

Oregon state subjectivity guidelines for H2B reforestation workers

Foreign workers hired by reforestation contractors with H2B visas often work on projects in multiple states. This leads to the potential for workers to have subjectivity in more than one jurisdiction. It is not uncommon for these workers to be hired by Oregon-domiciled companies that do very little, if any, reforestation work in Oregon. If the project work is temporary in nature, there is not a strong connection to the states where the work is performed.

SAIF has developed some general guidelines to assist policyholders, agents, and SAIF employees in determining H2B worker state subjectivity. Please note that each worker and claim is analyzed on an individual basis for subjectivity in Oregon or another jurisdiction and this guideline is intended for guidance only. Satisfying some or all factors described below does not automatically ensure the worker is an Oregon subject worker for the duration of their employment. Particularly with these types of workers, there is a high risk of dual subjectivity jurisdiction.

When H2B workers are hired, there are several factors in the onboarding and deployment process that can give them a “connection” to the state of Oregon:

- Travel to Oregon to report for work (often at employer expense)
- Receive training in Oregon
- Pay Oregon taxes
- Are dispatched to their first job from the Oregon location
- The intent of both the employer and worker is they are Oregon-based employees.

Once the workers are deployed, they continue to be Oregon subject, provided they are not working in a nonreciprocating or monopolistic state ([Reciprocity Map](#)) and the jobs are temporary in nature (beginning and ending date, not ongoing, etc.). As the worker moves from job to job, the connection to Oregon weakens. There are several ways to strengthen the connection to Oregon:

- Return workers to Oregon between job assignments
- Deploy the workers to jobs located in Oregon
- Bring the workers back to Oregon when the rotation of work is done or the visa time-period is expiring to complete paperwork, debrief, deliver final paycheck, etc.

Depending on circumstances, the possibility exists that a worker could have dual-subjectivity between Oregon and another state where the worker is deployed. This could lead to premium being charged in both states. Or, a worker might not be subject

to Oregon at all and subject only to the other state. An "other states coverage" policy is advisable to avoid noncompliance when working in other states.

When an H2B visa expires and the worker returns home, this is considered a break in employment.

Also, a temporary break in the employment relationship between the worker and employer (such as a seasonal layoff or extended break) could break the connection to Oregon. If during that break the worker is available to work for other employers and then later the worker returns to the reforestation employer during the worker's H2B visa period for that year, it would constitute a sufficient break in employment requiring re-establishment of the "connection" to Oregon.

Whenever there is a break in employment and/or the worker is rehired later, the "connection" to Oregon must be re-established per the process noted above. Failure to re-establish an Oregon connection after a break in employment could result in an individual employee's payroll becoming subject to another state.

If the worker travels directly to another state to begin work following a break in employment, they would not be considered Oregon subject and their payroll should not be reported on the SAIF Oregon policy until a connection is made to Oregon.