

# Agriculture Labor Issues as Related to New Immigration Laws

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**DISCLAIMER: \*\*\*\*\*** The information provided here is only for educational and informational purposes and is not a substitute for the advice of an attorney.

## Most US Farms and Ranches

- Are family owned and operated
- Many of them need to hire labor in order to operate successfully.

New Jersey State Legislature

## From planting and harvest to the daily care of plants and animals

- Agriculture is a labor-intensive industry

New Jersey State Legislature

## New Jersey 3 –part Approach to Farm Labor

Ensuring an adequate and qualified  
workforce

Decent, safe and sanitary housing; and

Ongoing worker education programs.

## To Ensure a Farm Labor Workforce

- The problem of illegal migration is one that must be addressed
  - Not only to ensure homeland security, but
  - Also to resolve other issues that result from a worker's immigration status.

New Jersey Legislature

## Problems for Apple Farmers

- Labor Availability
- Legal Questions Surrounding “No Match” letters from the Social Security Administration ( Will it Scare Away Workers?)

## Violation of Federal Laws Being Enforced More Vigorously

- Repeat illegal entry violators are being put into prison with subsequent violations causing longer prison stays.

## Oklahoma has New Strict Labor Law HB-1804

- Possible felony charge against employers
- Stricter control of public resources
- Closer scrutiny of worker's documents

Fortunately the government acknowledges these needs and has created several “guest worker” programs to enable your business to stay competitive.

H2A

H2B

## H2A Program

- **H-2A Program**
- The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

## H2A Program (cont)

- Before the U.S. Citizenship and Immigration Services (CIS) can approve an employer's petition for such workers, the employer must file an application with the Department of Labor stating there are not sufficient workers who are able, willing, qualified, and available, and the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

## H2A Program (cont)

- The Department of Labor's Wage and Hour Division, Employment Standards Administration (ESA) has responsibility for enforcing provisions of worker contracts.

## H2A (cont)

- Employers who wish to hire foreign workers to temporarily perform services or labor or to receive training need to also file an I-129 petition with the U.S. Citizenship and Immigration Services (CIS).

## H2A (cont)

- The I-129 is mainly used for nonimmigrant categories; thus, in most cases, workers who enter the United States under this petition must depart the U.S. when their maximum period of stay has been reached. Form I-129 may also be used to petition for an extension of stay or change of status for certain non-immigrants.

## H2A (cont)

- Once the petition is approved, the employer or agent is sent a Notice of Approval, Form I-797.
- Approval of a petition does not guarantee visa issuance to an applicant. Applicants must also establish that they are admissible to the U.S. under provisions of the Immigration and Nationality Act (INA).

## H2A (cont)

Applicants should be aware that a visa does not guarantee entry into the United States. The U.S. Customs and Border Protection (CBP) has authority to deny admission at the port of entry to any applicant who is inadmissible under INA, even if the applicant has a visa.

## H2A (cont)

Also, the CBP, not the consular officer, determines the period for which the bearer of a temporary work visa is authorized to remain in the United States.

At the port of entry, CBP officials issue Form I-94, Record of Arrival-Departure, which notes the length of stay permitted. The decision to grant or deny a request for extension of stay, however, is made solely by the USCIS

## Frequently Asked Questions Regarding the H-2A Program (Agricultural)

## **1. What is an H-2A certification?**

The H-2A labor certification program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

## **2. How long is an H-2A valid?**

The H-2A certification is valid for up to 364 days. As temporary or seasonal agricultural employment, the work is performed at certain seasons of the year or for a limited time period of less than one year when the employer can show that the need for the foreign worker is truly temporary.

### **3. What constitutes a temporary need for H-2A temporary labor certification?**

The employer's need for a worker must be of a seasonal or other temporary basis.

### **4. What is the required time frame for filing an H-2A temporary labor certification application?**

Employers are advised to file requests for H-2A certifications at least 45 days before certification is needed.

