

The H-2A Guest Worker Program Expands in California

Philip Martin

The H-2A program, which allows farm employers anticipating too few workers to be certified to employ foreign guest workers, more than tripled in size over the past decade across the U.S., and quadrupled in California.

The H-2A program allows farm employers to request certification from the U.S. Department of Labor (DOL) to have foreign workers admitted “temporarily to the United States to perform agricultural labor...of a temporary or seasonal nature.” Farmers seek certification from DOL to fill particular jobs with H-2A guest workers by ensuring that two conditions are satisfied: there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the employer petition and, the employment of the H-2A worker will not adversely affect the wages and working conditions of U.S. workers who are similarly employed.

Farmers satisfy these conditions by passing three tests. First, they must try to recruit U.S. workers and provide reasons why any U.S. workers who applied for jobs were not hired. Farmers must begin the recruitment process 45 days before they expect work to begin. Many farmers are convinced that U.S. workers who respond to their help wanted ads will not show up when needed or remain for the entire season, so many allegedly discourage U.S. workers who apply.

Second, farmers must provide free housing to H-2A guest workers and any out-of-area U.S. workers whom they hire. Most labor-intensive agriculture is in metro countries with relatively high housing prices. For example, the 40th percentile fair market rent for a two-bedroom apartment in

the U.S. salad bowl of Monterey County in 2018 is \$1,433 a month, meaning that 60 percent of two-bedroom units rent for more than \$1,433. A farm worker employed 160 hours at the state’s minimum wage of \$11 an hour would earn \$1,760 a month, which means that a one-earner family would, after taxes, spend almost all earnings on rent. High rents relative to earnings help to explain why the employment of H-2A guest workers has risen rapidly in Monterey county, where guest workers are often housed in motels that are converted into bunk houses with four workers to a room.

Third, DOL enforces the no-adverse-effect requirement by setting a super-minimum wage that must be paid to H-2A workers and any U.S. workers employed alongside them called the Adverse Effect Wage Rate (AEWR), which is \$13.18 an hour in CA in 2018, almost 20 percent above the state’s minimum wage. The AEWR is the average hourly earnings of nonsupervisory field and livestock workers for the state or region during the previous year, as determined by the USDA National Agricultural Statistics Service Farm Labor survey of employers.

The H-2 program was created in the 1952 Immigration and Nationality Act and used primarily by sugar cane growers in Florida and apple growers along the east coast until the mid-1990s. For example, in 1985, fewer than 21,000 farm jobs were certified to be filled by then H-2 workers, including 10,000 in Florida sugarcane. The program was revised by the Immigration Reform and Control Act (IRCA) of 1986 and renamed H-2A, but the number of farm employer requests fell after IRCA rather than expanding as anticipated because of rising unauthorized migration and the mechanization of the Florida sugarcane harvest.

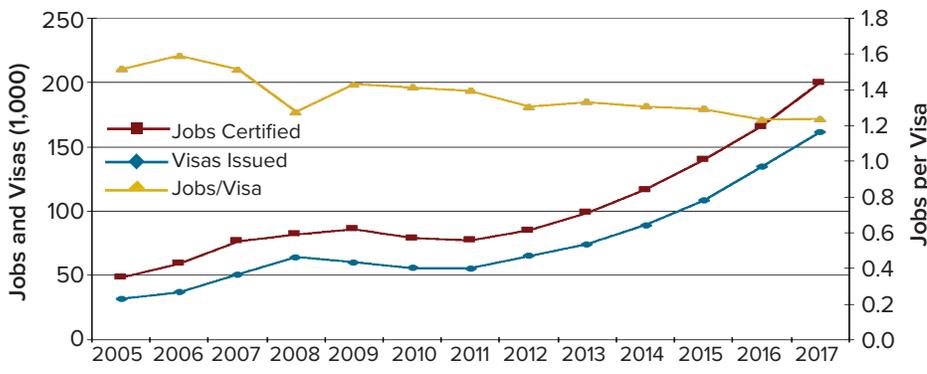
The number of jobs certified to be filled with H-2A workers began to rise in the mid-1990s, after the North Carolina Growers Association (NCGA) was formed to recruit and transport Mexican guest workers to its tobacco- and vegetable-grower members. Turn-key and loyal H-2A guest workers proved very attractive to farmers, especially as the H-2A workers gained experience by returning year after year. The NCGA has been the largest single employer of H-2A workers for the past two decades, certified to fill over 10,000 jobs a year with H-2A workers.

