



FREQUENTLY ASKED QUESTIONS ABOUT AG LABOR REFORM

What does agriculture need?

For too long, farmers and ranchers have struggled to make sure that they have a legal, reliable workforce. Current federal programs and policies dealing with farm labor have resulted in a daunting, broken system, riddled with shortcomings that have resulted in labor shortages, lost crops and bureaucratic nightmares.

The AWC calls for smart reforms to the immigration system to ensure that American agriculture has a legal, stable supply of workers, both in the short- and long-term for all types of agriculture. Such a solution requires legislation that provides stability to our labor force through legal status for the current, experienced agricultural workforce, and that ensures future needs are met through reforms to the H-2A program that will support the sustainability and viability of American agriculture. More specifically, we need:

- to provide a flexible and efficient agricultural worker visa program that includes availability to all agricultural producers without regard to the temporary, seasonal, or year-round nature of the job; a fair, predictable, and economical approach to wages and benefits that does not unduly impede U.S. competitiveness; flexibility in the length of visas to address the needs of different agriculture sectors; mobility; and ability to meet any future industry production expansion labor needs without arbitrary limits; and
- a mechanism for qualifying farm workers to continue working in agriculture without disruption and/or earn legal status to work and/or reside in the United States based on agricultural work experience and commitment; and
- to recognize the importance and provide for a mechanism to protect immediate family members from deportation, which is critical to ensure that undocumented farm workers come forward to seek proper work authority.

Why can't we just import our food and agricultural products?

The U.S. continues to provide one of the safest, most affordable, and abundant food supplies in the world. Outsourcing critical sectors of our economy, such as food and agriculture, would undoubtedly compromise our national security. If a country can't feed itself, it can't defend itself.

In addition, the activities that occur on domestic farms support not only farm workers, but also an entire supply chain of transportation providers, input suppliers, processors and retail outlets. Many of those jobs would be severely compromised or permanently lost if we choose to unnecessarily outsource our agricultural productivity.

Why can't farmers just pay more for farm labor?

Wages in agriculture are very competitive. In fact, farm worker wages are on average almost double the federal minimum wage. According to the USDA-NASS farm labor survey, the national average field and livestock workers wage in 2020 was \$14.62 an hour. In fact, history has proven that even higher wages do not produce enough U.S. farm workers to meet the demand. Farmers are required to recruit American workers before turning to guest workers, and the increasing use of the guest worker program demonstrates year-after-year that very few Americans apply for, accept, and perform these jobs.

Under the requirements of the H-2A program, employers are required to pay workers and those in corresponding employment the Adverse Effect Wage Rate (AEWR) in addition to providing free housing and

transportation to workers. Each year, the Department of Labor publishes the new AEW which is based on survey data from the previous year. For 2021, the national average AEW is 4.5% higher than 2020, while revenues for agricultural goods continue to diminish. This 4.5% increase is just the nationwide “average” for 2021. In many parts of the country, farmers will be forced to absorb increases of nearly 9%. These AEW increases far outpace the average wage growth experienced across the broader U.S. economy during the same two-year span.

The Department of Labor and the AEW calculation fails to consider the agriculture industry’s capacity to absorb additional costs when it implements annual changes to the AEW. For example, over the last five years the national average AEW has increased by 20% while revenues for fruits and nuts have only increased 1%, and revenues for vegetables and melons decline by 5%.

If labor is so expensive, then why not use mechanization and technology to replace the need for workers?

For many farmers in labor intensive sectors, the technology to mechanize a substantial part of their farm work does not yet exist and the reasons for this are as varied as the crops grown. For some, machines may severely damage produce, leading to food waste. Other crops need experienced people, not machines, to judge when fruit is ready to pick and when it needs to be left to ripen. Most pruning and training of fruit and nut trees and grape vines requires a skilled eye and careful judgment. Ensuring good animal welfare means that dairy and other livestock producers will always need workers to tend to their animals. Mechanization, automation, and other labor-saving strategies are indeed one part of the solution but are long-term and expensive strategies that will not eliminate labor needs entirely.

