The H-2A program allows farm employers to be certified by DOL to fill seasonal farm jobs with H-2A guest workers if they are unable to recruit sufficient US workers at the Adverse Effect Wage Rate (AEWR). Fewer than 100,000 jobs a year were certified until 2013; since then, the number of jobs certified to be filled by H-2A workers almost quadrupled to 378,000 in FY23.

H-2A growth slowed between FY22 and FY23, and H-2A job certifications declined in AZ and CA. There are several reasons, including wet weather that resulted in some crops not being planted, AEWRs of $15 to $20 an hour that are significantly above state minimum wages, and more automation and rising imports, reducing the demand for hand workers.

About 80 percent of DOL job certifications become H-2A workers; the gap between jobs and workers is due to some employers not following through and some H-2A workers filling two US farm jobs. H-2A workers are in the US an average six months, making the 300,000 H-2A workers equivalent to 150,000 full-time equivalent (FTE) workers, a sixth of 1.1 million average employment on US crop farms.

H-2A workers are concentrated in particular states, commodities, and types of employers. Over half of H-2A jobs are in five states led by Florida, two-thirds are in fruits and vegetables, and almost half are with farm labor contractors. Most H-2A workers perform harvesting tasks, although many also perform non-harvest tasks such as pruning, weeding, thinning, and packing.

Issues

There are three major H-2A issues in 2024: employer efforts to force DOL to justify the AEWR, calls for an AEWR freeze, and the fate of DOL’s worker protection regulations.

Congress is unlikely to approve the Farm Workforce Modernization Act (FWMA) or other significant legislation affecting the H-2A program in 2024. Instead, the major action is likely to be in federal courts, where farm employers are trying to roll back DOL regulations that set AEWRs by job title and increase protections for H-2A workers.

The FWMA would allow unauthorized farm workers and their family members who are in the US to become temporary legal residents with the right to work in the US. By continuing to do some farm work for the next four to eight years, these temporary legal residents could become immigrants, and so could members of their families who are in the US. If enacted, the FWMA could legalize some 850,000 unauthorized farm workers and 1.5 million dependents.

The FWMA would make it easier for farmers to employ H-2A workers by freezing the AEWR and opening year-round jobs to H-2A workers as in dairies. Annual increases in the AEWR would be limited while USDA and DOL study the need for an AEWR to protect US farm workers from any adverse effects due to H-2A workers. The FWMA was approved by the House in 2019 and 2021 but not taken up by the Senate, prompting a group of 75 Congressional representatives to call for an AEWR freeze in January 2024.

DOL on September 15, 2023 issued a notice of proposed rulemaking, Improving Protections for Workers in Temporary Agricultural Employment in the United States. These protection regulations would allow H-2A workers to have visitors in their employer-provided housing and require any buses and vans used to transport H-2A workers to have seat belts. DOL justified the new regulations by asserting that rapid growth in the number of jobs certified to be filled by H-2A workers has made seasonal farm jobs less attractive to US workers.

The 327-page worker protection regulation requires employers of H-2A workers to disclose the names of their recruiters in foreign countries to DOL and provide the names of their H-2A workers to any...
US unions that request H-2A worker names. Employers would have to advise H-2A workers of their right to organize freely by certifying to DOL that they will bargain in good faith over the terms of a proposed labor neutrality agreement with a union if the union has majority support among their employees.

Employers would have to justify terminations of H-2A workers under six conditions spelled out by DOL, such as the worker failing to meet pre-specified productivity standards or failing to comply with employer policies after progressive discipline. Employers must disclose any minimum productivity standards as well as piece rates and the AEWR in their job orders.

The third issue is the AEWR, the minimum wage that employers must offer and pay to H-2A workers and US workers who are similarly employed. Until 2023, there was one AEWR per state based on the earnings of field and livestock workers as reported by farm employers to USDA’s Farm Labor Survey.

DOL in 2023 introduced a more complex structure of AEWRs. Farm employers specify the Standard Occupational Code of the job, such as farmworkers and laborers, crop, nursery and greenhouse workers (45-2092) or agricultural equipment operators (45-2091). If the USDA FLS has a wage for this SOC, the FLS wage for the previous year becomes the AEWR for the current year.

If the FLS does not have wages for “nonfarm job titles” such as heavy truck drivers (SOC 53-3032) who move harvested crops over public roads to processing or storage facilities or construction laborers (SOC 47-2061) who build structures and facilities on farms, DOL will set the AEWR for these nonfarm jobs using DOL’s Occupational Employment and Wage Survey. In many cases, using the OEWS will double the AEWR that must be paid.

H-2A employers are critical of AEWRs for several reasons. First, they say that the USDA FLS should not be used to set a minimum wage for guest workers. Second, they emphasize that the small number of farmers responding to the FLS means that the AEWR can increase by 10 to 20 percent from one year to the next, making it hard to plan. Third, employers ask whether an AEWR is necessary to protect H-2A and US workers. Employers have petitioned DOL to do studies and conduct hearings to determine if the presence of H-2A workers adversely affects US workers. Only if the answer is yes, employers argue, should DOL set an AEWR.

