



# Agricultural and Resource Economics ARE UPDATE

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## ALSO IN THIS ISSUE:

Chips, Dip, and a Side of Deforestation? U.S. Agricultural Trade and Deforestation Policy Beyond Avocados  
Mark Agerton, Julia Mezentseva, and James E. Sayre .....5

Controlling Urban Pests: The Case of Termites  
David Zilberman, Vernard Lewis, William Gendron, and Sadie Shoemaker.....9

## California Farm Labor Policy Update

Zachariah Rutledge, Philip Martin, and Clare McGrady

**California employs a third of U.S. farmworkers, over 800,000, and half of California's farmworkers are not authorized to work in the United States. The H-2A program is expanding, especially in coastal areas, but legal guest workers account for fewer than 5% of average employment (i.e., U.S. full-time-equivalent (FTE) farm jobs). Congressional proposals to legalize unauthorized farmworkers and make it easier to employ H-2A workers could lead to a legal farm workforce that includes fewer settled workers and more guest workers.**



The Farm Workforce Modernization Act would grant legal status to many undocumented agricultural workers.

Photo Credit: Zachariah Rutledge.

Over the past decade, the number of immigrant workers willing to supply their labor to the U.S. agricultural sector has been declining, creating ripple effects across the state and country. California's farmworkers perform essential services that keep healthy food on our tables, but many of these employees face economic disparities due to a lack of legal work authorization, prompting new efforts to provide them with an opportunity to obtain legal status.

The recently reintroduced Farm Workforce Modernization Act (FWMA) seeks to address these labor supply issues by providing legal status to undocumented farm employees in exchange for continued work in agriculture. The FWMA would also make changes to the H-2A visa temporary agricultural guest worker program to ensure the program can remain viable in the future. In this article, we estimate the number of undocumented farm employees who could obtain legal work authorization under the FWMA and highlight potential changes to the H-2A visa program.

### Background

California is a powerhouse in fruit, vegetable, and horticultural crop production, producing a third of U.S.

vegetables and almost three-quarters of U.S. fruits and nuts. California is the largest employer of farm labor in the United States, accounting for up to a third of average farm employment and farm labor expenses.

Most California farmworkers are Mexican immigrants, many of whom are not authorized to work in the United States. In 1986, the Immigration Reform and Control Act (IRCA) included a Special Agricultural Worker (SAW) program that allowed 1.1 million undocumented farmworkers to become legal immigrants, including 600,000 in California. Over half of these legalized workers soon left the farm workforce, so that half of California crop workers were unauthorized by the mid-1990s, a higher share than before IRCA. Figure 1 (on page 2) shows that 20% of farmworkers were undocumented in California in 1990, just after the 1987–1988 SAW program ended. However, the unauthorized share rose rapidly in the 1990s and has remained at over 50% in most years since.

Worker-advocacy groups argue that undocumented workers will often tolerate poor working and living conditions and are subject to widespread wage theft and other abuses that are

not investigated or remedied due to understaffed federal and state agencies. Farmworker advocates argue that legal status would reduce farmworker vulnerability.

Rising wages and labor scarcity have sparked interest in another legalization program for undocumented farmworkers. The FWMA, approved by the U.S. House of representatives in 2019 and 2021, and reintroduced in 2023, would allow undocumented farmworkers to obtain legal work authorization by providing evidence of farm work during the previous two years. But how many unauthorized California crop farmworkers would qualify?

Title 1 of the FWMA aims to ensure that settled or U.S.-based workers are the primary source of labor on U.S. farms. Title 1 would allow undocumented farmworkers to seek and obtain Certified Agricultural Worker (CAW) status, a temporary legal status for workers who have been engaged in agricultural work for at least 180 days during the previous two years. CAW status could be renewed if workers continue to perform agricultural work for at least 100 days per year. Workers will not be required to do anything else to keep their legal status, but they could earn a green

card if they pay a \$1,000 fee and continue to engage in agricultural work for either 1) four more years if they have done at least ten years of agricultural work in the United States or 2) eight more years if they have done less than ten years of agricultural work in the United States.

