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NEW YORK STATE OF OPPORTUNITY. Department of Labor

www.labor.ny.gov
Division of Immigrant Policies & Affairs

SWA Job Order #: _____

Division of Immigrant Policies & Affairs: Foreign Labor Certification Unit: H-2B SWA Job Order Form

Submit this form to H2B@labor.ny.gov or fax it to (716) 541-9615. Call (585) 258-8858 or (716) 851-2609 with questions.

Did you receive a Prevailing Wage Determination for this H-2B job order? ☐ No ☑ Yes

Employer Information:

Employer/Business name: JOHN C. KIMMEL RACING STABLE

FEIN: [redacted] County of Business: _____

Type of business: Thoroughbred Horse Trainer

If applicable, Doing Business As (DBA): _____

Business address: 2150 Hempstead Turnpike City: Elmont State: NY Zip code: 11003

Mailing address, if different: _____ City: _____ State: _____ Zip code: _____

Contact person: John C. Kimmel Title: President

E-mail address (required): jckimmel@msn.com

Phone: 516.328.8852 Fax: _____

Job Order Information:

Job is full time, temporary and (check one): ☑ peak load ☐ seasonal ☐ one-time occurrence ☐ intermittent

Dates of Need: From: 07/08/2024 To: 11/30/2024

Title of job opening: Stable Attendant Number of openings: 10

Worksite, if different from business address: Belmont Park Race Track, 2150 Hempstead Turnpike, Elmont, NY 11003

Daily travel to/from worksite provided: ☑ No ☐ Yes:

If yes, designated pickup location: _____

Education required: None Will on-the-job training (OJT) be provided? ☑ No ☐ Yes

Experience required: 0 ☐ Months _____ ☐ Years Will you accept a trainee? ☑ No ☐ Yes

Will you accept related experience? ☑ No ☐ Yes:

If yes, please specify: _____

Work days: ☑ Sun ☐ Mon ☐ Tues ☑ Wed ☑ Thurs ☑ Fri ☑ Sat ☑ Varies

Work hours: From: 5:00AM To: 11:00AM Total hours per week: 40

Salary range: From: $ 17.75 To: $ 17.75 Per hour

Overtime offered? ☐ No ☑ Yes If Yes, at what rate? $26.63

Pay day: Thursday Frequency of pay: ☑ Weekly ☐ Bi-weekly[1]

Driver's License required: ☑ No ☐ Yes If Yes, Class: _____ Drug testing: ☑ No ☐ Yes

[1]Section 191 of the NYS Labor Law requires manual workers be paid no later than seven calendar days after the end of the week in which wages were earned.

Benefits, Deductions & Allowances:

All deductions from the worker's paycheck required by law will be made.

Applicable NYS Wage Order: ☐ Hospitality Industry ☑ Miscellaneous Industry ☐ N/A, no additional deductions/allowances

Employer Provided Housing: ☐ No ☑ Yes If Yes, utilities paid by employer: ☐ No ☑ Yes

Weekly deduction for housing/utilities, if applicable: _____ Employer Provided Meals: ☑ No ☐ Yes

If Yes, number/frequency of meals: _____ per _____ If yes, deduction: _____ per ☐ meal ☐ day ☐ week

Employer Required Uniforms: ☑ No ☐ Yes If Yes: ☐ Regular Wardrobe ☐ Company Specific[2]

Who will Launder/Maintain Company-Specific uniforms? ☐ Employer at no charge ☐ Worker

If Worker: Maintenance Pay: _____/week

☐ Wash & Wear Material Exception (Hospitality Industry Only)

Any other employer provided benefits: Discretionary performance bonus

Any other intended deductions: Standard taxes and deductions required as by law.

Job Description (Duties to be performed):

Cares for and cleans horses; exercises and inspects them according to instructions.

Regarding the working hours: 5:00AM to 11:00AM and 3:00PM to 5:00PM, hours and days may vary.

Optional housing and utilities will be provided free of charge in the backstretch of the Saratoga Race Course.

Bonuses may be paid to workers based upon the winnings of the horses and at the discretion of the employer, which is referred to as "discretionary performance bonus."

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Physical ability requirements (ex.: Lifting): Not applicable

Recruitment Information:

Candidates should contact employer directly via (check all that apply): ☒ Email* ☑ Mail ☐ Fax ☐ Telephone ☐ In Person
*Email is required; please also check any other preferred contact methods.

Candidates may also apply directly through the local Career Center of the State Workforce Agency (SWA), whose contact information is provided below. Please complete the nearest Career Center Information, which can be found by using the online Career Center Locator: https://dol.ny.gov/career-centers.

Local SWA Career Center name: Saratoga County Employment & Training

Local SWA Career Center address: 152 West High Street, Suite B-204, Ballston Spa, NY 12020

Local SWA Career Center phone number: 518.884.4170

[2] Per Section 193 of the NYS Labor Law, workers may not be charged for any company-specific uniform. Per the NYS Miscellaneous and Hospitality Minimum Wage Orders, if workers are required to maintain company specific uniforms, they must be provided with the applicable weekly maintenance amount.

Terms and Conditions / Clarifications and Assurances / Additional Information

Employer Obligations

The employer's job order will offer to U.S. workers (this means anyone, including foreign-born residents, residing within the U.S. and/or its' territories) no less than the same benefits, wages, and working conditions the employer is offering, intends to offer, or will provide to H-2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the H-2B workers. This does not relieve the employer from providing to H-2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with H-2B regulations.

The employer must provide to an H-2B worker outside of the U.S. no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the job order in a language understood by the worker, including any subsequent approved modifications.