**Protections**

How should H-2A and US workers should be protected? There are three major checks on US employers:

- Employers must prepare job offers that describe the job in detail and are reviewed by State Workforce Agencies (SWAs) and DOL’s OFLC before being posted to https://sea-
sonaljobs.dol.gov. These job offers include the location of the housing for out-of-area US and H-2A workers and promise at least the Adverse Effect Wage Rate (AEWR), a super-minimum wage that aims to ensure the presence of H-2A workers does not adversely affect US workers.

- SWAs or local housing officials must inspect the housing employers provide to H-2A workers at no cost to ensure that each worker has at least 50 square feet and the housing is clean and safe.
- DOL’s Wage and Hour Division investigates all employers, including employers of H-2A workers, to ensure that they are complying with labor laws. Even though H-2A workers are only a sixth of average employment on US crop farms, H-2A violations were found on half of the 831 farms investigated by WHD in FY23. Violations of H-2A regulations accounted for 70 percent of the back wages assessed and two-thirds of the civil money penalties levied on farm employers by WHD investigators.

The H-2A regulatory structure is criticized by farm employers as too cumbersome and by worker advocates as insufficient to protect US and H-2A workers. Farmers have three major complaints:
- There is no need to try to recruit US workers because US workers do not want the seasonal farm jobs farm employers offer. Very few US workers respond to required job ads, few of those who are hired show up when work begins, and few US workers remain until seasonal jobs end.
- Farmers specify their need date for H-2A workers, and rely on government agencies to process the foreign workers they recruit and transportation providers to get H-2A workers to their farms. Agency requests for more information, delays in visa processing, and other factors mean that employers worry that H-2A workers will not be available when needed.
- The AEWR is higher than the federal or state minimum wage, and can increase by 10 to 20 percent from one year to the next, making it hard for employers to anticipate their labor costs when planning.

Worker advocates believe that H-2A workers are inherently vulnerable to exploitation, and that many migrants pay unlawful recruitment fees abroad. Once in the US, H-2A workers aim to please their employer to keep their jobs and be invited to return next year, making them reluctant to complain even if they know that their employers are failing to adhere to the job offer and H-2A regulations.

There are relatively few complaints of labor law violations from H-2A workers. Employers say that the reason is because H-2A workers are satisfied, while worker advocates say the reason for few complaints is that H-2A workers are vulnerable.

Employment

US agriculture employs about 2.5 million hired farm workers sometime during each year to fill about 1.5 million FTE jobs, a ratio of 1.7 workers per job due to seasonality and worker turnover. There are more than 1.5 million jobs in US agriculture because a full-time equivalent job can be created by adding up several seasonal jobs, as when three four-month jobs create one FTE job.

Farm worker employment is concentrated in three interrelated ways: by commodity, area, and size of
farm. Crop agriculture accounts for three fourths of average agricultural employment or about 1.1 million FTE jobs, and employs 80 percent of unique farm workers, some two million. Within crop agriculture, fruits and nuts, vegetables and melons, and horticultural specialties (FVH) account for 75 to 80 percent of farm workers.

Most FVH farms specialize in one or a few commodities, so that the largest 10 producers of apples, lettuce, and other commodities often account for half to three-fourths of total production. These large farms employ half to three-fourths of farm workers directly and indirectly, as when workers are brought to farms by farm labor contractors (FLCs) and other nonfarm intermediaries that the government calls crop support services. FLCs are crop support service businesses that assemble crews of workers and move them from farm to farm to perform seasonal tasks that range from pruning to harvesting.

About 40 percent of average employment in US crop agriculture is with nonfarm crop support employers. The Quarterly Census of Employment and Wages (QCEW) finds that average employment in crops and crop support is 890,000, including 340,000 in crop support.

**Earnings**

USDA’s Farm Labor Survey reported that the average hourly earnings of US field and livestock workers were $17.55 an hour in 2023, up almost $1 an hour or six percent from 2022. DOL uses the earnings of field and livestock workers to set the Adverse Effect Wage Rate (AEWR) for H-2A guest workers in 15 multistate regions plus CA, FL, and HI. Three states, CA at $19.75 and OR and WA at $19.25, have AEWRs of over $19 in 2024, while seven southeastern states including FL and GA have AEWRs of less than $15 an hour.

Average hourly earnings rose by over $1 an hour between 2022 and 2023 in the western, cornbelt, and southeastern states, but rose by only $0.25 an hour in IA and MO and in CO, NV, and UT.

