

Agricultural Workforce - Updating and Modernizing H-2A

IN SUMMARY

- **Change the Dialogue.** We have a workforce crisis. We need a short-term solution that includes freezing the AEWR and some surgical fixes to H-2A. We can't wait another 35 years of inaction by Congress.
- **This is a labor & employment issue, not an immigration issue.** H-2A and H-2B are non-immigrant visas
- **Food security is national security.** US will for the 1st time be a net importer of food in 2023. Why do we want to give up our food security?
- **We Want to Grow Fresh Food Here.** A high % of our domestic food production is now planted, cared for and harvested by legal foreign guestworkers and that trend will continue. So, do we want to continue growing fresh food on U.S. soil, under our food safety, environmental and labor laws? If so, farms need that workforce.
- **Economic & Rural Development.** Legal guestworkers are helping sustain our farms, local communities, and our economy, and are supporting infrastructure in many rural communities that provides for year-round full-time jobs.
- **Freeze the AEWR. Fix or Replace it.** We need a predictable and stable wage rate. Labor is now as high as 40% of farms' total production costs. The wage rate methodology & the mechanism to determine the AEWR is broken. Margins are too tight; It is devastating our multigenerational family farms and forcing them to change what they grow and go out of business. As a result, less food will be grown here on U.S. soil and our dependence on food from countries that don't like us will grow.

RECOMMENDED IMMEDIATE FIXES

- **Freeze the AEWR.** Until it can be fixed or replaced with a stable and predictable wage. Limit or cap the annual increase. Eliminate the 2023 AEWR rule and the disaggregation of wages it contains.
- **Eliminate Seasonality Provision – Year-Round Visas.** Allow H-2A program to have jobs with year-round needs.
- **Help offset increasing H2A Program Costs for Farms.** Provide tax credit to farms for value of the housing benefit to workers.
- **Staggered Arrivals.** Let employers stagger their worker arrivals. This would save a lot of expense for growers and would reduce processing times and resources for DOL and USCIS.
- **Streamline Returning Workers.** Provide option for a multi-year visa for returning workers who've already been here and have been vetted, eliminating need for consulate processing, and reducing the backlog.
- **Reduce Required Positive Recruitment Period** to 30 days instead of 50% of life of contract
- **Require Electronic Processing and Communication from USCIS.** Upgrade technology and capabilities so USCIS can accept electronic applications and complete their processing, respond to status updates, escalate cases and communicate via email and digital platforms. (Currently paper process with snail mail!)
- **Contract Flexibility.** Allow contracts than involve work in more than one area of intended employment (AIE). Require DOL to consider post-certification amendments.
- **Reinstate Joint Employer Application Flexibilities** that were removed under new H2A rule.

ADVERSE EFFECT WAGE RATE

- Freeze the AEWR, until it can be fixed or replaced
- Repeal or eliminate the 2023 AEWR rule and disaggregation of wages with new OEWS categories.

- Develop a new predictable and stable wage rate, that doesn't provide a government established unfair competitive advantage for different areas of the country:
 - Identify alternate method or national wage to use as a base, instead of data from the USDA Farm Labor Survey (FLS), and
 - Limit/cap annual wage rate growth – use CPI annual index and/or limit increases to no more than 3%; *or*
 - Work with Ag Committees to fix the FLS, improve data accuracy, methodology, and ensure representative sample by state

H-2A Processing Challenges

- Prioritize visa appointments at Consulates for those tied to our food security (H-2A and H-2B) over tourism and others
- Increase # and availability of consulate appointments for H workers
- Fund and staff Consulates appropriately for the increasing growth in the H program
- Increase staffing at DOL and State Dept, and to handle increased workload from growth in H programs.
- Allow expedited processing for returning workers vs. new workers

Modernize & Update H-2A program

- Last legislative change was 1986
- Provide option for 2-year visa for returning workers, eliminating need for consulate processing, and reducing the backlog.
- Allow for staggered arrivals of workers. Reduces processing times, staff resources and costs for federal agencies involved through lower # of needed contracts. Reduces expenses for farms through lower # of needed contracts.
- Recognize farmers/H2A user for housing provided via a tax credit or other method.
- Reduce the positive recruitment period to 30 days
- Make USCIS application/processing digital and make USCIS respond to status updates and escalate cases via email. (Currently paper process with USPS)
- Allow contracts than involve work in more than one area of intended employment (AIE).
- Require DOL to consider post-certification amendments.
- Removal of joint employer restrictions now in place because of new H2A rule.
- Expand H-2A to allow for year-round visas

Oppose USCIS Proposed Fee Hike & Restrictions

- Oppose USCIS 2023 fee hike proposal:
 - H-2A Unnamed: from \$460 to \$530, a 15% increase
 - H-2A Named (Worker Transfers, Extensions): from \$460 - \$1090, a 137% hike, and limiting petitions to 25 workers.
 - Asylum Program Fee: new \$600 fee charged to every employer petition for H2A and H2B.
- Prohibit USCIS from charging H users for the Federal Government's asylum program!

Current Legislative Action

- H.J. Res. 59/S.J. Res. 25 – a bill to repeal the AEWR rule through the Congressional Review Act - *expired*
- S. 874 and H.R. 3308 – bipartisan legislation to pause 2023 AEWR at 2022 levels
- H.R. 3516 H-2A Returning Worker Interview Waiver. Rep. Nancy Mace (R-SC)
- H.R. 4708 - H-2A Improvements to Relieve Employers (HIRE) Act – expands certification to 3 years, waives in-person interview for returning workers, enhances job transparency.
- H.R. 2: House Republicans Border Security package
- H.R. 3599 The Dignity Act, Rep Salazar. Comprehensive Reform package.