During the period of employment specified on the *Application for Temporary Employment Certification,* the employer must comply with all applicable Federal, State and local employment-related laws and regulations, including health and safety laws. This includes compliance with 18 U.S.C. 1592(a), with respect to prohibitions against employers, the employer's agents or their attorneys knowingly holding, destroying or confiscating workers' passports, visas, or other immigration documents.

Recruitment Activities

Employers must conduct recruitment of U.S. workers to ensure there are not qualified U.S. workers who will be available for the positions listed in the *Application for Temporary Employment Certification.* U.S. applicants can be rejected **only** for lawful job-related reasons. Unless otherwise instructed by the Certifying Officer (CO), the employer must conduct the recruitment described in 655.42 through 655.46 within 14 calendar days from the date the Notice of Acceptance is issued. All employer-conducted recruitment must be completed before the employer submits the recruitment report as required in 655.48. Employers must continue to accept referrals and applications of all U.S. applicants interested in the position until 21 days before the date of need.

Employers that wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Employers cannot provide potential H-2B workers with more favorable treatment with respect to the requirement for, and conduct of, interviews. The employer must consider all U.S. applicants for the job opportunity. The employer must accept and hire any applicants who are qualified and who will be available.

The employer may be instructed by the CO to conduct additional reasonable recruitment. Such recruitment may be required at the discretion of the CO where the CO has determined there is a likelihood that U.S. workers who are qualified and will be available for the work, including but not limited to where the job opportunity is located in an Area of Substantial Unemployment.

Wage Rates, Special Pay Information, and Deductions

The offered wage in the job order equals or exceeds the highest of the prevailing wage or Federal minimum wage, State minimum wage, or local minimum wage. The employer must pay at least the offered wage, free and clear, during the entire period of the contract. A single workweek will be used to compute wages due.

All deductions from the worker's paycheck required by law will be made. No deductions will be made which reduce a worker's wages below the required rate. In New York State, the only deductions that can be taken from worker pay are:

1. Those required by law, such as Social Security, income tax, and garnishment of wages; and
2. Those that benefit workers and are authorized in writing, such as life insurance, or a savings account.

Any other deductions are illegal.

If, before the expiration date specified in the job order, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God, or similar unforeseeable man-made catastrophic event (such as an oil spill or controlled flooding) that is wholly outside the employer's control that makes the fulfillment of the job order impossible, the employer may terminate the job order with the approval of the CO. The employer must make efforts to transfer the H-2B worker or worker in corresponding employment to other comparable employment acceptable to the worker and consistent with the Immigration and Nationality Act, as applicable. If a transfer is not affected, the employer must return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2B employer, whichever the worker prefers.

On or before each payday the employer will provide to each worker in one or more written statements the following information: (1) the worker's total earnings for each workweek in the pay period; (2) the worker's hourly rate and/or piece rate of pay; (3) for each workweek in the pay period the hours of employment offered to the worker; (4) for each workweek in the pay period the hours actually worked by the worker; (5) an itemization of all deductions made from or additions made to the worker's wages; (6) if piece rates are used, the units produced daily; (7) the beginning and ending dates of the pay period; and (8) the employer's name, address and FEIN.

Transportation, Subsistence, and Fees

Employer agrees to reimburse inbound transportation and subsistence expenses ($ 15.88 per day minimum, without receipts, to a maximum of $ 59.00 per day, with receipts) from the place from which the worker has come to work for the employer, whether in the U.S. or abroad, to the place of employment if the worker completes 50 percent of the period of employment covered by the job order (not counting any extensions). In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, up to 75 percent of the maximum reimbursement for meals, or $ 44.25. The employer may arrange

and pay for the transportation and subsistence directly, advance at a minimum the most economical and reasonable common carrier cost of the transportation and subsistence to the worker before the worker's departure, or pay the worker for the reasonable costs incurred by the worker.

If the worker completes the period of employment covered by the job order (not counting any extensions), or if the worker is dismissed from employment for any reason by the employer before the end of the period, and the worker has no immediate subsequent H-2B employment, the employer must provide or pay at the time of departure for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer that has not agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the employer must provide or pay for that transportation and subsistence. If the worker has contracted with a subsequent employer that has agreed in the job order to provide or pay for the worker's transportation from the employer's worksite to such subsequent employer's worksite, the subsequent employer must provide or pay for such expenses. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

If applicable, employer will provide transportation, at no cost to the worker, to the actual work site and return at the end of the day.

H-2B workers will be reimbursed in the first workweek for all visa, visa processing, border crossing, and other related fees, including those mandated by the government (excluding passport fees).

Tools and Equipment

The employer will provide workers at no charge all tools, supplies, and equipment required to perform the job.

New York Paid Sick Leave

Per the New York Paid Sick Leave Law, all employees must be provided sick leave as applicable. Hours earned (up to a prescribed maximum) are rolled over from year to year for seasonal workers.

Please select the option that applies to your business:

- ☐ Employers with 4 or fewer employees and a net income of less than 1 million in the prior tax year must provide employees with up to 40 hours of unpaid sick leave per year.
- ☑ Employers with between 5 and 99 employees and employers with 4 or fewer employees and a net income of greater than 1 million in the prior tax year must provide each employee with up to 40 hours of paid sick leave per year.
- ☐ Employers with 100 or more employees will provide up to 56 hours of paid sick leave per year.

Additional New York State Assurances

- NYS Labor Law section 201g requires that employers adopt a sexual harassment prevention policy. Interactive training and a copy of the written policy must be provided to all workers. The policy must be provided in the language spoken by the workers.
- Deductions from Worker's Pay: Article 6 of the NYS Labor Law, sections 193.1 and 193.2, prohibit an employer from deducting monies, either through payroll deduction or by separate transaction, any amount or charge which is not authorized by NYS labor law. Therefore, the employer may NOT make any other deductions NOT required by law.

Employer Signature: _____ **Date:** 10/30/23