We used the National Agricultural Worker Survey (NAWS) to estimate the share of the workforce that would be eligible for CAW status and the Quarterly Census of Employment and Wages (QCEW) to estimate the number of qualifying crop farmworkers. Combining these data sources allows us to estimate the number of farmworkers who would be eligible for legal work authorization in California.

According to the 2022 QCEW, there are about 350,000 full-time equivalent non-H-2A jobs in California crop agriculture, including directly hired workers and those brought to farms by crop support service firms. Due to worker turnover and seasonality, the number of individuals filling those jobs is higher. A recent study found that two employees fill each full-time equivalent job, so we multiply the QCEW employment numbers by two to provide an estimate of the number of employees filling these jobs.

## CAW Status Eligibility

We estimate that 41% (293,000 workers) of the crop farm workforce in California is CAW eligible, led by Kern County with 48,000 workers, Monterey County with 43,000, Fresno County with 31,000, Tulare County with 26,000, and Santa Barbara County with 22,000 (see Table 1). About half of those eligible for legalization are in the San Joaquin Valley.

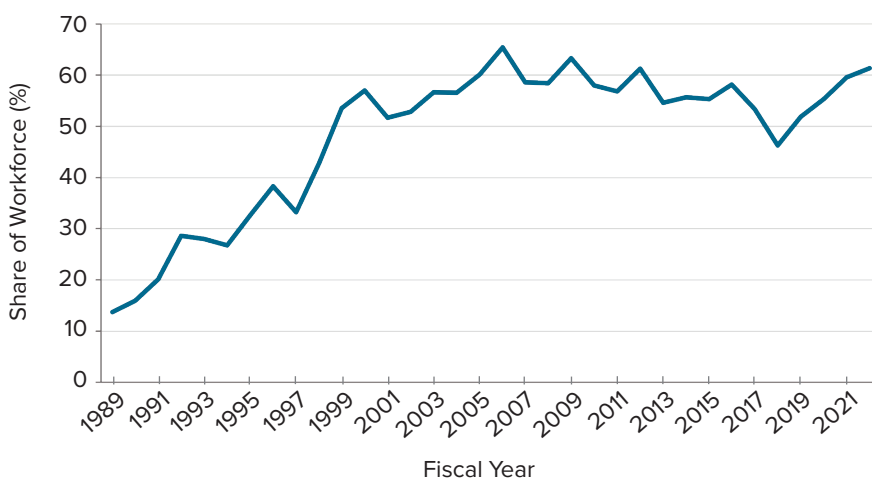
## Immigrant Visas

The share of the crop farm workforce that would be eligible for a green card in four years is 29% (or 69% of the CAW-eligible workers), some 202,000 workers. Table 1 shows the number of crop production employees in each county who could obtain a green card in four years, led by Kern County with 33,000 workers, Monterey County with 30,000, Fresno County with 22,000, Tulare County with 18,000, and Santa Barbara County with 15,000.

The share of the crop workforce in California eligible for a green card in eight years is 13% (or 31% of the CAW-eligible workforce). We estimate that 91,000 undocumented workers would be eligible for a green card after eight years, led by Kern County with 15,000 workers, 13,000 in Monterey County, 10,000 in Fresno County, 8,000 in Tulare County, and 7,000 in Santa Barbara County.

Access to legal work authorization has important implications for undocumented workers in California's rural communities. Farmworker advocates argue that legal status would reduce worker vulnerability and increase worker welfare, while providing farm employers with legal workers who would continue to do farm work in order to earn immigrant visas. However, employers are concerned that if farmworkers gain legal work authorization, they might leave the agricultural sector for work in non-farm sectors of the economy. Figure 2 shows

**Figure 1.** Share of Undocumented Crop Workforce in California



Source: National Agricultural Workers Survey.

that only a small share of the Mexican immigrant labor force in the United States works in agriculture, suggesting that farm employer worries are valid. If CAW workers exit agriculture after receiving immigrant visas, employers may hire more H-2A guest workers, who are typically more expensive than settled U.S. workers because of the need to pay for their housing and transportation.