\*At Least 90 Days (or more) would be better \*<sub>mjt</sub>

**5. If my application is denied, can I still file with BCIS?**

Yes. The DOL decision is only an advisory to BCIS in H-2A certification applications

**6. Must the employer attempt to hire US worker to fill the jobs first?**

Yes, the employer must agree to engage in recruitment of U.S. workers. Typically, this means an active effort, including newspaper and radio advisement.

## 7. What does the employer have to pay the workers?

The United States Department of Labor will determine the applicable rate. The wage or rate of pay must be the same for U. S. workers and H-2A workers. The hourly rate must also be at least as high as the applicable Adverse Effect Wage Rate (AEWR), federal or state minimum wage, or the applicable prevailing hourly wage rate.

## H2A (cont)

\*\* Each H-2A employer must also guarantee that the worker will have work for at least 75% of the total hours in the contract period of need. \*\*

## **8. Are H-2A employers required to provide Worker's Compensation Insurance?**

Yes, the employer must provide Worker's Compensation Insurance where it is required by State law. In States where it is not required, the employer must provide equivalent insurance for all workers.

## **9. Do the H-2A employers have to provide housing for the workers?**

Yes, free housing is required for all workers who are brought in to work. Housing requirements include an inspection by the State as required by the federal housing standards.

## 10. Does the employer have to provide meals?

The employer must provide free and convenient cooking and kitchen facilities for workers.

Or the employer can provide three meals a day to each worker and if the employer provides meals, then the employer may charge a certain amount per day for the three meals.

## Examples of Organizations or Private Companies Focusing on Providing a Service to Find Labor

- FEWA
- Agriworkers
- Labormex
  
- \* The internet Has many more \*

## F.E.W.A

- Federation of Employers and Workers of America
- H2A Non-Profit Service Provider

## Labormex.com

- Labormex Agriculture® not only recruits your workers but also handles all the complicated paperwork involved in obtaining the work visas.
- Labormex Agriculture's offices are located in Central Mexico, surrounded by farms and ranches in an area rich in agriculture related industries. This allows us to select hardworking people who are acclimated to tough physical labor.

## Labormex.com (cont)

- Labormex will handle the entire H2A or (in some cases H2B) legal process, but with their state of the art computerized system, you will be able to login and see your updated status instantly.

## Labormex.com (cont)

- Labormex will submit all of the necessary paperwork, and let you chose your workers from a large database.
- Labormex can recruit workers with special skills or talents.
- Labormex pre-screens all of the workers including drug tests and criminal background checks

## Labormex.com (cont)

- If needed, Labormex Agriculture® will assist any client that needs help finding housing for their workers and can offer special services such as:
  - - Translation Services
  - - Orientation Sessions
  - - Training Sessions

## Agriworkers

- Is a Central American Labor Management Company specializing in the recruitment and placement of agricultural workers to your job site.
- May also be able to help you with other types of workers upon request.

## Agriworkers

- Supplies all types of Ag Workers but specialize in Beekeepers, Ranch Hands, Dairy Farmers and Fishermen.
- All of their workers have a minimum of two years experience in their fields. They are qualified workers recruited in Central and South America.

## Agriworkers

Workers are accustomed to hard work and long hours as the professions dictate. They are capable of filling contracts from three to ten months per year and returning year after year.

## Agriworkers

Some of their workers may have experience in other countries.

A small percentage of them may speak some English; and all of them speak Spanish.

Some of them have a Drivers License and

A few even have some computer skills.

## Cost - \$/Hour

- Some Texas Producers Estimate \$15.00 to \$16.00 per hour Costs When Total Costs Calculated.

## Ways to Reduce Costs

- South Carolina and Oklahoma Growers are Working together to Contract Labor.
  - Blue Berry then Watermelon Harvest in South Carolina (One Contract)
  - Then Move the Laborers to Oklahoma For Watermelon Harvest (Separate Contract)

### \* Note

The H-2A visa program is not a way to legalize the status of (illegal) undocumented/unlawfully present aliens in the U.S.

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# ¿Preguntas?

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