enforcement of labor laws governing the recruitment of workers in Mexico;

**CONSIDERING** the Joint Declaration between the Department of Labor of the United States of America and the Ministry of Foreign Affairs of the United Mexican States to Work Together to Inform Mexican Workers in the United States About Their Labor Rights, signed at Washington September 2, 2021;

**CONSIDERING** their shared desire to coordinate mutually beneficial policies and share information to contribute to regional competitiveness and safe, regular, and humane migration pathways;

**RECOGNIZING** their shared interest in the use of U.S. and Mexican temporary foreign worker programs, and the mutual desire to facilitate safe, orderly, and regular labor mobility to the United States and Mexico;

**AFFIRMING** the importance of establishing fair recruitment processes and employment practices between the United States Government and the Government of Mexico applicable to temporary foreign workers from Mexico, consistent with the applicable laws, rules, and regulations in the United States and in Mexico; and

**RECOGNIZING** the growing use of temporary worker programs and the Participants’ mutual desire to safeguard workers’ human rights and fundamental freedoms through efforts to increase transparency and enhance the integrity of the recruitment of workers in these programs;

Have come to the following understandings:

## **SECTION 1: Objectives**

The objectives of this Memorandum of Understanding (Memorandum) are as follows:

1. Strengthen bilateral cooperation surrounding the H-2 temporary worker visa programs through joint efforts that include the involvement of relevant governmental agencies and stakeholders in the United States and in Mexico;
2. Protect the labor rights and existing anti-discrimination rights for temporary foreign workers throughout recruitment, employment, and return in the United States and in Mexico including nationals of Mexico, Guatemala, Honduras, and El Salvador;
3. Emphasize the importance of fair recruitment and decent work as well as accountability for those who abuse these principles in the United States and in Mexico – including for nationals of Mexico, Guatemala, Honduras, and El Salvador;
4. Further facilitate the availability of temporary agricultural and non-agricultural employment in the United States and in Mexico in compliance with applicable laws, rules, and regulations of both countries;
5. Explore support for the new STPS National Employment Service platform, which aims to organize and present labor mobility options including information on worker rights, protections, and resources for Mexican nationals.

## **SECTION 2: Scope of Collaboration**

In furtherance of these objectives, the Participants intend to pursue the following initiatives:

1. Promote fair recruitment and compliance with U.S. laws, rules, and regulations governing temporary foreign worker programs and Mexican laws on labor recruitment;
2. Prohibit discrimination against applicants and workers based on color, religion, national origin, sex (including sexual orientation, gender identity, and pregnancy), age, disability or genetic information, or any other protected basis;
3. Through quarterly meetings, the relevant government agencies of the Participants are expected to monitor the enforcement of employment laws, rules, and regulations that apply to temporary foreign workers, including through oversight and enforcement of labor laws, to hold employers and their agents accountable for violations and through efforts to connect workers who experienced harm or exploitation to assistance and care in the United States and in Mexico;
4. Utilize existing authority to foster and enhance accountability, labor rights, and transparency, including through improving workers' awareness about the H-2 programs'

structures and application processes, their rights under the program, and existing labor protections and victim services through ongoing outreach and training for workers and stakeholders in the United States and in Mexico;

5. Jointly plan and execute pre-departure training on U.S. labor and employment anti-discrimination laws, rules, and regulations for STPS officials, and post-arrival training for Mexican consular officers to assist temporary workers with education about workers' rights and complaints-filing processes; and
6. Identify and explore forms of collaboration for Mexico's new platform on labor mobility.

The Participants affirm their expectation that the recruitment, employment, and return of temporary foreign workers intend to be conducted in accordance with the applicable laws, rules, and regulations of the United States and Mexico.

Where appropriate, in order to achieve the objectives of this Memorandum, the Participants intend to encourage and coordinate the involvement of other relevant U.S. and Mexican governmental agencies, as well as the respective consular authorities of Guatemala, Honduras, and El Salvador regarding the protection of the interests of their nationals.

