



Improper Fee Charging

How It Occurs, How To Investigate It, and What To Do About It



Disclaimer



- ▶ The purpose of this discussion is educational. Improperly handled allegations/instances of fee charging can get you in real trouble. You need to get case specific legal advice if you encounter this problem.
- ▶ This presentation will orient you to the issues so you can have more confidence in handling the problem if it arises



What Is Fee Charging?

- ▶ Short Definition – “Paying to get on the list”
- ▶ Estimates are that **about 60%** of H-2A employment opportunities involve some kind of fee charging. That’s probably low.




Ignorance Is Not Bliss

- Conspiracy to commit human trafficking (federal felony)
- Loss of ALL workers at the consulate
- Revocation of I-129 Petition
- Debarment from future H-2A applications
- U.S. lawsuits
- Mexican lawsuits



Types of Fee Charging Schemes

- Weekly cut of earnings – worker pays \$\$ per week for “X” weeks
- Flat fee before or after season
- Services or in-kind exchanges during or after season



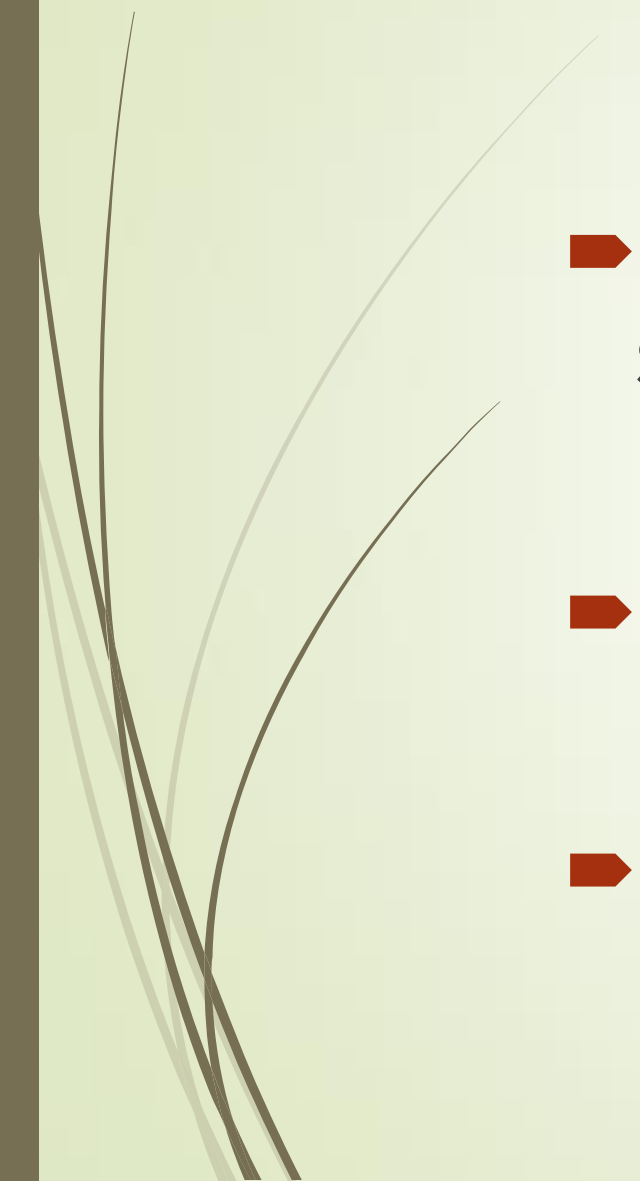
Green Acres employs 30 H-2A workers. Many have been coming for years and their leader, Ivan, 'is just like family.' Ivan, a native of Monterrey, is a particularly valued employee. One worker is new.

On a Sunday, Green Acres' owner gets a call from the new worker. He says that 10 guys promised to pay Ivan \$150/week for a job at Green Acres. The worker says they don't mind paying \$150/week with more time (work has been slow), but now Ivan wants \$200/week. The worker won't say who the other 9 are. He asks Green Acres' owner to intervene to set the deal straight.

Ivan denies everything. The worker is a *chilango*, lazy, and a troublemaker. There never was a deal to pay \$150 per week. Ivan states that one worker gave him \$200, but that was in gratitude for the job.



What Should Green Acres Do?

- Get legal counsel. Green Acres has a serious situation on its hands.
 - Investigate
 - Reimburse
- 




Investigate



- Plausibility: Which story is most plausible?
- Factors:
 - Does this sound like other fee charging schemes?
 - Cultural considerations?
 - Common sense?




Interviewing

- ▶ Interview all workers
 - ▶ Interview in family groups – 3 or so at a time
 - ▶ Language – Interpreter
 - ▶ Anti-retaliation warnings
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Evaluating The Information

- Evaluate objectively – Ivan is “just like family”
 - Which story is most plausible?
 - Decide. If fees were charged, reimburse
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Prevention

- ▶ Do not rely on the “Ivans” who work with you.
- ▶ Work with reputable agents/recruiters
 - ▶ Consider Mexico’s National Employment Service (“SNE”): competent, professional, non-corrupt
 - ▶ SNE strongly prohibits fee charging and can address cultural issues in a way neither you nor your recruiter can



Prevention: Ethical Practices

- What goes on in Mexico does not necessarily stay in Mexico.
- You can be held liable in US and Mexcian courts for what goes on in a bar in Pachuca.
- An ounce of prevention is a pound of cure.



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