## The H-2A Program

The supply of settled farmworkers is shrinking due to a number of political, economic, and demographic factors. This trend has led to labor shortages in some regions of the United States and has stimulated the use of the H-2A program.

The H-2 program included in the Immigration and Nationality Act (INA) of 1952 is named for the section of the INA that allows foreign laborers to work in the United States on a temporary basis to perform “low-skilled labor” in both the agricultural and non-agricultural sectors. The Immigration Reform and Control Act of 1986 divided the H-2 program into the H-2A program for agricultural workers and the H-2B program for non-agricultural workers.

The intent of the H-2A program is to fill vacant jobs in U.S. agriculture while ensuring no adverse impacts on settled U.S. farmworkers. H-2A farmworkers historically accounted for only a small proportion of the U.S. farm labor force, but over the past decade, employment through the H-2A program has expanded rapidly. Between fiscal years 2012 and 2023, the number of H-2A jobs certified by the U.S. government increased steadily from 85,000 to 378,000.

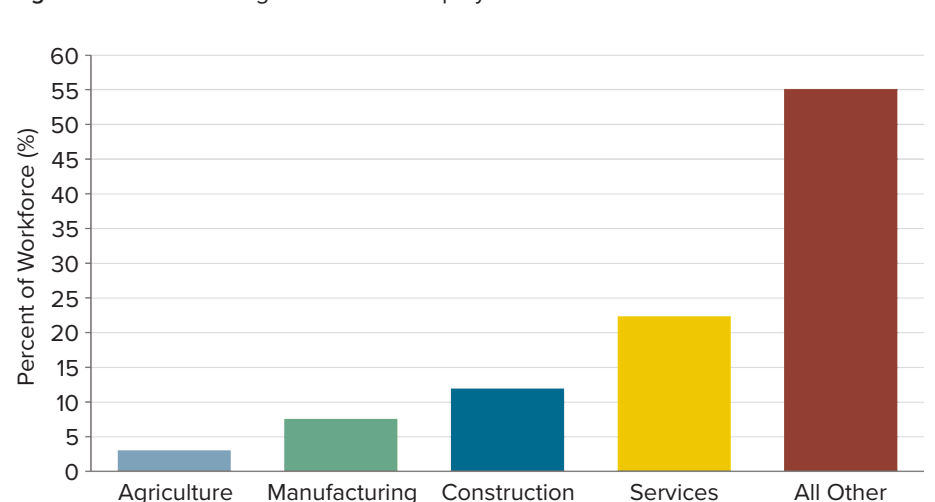
The FWMA includes provisions that would make it easier and cheaper to employ H-2A guest workers. Farm employers seeking certification to recruit and employ H-2A workers must 1) try to recruit available,

**Table 1.** Estimated CAW Eligible Workers by County in California

County	CAW Eligible	Eligible for Green Card in 4 Years	Eligible for Green Card in 8 Years
Kern	48,460	33,420	15,020
Monterey	43,340	29,900	13,400
Fresno	31,260	21,580	9,700
Tulare	26,260	18,120	8,140
Santa Barbara	21,940	15,140	6,800
Ventura	13,900	9,600	4,320
San Joaquin	10,100	6,960	3,140
Stanislaus	9,260	6,400	2,880
Madera	9,200	6,340	2,860
Merced	8,880	6,120	2,760
<b>Top 10 Counties</b>	<b>223,000</b>	<b>154,000</b>	<b>69,000</b>
All Other	70,000	48,000	22,000
<b>Total</b>	<b>293,000</b>	<b>202,000</b>	<b>91,000</b>

Source: Authors' calculations using data from the National Agricultural Workers Survey and the Quarterly Census of Employment and Wages.

**Figure 2.** Mexican Immigrant Sectoral Employment Shares



Source: American Community Survey, 2022.

willing, and qualified U.S. workers, and 2) offer to pay the highest of several wages, including the prevailing wage or the Adverse Effect Wage Rate (AEWR), to avoid adversely affecting the wages and working conditions of U.S. workers.