The H-2A program expanded during the housing boom of 2005–06, as California vegetable growers who operate in Yuma, Arizona, during the winter months complained of labor shortages. Almost all border-area workers are legally authorized to work because the U.S. Border Patrol often stops the buses used to carry workers to fields and checks worker documents, encouraging growers to use the H-2A program to obtain workers. When Salinas-based growers had difficulty finding workers in Monterey County after the 2008–09 recession, they requested certification to bring the H-2A workers who harvested vegetables during the winter months in Arizona to Salinas during the summer months.

The H-2A program expanded in other states as well. The U.S. DOL certified almost 243,000 jobs to be filled with H-2A workers in FY18, up from 165,000 in FY16. Five states accounted for 52% of FY18 H-2A jobs: 13% in Florida, 12% in Georgia, 10% in North Carolina, 9% in Washington, and 8% in California.

Over 550,000 U.S. farms reported hiring labor in the 2012 Census of Agriculture, and over 100,000 are enrolled in state unemployment insurance systems that provide benefits to laid-off workers.

Figure 1. H-2 Jobs Certified, Visas Issued, and Jobs per Visa, 2005–17



Fewer than 10,000 farm employers request H-2A workers, but it is hard to determine the exact number of participating farms because some make multiple requests and some request workers under different names, as when a farm and its associated labor contractor make separate requests.

The top requesters of H-2A workers are employer associations and labor contractors, including the NCGA with 11,600 jobs certified in FY18, the Washington Farm Labor Association (WAFLA) with 5,200, California labor contractor Fresh Harvest with 4,200, and Washington’s Zirkle Fruit with 4,200. Contractors must submit documentation to DOL of their arrangements to provide workers to farmers, but FLC-farmer contracts are not made public.

Some jobs that DOL certifies are not filled by H-2A workers, and some H-2A workers fill more than one job, so more jobs are certified than H-2A visas issued. In recent years, for every 120 farm jobs certified, the U.S. Department of State issued 100 H-2A visas. H-2A admissions data published by the

Farm Employment

Farm worker employment involves several concepts. First is average employment, the number of workers employed each month, summed, and divided by 12 months. Average U.S. farm employment as measured by employer reports when paying unemployment insurance (UI) taxes was over

1.2 million in 2015. Some states do not require smaller farmers to pay UI taxes on farm worker wages, so UI covers an estimated 86% of U.S. hired farm workers, making average U.S. farm worker employment 1.4 million.

California requires all employers to participate in UI, and its average agricultural employment of 420,000 in 2015 was 30% of average U.S. agricultural employment. Over the past decade, average UI-covered farm worker employment increased in both the U.S. and California.

There are more farm workers than average employment jobs because of seasonality that generates peaks and troughs. UI-covered farm worker employment across the U.S. ranged from a high of 1.4 million in July 2015 to a low of 1.1 million in January, for a peak-trough ratio of 1.3. California had a peak 475,000 workers in August and 354,000 in January, for a ratio of 1.3. The peak-trough ratio increases as the geographic unit decreases. At the county level, the peak-trough ratio may be two, and on an individual farm as high as 100 to one, as when 200 workers are hired for harvesting but only two during the winter.

Average employment and peak-trough ratios are measures of jobs, not the number of unique workers who fill them. The ratio of workers to jobs cannot be determined easily. During the 1980s, when the Current Population Survey included questions in December asking whether anyone in

the household worked for wages on a farm during the year, CPS reported 2.6 million unique farm workers when average farm employment was 1.3 million, suggesting two unique workers per job. These workers were grouped at the ends of the days-of-farm work spectrum. A third did fewer than 25 days of farm work during the year, while 20 percent worked year-round.

There are no national data on the number of individuals who work for wages on farms sometime during the year. California extracted the social security numbers (SSNs) of all workers reported by farmers sometime during the year, allowing a comparison between unique farm workers and average employment. In 2014, when average agricultural employment was 411,000, some 829,000 unique SSNs were reported by California farm employers, suggesting the same two workers for each average job as in the 1980s.

Average employment, peak-trough ratios, and unique farm workers are three ways to look at who works for wages on U.S. farms. There are other windows into farm work, including which states and commodities have the most farm workers.

Farm worker employment is concentrated in a few states. In 2012, California had 36 percent of average UI-covered farm employment, followed by WA, FL, TX, and OR, which each had 3–8% of average employment (Figure 2). Another 19 states had 1–2% percent of average farm employment, which means that over half of the states had less than 1% of U.S. farm worker employment.

Farm worker employment is concentrated by commodity. U.S. crop employment averaged 560,000 in 2015, including almost 200,000 in fruits and nuts, almost 100,000 in vegetables and melons, and 150,000 in greenhouse and nursery production, so that 80% of average crop employment was in fruit,

vegetable, and horticultural specialty crops.