### **SECTION 3: Worker Protections and Recruitment**

The Participants believe in the importance of safe and lawful recruitment, employment, working conditions, housing facilities, and transportation services, the timely and correct payment of wages, and access to complaint mechanisms and lawful remedies, including the return of back wages owed to temporary foreign workers, and intend to:

1. Strengthen shared mechanisms to prevent, report, and investigate, in good faith, violations of foreign temporary workers' rights, fraud, abuse, forced labor, discrimination, and retaliation for reporting in the United States and in Mexico before, during, and after their participation in the temporary foreign worker programs;
2. Ensure public access to data necessary to conduct gender analysis and gender impact assessments of Mexican worker participation in U.S. temporary foreign worker programs, consistent with applicable laws, policies, and regulations;
3. Use the existing Consular Partnership Program (CPP) as one of the primary mechanisms for collaboration and coordination between U.S. government agencies and the Mexican Consular Network in providing workplace rights education and information to Mexican workers and U.S. employers;
4. Educate intending H-2 workers about available worker protections under applicable laws, rules, and regulations including the prohibition on requiring workers to make payments to obtain or maintain H-2 status, as described below, as well as provide information about U.S. domestic agencies, consulates, and advocacy organizations they can contact while in

the United States or Mexico regarding questions or issues and the numbers of national anti-trafficking hotlines;

5. Identify and enhance the support that women, members of ethnic minorities, and persons of Indigenous heritage who are interested in applying for a temporary foreign worker position need for a safe and fair recruitment and employment experience;
6. Work to return back wages found due by the U.S. Department of Labor's Wage and Hour Division in a timely fashion to Mexican workers participating in U.S. temporary foreign worker programs, including workers that have returned to Mexico, in coordination with the SRE and STPS for the benefit of the workers, without any unlawful deductions or fees; and
7. Encourage Mexican workers and employers participating in U.S. temporary foreign worker programs to provide feedback regarding their experiences, including but not limited to the tools offered by the STPS and SNE, and in coordination with stakeholder organizations that support workers, where possible.

The Government of Mexico intends to explore options to establish robust oversight mechanisms for worker protections of potential temporary workers while they are in Mexico.

The Participants acknowledge the importance of systems to facilitate the placement of workers in U.S. temporary foreign worker programs in a timely and orderly manner where the U.S. Secretary of Labor has certified there are insufficient U.S. workers available at a time and place of need and that the employment of temporary foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The Participants expect that strengthened collaboration and cooperation between the Participants intend to contribute to a fair, transparent, and gender-neutral recruitment process to benefit and protect workers.

The Participants acknowledge the following requirements specific to the H-2 Temporary Worker Programs and intend to raise awareness of these requirements:

1. Under U.S. laws, rules, and regulations governing the H-2 programs, H-2 nonimmigrant workers cannot be required to make any payment of any kind for any activity related to the workers obtaining or maintaining H-2 status by, but not limited to, the following: the employer, agent, facilitator, recruiter, or employment agency. Prohibited payments include, but are not limited to, applications for H-2 temporary labor certification, petitions for H-2 classification, H-2 visa applications, and applications for admission to the United States. Such payments also include direct or indirect payment of attorneys' fees, application or petition preparation and filing fees, and recruitment costs, but do not include costs that are primarily for the benefit of the worker, such as government required passport fees.

2. Under U.S. laws, rules, and regulations, any deductions, not otherwise required by U.S. law, from the wages of H-2 nonimmigrant workers must be voluntary, disclosed to the worker, and meet the following criteria:
  - a. Any deductions, not required by U.S. law, must be initiated at the worker's request.
  - b. The worker has an independent choice to have the deduction made or not.
  - c. Neither the employer, recruiter, nor any agent of either may derive any profit from the transaction.
  - d. The worker may designate the amount of the deduction and choose to stop the deduction at any time.
  - e. The worker's recruitment and employment will not be adversely affected by a decision not to have the deduction.
  - f. Neither the employer, recruiter, nor their agents may in any manner influence or coerce the worker in regard to the deduction.

The Participants acknowledge the following requirements specific to temporary foreign worker programs in Mexico and intend to raise awareness of these requirements:

1. All employment processes must comply with the provisions of the Mexican Federal Labor Law, the existing Rules of Operation of the Employment Support Program, as well as the guidelines that govern the operation of recruitment and/or employment agencies in Mexico.
2. Mechanisms are intended to be made available to access information regarding processes of fair recruitment and labor rights protection.
3. The workers may receive accompaniment from the SNE and Mexican consular services in the submission of complaints about violations in the recruitment and employment process.