When you talk about dealing with the current workforce that is undocumented, are you talking about “amnesty”?

The type of legislative solution we are seeking includes an earned legal status only after an individual proves they have recent, substantial work experience in U.S. agriculture, and are willing to continue to do so into the future.

The reality is that a significant percentage of farm workers are in the U.S. without proper legal status, largely because Congress has failed to fix the shortcomings of the existing agricultural worker program. It’s time to deal with this reality. We need a fair solution for workers and the farmers who rely on them, to allow individuals to get right with the law and ensure they can continue working in agriculture. We believe enforcement is another important part of the solution, both for farmers and for American workers.

The Biden Administration has made immigration reform a priority. How does the AWC’s proposal fit into that?

As we have mentioned before, part of the solution we are seeking creates legal ways for agricultural workers to enter our country. Creating an accessible agricultural worker program that allows for a path to earned legal status is an important component to addressing the ag labor crisis. However, we must also make needed reforms to the H-2A guest worker program. Guest worker reform is critical to ensuring we solve the needs of the entire agriculture industry.

Does the AWC support mandatory E-Verify?

E-Verify is a federal, online system designed to determine authorization to work in the U.S. That seems like a good idea, and it is, but only if coupled with a solution to the agricultural labor problem. Unfortunately, that is not yet the case. Without a solution to these underlying problems, simply cracking down on unauthorized workers would cause a major disruption to the agricultural supply chain as farmers are left holding the bag.

An American Farm Bureau Federation commissioned study found an enforcement-only approach including border security, increased interior enforcement, and electronic verification, would cause agricultural production to fall by \$70 billion dollars, and food prices to increase by 5-6 percent. This would be crushing to an already struggling and vulnerable industry.

We are not opposed to E-Verify, if farmers have access to a stable supply of workers through stabilization of our existing workforce and fundamental reforms to our current H-2A guest worker visa program. Access and enforcement must go together.

Should the Senate just pass the House-passed bill, the Farm Workforce Modernization Act?

We expect each chamber to craft and move their own bills. Instead of calling on the Senate to pass the House-passed bill, it is more productive to call on the Senate to develop its own ag labor reform legislation that resolves the concerning provisions and issues that either need improvements or were not yet addressed in the House version.

What does the House-passed bill not do?

The House-passed bill is addressing some issues, but is still inadequate. Several key improvements are needed to the H-2A program, including allowing for greater access by the entire agriculture industry through definitional and seasonality changes; creating a long-term, economic wage solution; and ensuring all business models are treated equally.

Are there key areas of the House-passed bill that the Senate needs to be aware of when crafting their version?

While the House-passed bill attempts to limit future growth in wages, it still utilizes the underlying AEWCR calculation to set wage floors in the H-2A program and assumes an inaccurate premise that Americans are available and willing to do these jobs. It also utilizes a complex, disaggregated wage structure. The AWC has continually relayed that the flawed survey methodology must be replaced with a fair, sustainable, and predictable approach to wages that considers market realities.

Additionally, while the House-passed bill allowed for use of the program to agricultural production for industries with year-round labor needs, it set arbitrary limitations on their H-2A visas. The H-2A program already requires labor market tests and other provisions to ensure domestic workers are not displaced, and a cap only serves to pick winners and losers in agriculture.

The House-passed bill placed unnecessary burdens on farmers by adding increased complexity, regulation, and litigation. Providing for private right of action lawsuits will undoubtedly add heightened costs and burdens to employers without the necessity of additional safeguards for workers. Additional costs and restrictions will also be felt by a number of employers, including Farm Labor Contractors.

Ensuring Congress has adequately resolved the industry's current and future workforce needs is a critical component of enforcement. For that reason, implementing mandatory e-verification on farmers and ranchers who may or may not have access to a guest worker visa program (if that visa cap has already been reached, they would not have access to workers) is unacceptable. As mentioned above, access and enforcement must go together.