The H-2A Program in 2021

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Highlights

DOL certified a record 275,000 farm jobs to be filled with H-2A workers in FY20, and is on track to certify over 300,000 jobs in FY21. Between 75 and 80 percent of job certifications result in H-2A visas being issued to farm workers.

H-2A job offers promised an average 168 days and 943 hours of work at $13.29 in FY20, for earnings of $12,711. H-2A workers could earn more if they work more hours or have higher piece rate earnings, and less if their employers satisfy only the ¾ guarantee, that is, offer workers 75 percent of the promised work days.

The H-2A program is clouded by regulatory and legislative uncertainty. DOL efforts to change the basis for calculating AEWRs were blocked by federal courts. The Farm Workforce Modernization Act would repeat the agricultural grand bargain in the Immigration Reform and Control Act of 1986 by legalizing currently unauthorized farm workers and streamlining the H-2A program.

H-2A Growth

The H-2 program was enacted in 1952 and operated in the shadows of the much larger Bracero program until 1964, when the Bracero program ended and DOL made it hard for employers to shift from Bracero to H-2 workers. The program was renamed H-2A in the IRCA and expected to expand quickly as newly legalized farm workers left for nonfarm jobs and there were few unauthorized workers to replace them.

Instead, the H-2A program shrank in the 1990s as unauthorized Mexican workers spread throughout the US and the Florida sugarcane harvest was mechanized. Employer associations emerged in ID and NC to recruit and transport H-2A workers, and vegetable farmers near the Mexican border in AZ turned to H-2A workers.

The number of farm jobs certified to be filled with H-2A workers remained below 100,000 until FY14 before increasing by 25,000 between 2015 and 2016, by 34,000 between 2016 and 2017, and by 42,000 between 2017 and 2018. DOL is likely to certify over 300,000 jobs for H-2A workers in FY21, so that H-2A workers account for 15 percent of average employment in US crop agriculture. Braceros at their peak in the mid-1950s accounted for 20 percent of US crop employment.

H-2A Contracts

Most H-2A jobs are in the six states that each had more than 10,000 of H-2A jobs in FY20: Florida had 14 percent, Georgia and Washington, 10 percent each, California 9 percent, North Carolina 8 percent, and Louisiana 4 percent.

The top 10 H-2A employers accounted for 38,200 or 14 percent of all H-2A jobs; from 2,200 jobs for Washington-based Zirkle Fruit Company to over 10,600 for the North Carolina Growers Association. Several of the top-10 H-2A employers offered 35-hour work weeks, including California-based Fresh Harvest, while Nevada-based Peri & Sons offered 44-hour work weeks. The range in contract length was from a low of 101 days (14 weeks) for Florida-based Overlook Harvesting to a high of 229 days (33 weeks) for Florida-based Temp Labor LLC.

California accounts for a third or more of US farm employment and wages, but less than 10 percent of H-2A jobs certified. Most of the top-10 California-based H-2A employers are FLCs who provide H-2A workers to berry and vegetable farms in coastal counties, where housing costs are high and some H-2A workers are housed in motels.

Whither H-2A?

DOL on July 26, 2019 proposed changes to the H-2A program, including setting AEWRs by occupation or job title rather than having one AEWR per state. DOL proposed to use data from USDA's Farm Labor Survey (FLS) to set AEWRs for most jobs, and DOL's Occupational Employment Statistics (OES) to set AEWRs for farm-related jobs that are not covered by the FLS, such as for construction workers on farms and truck drivers. DOL's proposed changes drew over 83,500 comments; most opposed some or all of the changes.

In September 2020, USDA cancelled the FLS survey, and in November 2020 DOL issued regulations to freeze AERWs at 2020 levels in 2021 and 2022. A federal judge ordered USDA to resume the FLS and blocked DOL's AEWR changes, so AEWRs for 2021 were set on the basis of delayed 2020 FLS data. DOL's final regulations covering non-AEWR changes to the H-2A program were withdrawn by the Biden Administration.

The FWMA would likely accelerate the growth of guest workers by incorporating the regulatory changes DOL proposed in July 2019. The FWMA would slow the growth of AEWRs, open year-round jobs in animal agriculture and dairies to H-2A workers, make farmers eligible for USDA grants and loans to build housing for H-2A workers, and allow 10,000 legal farm guest workers to move between registered farm employers.

The H-2A program expanded in 2020 despite covid, highlighting the difficulties of moving jobless hospitality workers into farm work. As the US economy recovers in 2021 and wages for low-skilled workers rise toward $15 an hour, the H-2A program is likely to expand faster. With US farm wages at least ten times higher than Mexican farm wages, Mexican workers are eager to work in the US, and there may be subsidies and incentives to increase recruitment in Northern Triangle countries such as Guatemala.

Farmers face the challenge of how to produce fresh fruits and vegetables, and buyers of where to source fresh produce. The major choices for farmers are labor-saving mechanization or mechanical aids that make US and H-2A workers more productive, while buyers can seek US or imported fruits and vegetables. Many farmers are investing in both labor-saving mechanization and mechanical aids, as with investments in apple harvesters and platforms that replace ladders; H-2A workers may serve as a bridge to mechanization in these commodities. In open-field tomatoes and melons, H-2A workers sustain US production of commodities whose production is shrinking as imports rise.

Further Reading
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