#### **SECTION 4: Outreach and Education**

The Participants intend to develop and disseminate through accessible channels, including in-person workshops, informational materials for prospective nonimmigrant workers, recruiters, and U.S. and Mexican employers about their rights and obligations under U.S. and Mexican laws, rules, and regulations, as well as resources to obtain assistance, victim services, or contact national anti-trafficking hotlines. The Participants intend to continue to coordinate outreach efforts through the CPP and the Mexican Consular Network with stakeholder organizations, as necessary, to broaden the scope of these outreach efforts. The Participants intend to disseminate such informational materials to nonimmigrant workers in the United States and in Mexico, including prospective nonimmigrant workers, in a language they understand.

#### **SECTION 5: Implementation and Consultation Process**

The Participants intend to share information, exchange best practices, and discuss the implementation of this Memorandum as appropriate and in the quarterly meetings of the Participants described in this Memorandum. The Participants may hold additional consultations, at any time, to address any issue regarding the application or interpretation of this Memorandum.

To this end, the Participants intend to develop a plan of action detailing a timetable of meetings and possible activities.

The Participants intend to cooperate through various joint actions, including but not limited to:

1. Exploring support for the new STPS National Employment Service platform, or other available recruitment mechanisms, to provide publicly available information on the H-2 programs, laws, rules and regulations around H-2 employment and recruitment, available resources in the United States and Mexico such as national anti-trafficking hotlines and victim services, and worker rights to nonimmigrant workers in the United States, and Mexican workers seeking employment in the United States;
2. Promoting events in the United States and in Mexico to provide information about the H-2 temporary foreign worker programs, workers' rights, and the STPS National Employment Service's role in labor mobility;
3. Promoting initiatives to increase transparency and accountability of all agents, facilitators, recruiters, or employment agencies involved in the recruitment processes, including regular consultations with stakeholders that can provide data and information on unfair practices in the recruitment process;
4. Enhancing the Participants' capacity to facilitate fair recruitment;
5. Encouraging Mexican workers who suffer labor recruitment abuses to file complaints without fear of retaliation and raising awareness of available mechanisms that are realistic, simple, and confidential to report these abuses to appropriate Mexican and/or U.S. agencies before, during, and after their participation in U.S. temporary foreign worker programs;
6. Sharing lessons learned from USAID's work in expanding equitable access to labor pathways for workers in Guatemala, Honduras, and El Salvador. These sessions can focus on establishing recruitment registration regulations, promoting transparency in private- and public-sector recruitment, and providing robust pre-departure training for nonimmigrant workers;
7. Conducting meetings to monitor the exercise of labor rights of temporary foreign workers, including through oversight and enforcement of labor laws to hold employers and their agents accountable for violations, and efforts to connect workers who experienced harm or exploitation to assistance and care in the United States and Mexico;
8. Exploring measures to leverage activities under the CPP in coordination with the Mexican Consular Network; and
9. Where appropriate, explore mechanisms with relevant consular authorities of Guatemala, Honduras, and El Salvador.

**SECTION 6: General Provisions**

Each Participant intends to finance its own participation in any areas of cooperation under this Memorandum, in accordance with the applicable law.

This Memorandum is not intended to and does not give rise to any rights or obligations under international law.

This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity in the United States or Mexico by any party against either the United States Government or Government of Mexico, their departments, agencies, or entities, their officers, employers or agents, or any other person.

The protection and supervision of the labor rights of Guatemalan, Honduran, and Salvadoran nationals referred to in this Memorandum is carried out by the Participants to the extent possible and to the extent of their respective competencies. The Participants intend to explore cooperation mechanisms with the consular missions relevant to such persons, in order to facilitate efforts by those consular missions to protect the interests of their respective nationals.

This Memorandum becomes applicable on the date of its last signature. It may be modified by written decision of the Participants. Either Participant may discontinue its participation under this Memorandum and is expected to provide six (6) months written notification, to the other Participant, of its intention to discontinue this Memorandum.

Signed, in duplicate, in Mexico City, on this January , 2023, in the Spanish and English languages, both texts being equally valid.

**FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA**

**FOR THE GOVERNMENT OF  
THE UNITED MEXICAN STATES**

**Ken Salazar  
Ambassador of the United States to  
the United Mexican States**

**Esteban Moctezuma Barragán  
Ambassador of Mexico to  
the United States of America**