USDA’s Farm or Agricultural Labor Survey collects data from 6,000 farm employers (about 12,000 farms are contacted and half respond). Respondents report the total earnings and hours worked of various types of directly hired employees for the week that includes the 12th of the month of January, April, July, and October. USDA divides total earnings by hours worked to calculate average hourly earnings. Employers complete a table with rows for 16 types of workers, such as Crop, Nursery and Greenhouse Farmworkers, by entering the total hours worked and the gross weekly wages paid to each type of worker during the survey week and separating base wages from bonuses and overtime wages. Section 3 collects data on peak employment and asks whether the farm had any H-2A workers during the previous year, while Section 4 collects data on the farm’s sales during the previous year by category, such as over $5 million, the farm’s acres of various crops, and the share of the farm’s sales from fruits, nuts and berries, vegetables and melons, and corn and grains; the form does not collect data on sales of individual commodities. Sections 5 and 6 collect data on farm operators.

The FLS publishes data by region and farm sales and reports that...
hourly earnings are lowest on farms that have sales of less than $100,000 a year and highest on farms that have sales of $100,000 to $250,000 a year. Some 50 to 55 percent of field and livestock workers are employed on “other crop” farms, meaning FVH farms, followed by 30 percent employed on animal agriculture farms and 15 percent on field crop farms. US farms with sales of $1 million or more account for 55 to 60 percent of all directly hired farm workers, while farms with 51 or more workers account for a third of all US hired farm workers. Regional data on employment by size of farm are not published.

The sample of farmers who respond to USDA is small, which can generate large changes in average hourly earnings from year to year. For example, the average hourly earnings of hired farm workers in the Mountain II states of CO, NV, and UT rose over 20 percent between 2017 and 2018. Between 2014 and 2017, the average hourly earnings of all hired workers in the Mountain II states were flat or falling.

Farmers complain that large increases in the AEWR mean jumps in the cost of employing H-2A workers. DOL responded in 2023 with regulations that set AEWRs by job title rather than by state. Employers now specify the job title or occupation to be filled, and DOL first looks to the USDA data to determine the AEWR for that occupation. However, if the USDA data do not have an hourly wage for a particular occupation such as truck driver, DOL uses the Occupational Employment and Wage Statistics data to set the AEWR.

The current USDA-FLS-based system generates AEWRs for 18 states and multistate regions, creating a small table. DOL’s new methodology results in a 10-page table that includes AEWRs in each
state for 10+ occupations. The major effects of setting AEWRs by job title or occupation is to raise the AEWR of supervisors and equipment operators and slightly reduce AEWRs for crop workers as higher wage workers are removed from the USDA data.

USDA interviews only farm employers, while DOL’s Occupational Employment and Wage Survey (OEWS) interviews only nonfarm employers who bring workers to farms such as labor contractors. The OEWS provides far more wage and employment data than the USDA survey, including employment for 830 detailed occupations as well as mean and median wages. The data are reported by job title for each state and for 530 metro and non-metro areas within states.

**Perspective**

The 1952-86 H-2 seasonal guest worker program was modified in 1986 into H-2A for farm workers and H-2B for nonfarm workers. The H-2A program is not capped, and has almost quadrupled from less than 100,000 jobs certified in FY13 to almost 400,000 jobs certified in FY23. The H-2B program is capped at 66,000 a year but, with exemptions, typically admits over 100,000 guest workers to fill nonfarm seasonal jobs each year.

The H-2A program that requires employers to try to recruit US workers, offer free housing, and satisfy other requirements was created in IRCA in 1986. In the mid-1980s, western farmers wanted an alternative free-agent guest worker program, a mechanism to allow foreign guest workers to arrange their own housing and “float” from farm to farm. The Replenishment Agricultural Program included in IRCA fulfilled this wish for a free-agent guest worker program, but was not implemented because there were no farm labor shortages that would have triggered the issuance of RAW free-agent visas.

Illegal immigration continued after IRCA because sanctions on employers who hired unauthorized workers were not enforced. The share of unauthorized crop workers rose to 50 percent by the mid-1990s and remained at this level since, falling toward 45 percent in recent years due to fewer unauthorized newcomers and more legal H-2A workers.

Policy makers often turn to on-the-shelf concepts to deal with crises, making 2024 an optimal year to formulate proposals that may be implemented in 2025 and beyond. There are incremental changes to the H-2A program that could benefit both employers and workers, such as a TSA-style precheck program for trusted employers and H-2A workers. DOL investigates fewer than 1,000 farm employers each
Up to Half of WHD Compliance Actions Involve H-2A Violations

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Nonfarm Crop Support Businesses are Bringing More Workers to Crop Farms

Note: Employment is measured as the annual average number of full- and part-time jobs. Data do not cover smaller farm employers in those States that exempt them from participation in the unemployment insurance system.
The Average Hourly Earnings of Crop and Livestock Workers Ranged from Less than $15 to Almost $20 in 2023

Figure 4. 2024 AEWR

AEWR Increases From 2022 to 2023 Ranged From $0.25 to $1.28 an Hour

Figure 7. Dollar-Per-Hour Increase in 2024 AEWR Over 2023 AEWR

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