The AEWR is a measure of average gross hourly earnings that serves as the minimum wage for H-2A employees and the U.S.-based workers who are employed by H-2A employers in similar jobs. The U.S. Department of Agriculture administers the Farm Labor Survey (FLS), which is used to

set the AEWRs paid to seasonal agricultural guest workers. The AEWRs were originally implemented to help prevent wage depression that might occur from foreign workers being employed by domestic farm employers. The FLS surveys farmers in 18 U.S. regions, excluding Alaska. All of the regions contain more than one state except for California, Florida, and Hawaii.

AEWRs vary across states and range, in 2024, from less than \$15 in southeastern states to \$19.75 in California, when California's minimum wage

is \$16. The FWMA would freeze the AEWR at current levels and study the need for it and the appropriate database and formula to modify it.

Currently, most H-2A workers can be employed only in seasonal farm jobs and remain in the United States for up to 10 months. The FWMA would grant H-2A workers three-year visas and allow up to 20,000 H-2A workers a year to be employed in year-round jobs, as in dairies and other animal agriculture, provided that farm employers with these year-round jobs offer family housing to their guest workers and a trip home each year. Employers argue that a cap of 20,000 year-round H-2A visas is insufficient to meet their needs.

Guest workers are tied by contracts to a single U.S. farm employer. The FWMA would create a Portable Agricultural Worker (PAW) pilot program that would allow up to 10,000 foreign workers a year to enter the United States and work for a variety of farm employers for up to six years. The U.S. Department of Homeland Security, Labor, and Agriculture would study the PAW program and make recommendations on the feasibility of expanding farm guest worker programs in which the workers are free agents who are able to work for any certified farm employer.

### What Is Next?

Congress has been unable to enact significant immigration reforms to deal with unauthorized migration since IRCA in 1986. Meanwhile, the Department of Labor's Office of Foreign Labor Certification has become something of a political football: relaxing regulations on employers under Republicans and tightening them under Democrats.

Without legislation, there are likely to be more regulatory changes that favor employers or workers instead of win-win changes that would benefit

both employers and workers. One such win-win change would be to introduce a Transportation Security Administration (TSA)-style precheck system for H-2A employers willing to undergo increased scrutiny during an initial vetting process in return granting these employers certification to employ H-2A workers for 3 to 5 years. Most of the employers likely to apply for such precheck clearance are large, with systems to ensure compliance. However, since two-thirds of H-2A guest workers are employed by the 600 largest employers, giving these large H-2A employers incentives to comply would free up enforcement resources to deal with the 12,000 smaller H-2A employers.

### Conclusion

Since IRCA was passed in 1986, congress has failed to enact major farm labor reforms. The FWMA is a new piece of legislation that aims to secure an adequate number of U.S.-based farm employees over the short run and make revisions to the H-2A program to secure a workforce over a longer period of time. We utilize data from the NAWS and the QCEW to estimate the number of unauthorized California farm employees that could obtain legal work authorization under the FWMA. We estimate that 41% of California's farm workforce (or 293,000 undocumented employees) would be eligible for legal work authorization under the FWMA, with some 202,000 becoming eligible for a green card in four years and another 91,000 becoming eligible in eight years.

While pressure from other sectors of the economy might pull legalized workers out of agriculture, the FWMA seeks to sustain the supply of labor by making changes to the H-2A visa program. For example, H-2A workers would have annual wage growth capped at 3.25%, making the program more cost effective for producers, and

20,000 multi-year H-2A visas would be granted, allowing currently ineligible employers, such as dairy and livestock producers, to hire workers through the H-2A program.

#### Suggested Citation:

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#### For additional information, the authors recommend:

Hooker, Brandon, Philip Martin, Zachariah Rutledge, and Marc Stockton. 2024. "California Has 882,000 Farmworkers to Fill 413,000 Jobs." *California Agriculture* 78(1): 22–29. Available at: <https://bit.ly/3XZm0j4>.

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