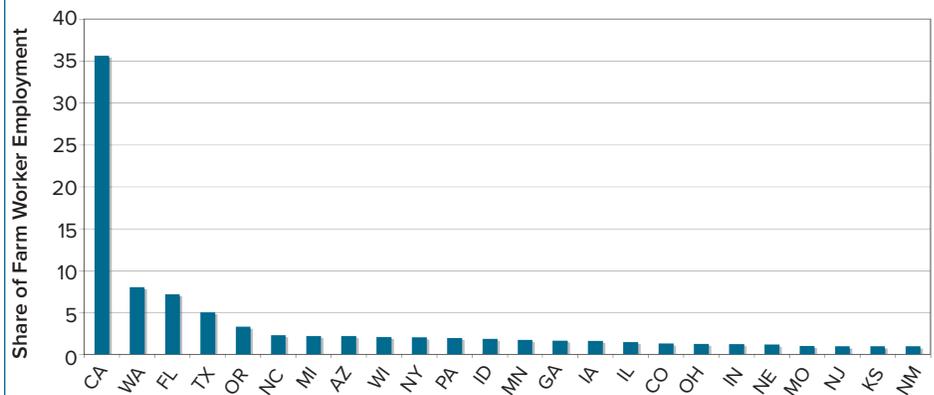
California

Imperial Valley-based Fresh Harvest is the California's largest employer of H-2A workers, and places most of the 4,200 H-2A workers it brings into the state in Salinas-area berry and vegetable fields. Fresh Harvest, part of a larger logistics and farming enterprise with operations in Mexico and the US, houses many of its H-2A workers in Salinas-area motels and in a King City tomato packing shed converted to a dormitory.

Fresh Harvest began as a custom harvester for Fresh Express, a bagged salad firm, and evolved into the supplier of labor to harvest 20 percent of the state's lettuce for bagged salads and 20 percent of the state's berries. The Salinas area has the highest number and share of H-2A workers, a peak 10,000 H-2A workers among a total of 82,000 farm workers. Some settled workers in the Salinas area complain that younger H-2A workers are able to earn more at prevailing piece rates, and have more take home pay because the H-2A workers receive free housing and transportation to work.

Mexican worker interest in U.S. jobs paying \$13 an hour and offering transportation and housing is very high, but many of the workers who want to become H-2As are not productive enough to justify U.S. wages that are 10 times more than prevailing farm wages in Mexico. Fresh Harvest has farming operations in Mexico, and selects some of its best workers in Mexico for H-2A visas to work in the US. Like other recruiters, Fresh Harvest tests non-employees by having them climb a ladder with a 60-pound weight to see if they can pick avocados and wheel a strawberry cart to determine if they will be productive berry pickers.

Figure 2. State Shares of Average U.S. Farm Worker Employment, 2012



Source: U.S. Department of Labor, Bureau of Labor Statistics, QCEW (www.bls.gov/cew)

Conclusions

Fewer than 10,000 of the 100,000 U.S. farms that pay UI taxes, and the 500,000 farms that report hiring workers to the Census of Agriculture, are certified to employ H-2A guest workers. For the past three decades, farm employers have sought three major changes to the H-2A program, viz, (1) an end to certification or DOL-oversight of efforts to recruit U.S. workers, (2) elimination of the requirement to provide free housing to H-2A workers, and (3) a reduction of the Adverse Effect Wage Rate.

Farmers failed to persuade Congress to make these changes, and they also were unable to win an alternative guest worker program for agriculture. Instead, as fewer unauthorized Mexicans entered the U.S. and sought farm jobs, more farmers began to use the H-2A program to recruit legal Mexican workers. Farmers complain about the bureaucracy and costs of H-2A workers but, with few alternatives, more are turning to H-2A guest workers despite paperwork and costs.

Half of U.S. crop workers are unauthorized, and these unauthorized are aging and settling in families with US-born children, reducing their willingness to migrate to farm jobs. H-2A guest workers are the fresh blood in the farm workforce, younger than most current workers and willing to work where there are vacant jobs. Many farmers

considering how to harvest crops over the next decade are convinced that their medium-term options are labor-saving mechanization or H-2A guest workers under current regulations. The option chosen has very different implications for investment, viz, spend on labor-saving machines in the hope of replacing workers or build housing for guest workers who are likely to constitute a rising share of the workforce.

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Martin, Philip. 2009. *Importing Poverty? Immigration and the Changing Face of Rural America*. Yale University Press. www.yalebooks.com/yupbooks/book.asp?isbn=9780300209761

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