

# AG LABOR REFORM OUTREACH TOOLKIT

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## INTRODUCTION OF THE AG LABOR CRISIS

Farmers face a shortage of legally authorized and experienced workers each year which threatens the sustainability and security of U.S. based agricultural production. Legislation is needed to provide farmers and ranchers, across all of agriculture, access to a legal and stable workforce. American farmers are facing an escalating challenge to find enough labor to continue to put food on our tables. Hiring a workforce from the domestic population is becoming less viable for growers and ranchers as Americans have become unwilling to do this difficult work. This dire labor situation is one of the top issues facing American farmers and American farmers have been asking Congress to address this problem for over twenty years, without success. As a result, over half of the existing workforce lacks legal proper documentation to work in the United States.

Farmers pay fair wages for workers, but domestic U.S. workers are no longer willing and available to fill open jobs on farms. To fill these vacant positions, farmers have turned increasingly to recruiting foreign labor through the H-2A program, but this program is not open to all farms (such as dairies or mushrooms) and the program poses challenges for farmers who can use it. It is expensive, difficult to navigate, and imposes regulatory demands that are particularly onerous for small and medium sized producers.

Farmers need the help of Congress to provide long-lasting solutions to these long-standing problems. We call for the protection of qualifying, existing farm workers and their immediate family members so that they can continue working in U.S. agriculture and provide much needed stability of the ag workforce. We also call for necessary improvements to the H-2A guest worker program, including reforms to the wage structure and program eligibility, to allow for the sustainability of U.S. based agricultural production in all sectors.



## TALKING POINTS

- **America’s farmers face a variety of challenges, but the unprecedented shortage of domestic labor and restricted access to a guest workforce top the list.** This issue has grown more dire over the last year, exacerbated by the COVID-19 pandemic.
  - This labor crisis negatively impacts our nation’s economic competitiveness, local economies, and job market. Every farm job sustains at least two to three more jobs off the farm.
  - Our current agricultural labor system is driving production agriculture outside our borders to countries with lower production costs and an adequate labor force.
  - Without a reliable, legal and experienced workforce, American farmers risk being unable to tend, harvest and pack farm products. By reforming the guest worker system, we can keep American farms open and productive, and protect our domestic food supply.
- **Key reforms are needed to the H-2A program,** the visa program farmers use to hire legal workers to supplement their U.S. workforce. The existing program is cumbersome, expensive, restrictive, and often leaves U.S. farmers at a competitive disadvantage in the global marketplace. We must address the needs of American farmers by:
  - **Enabling greater access for the entire agriculture industry.**
    - Definitional changes: Access to the program is determined by outdated statutory definitions that do not align with modern agricultural practices. The modernization of the H-2A Definition of Agriculture Labor & Services is critical to meet the needs of farmers now and in the future.
    - Seasonality changes: Entire sectors of agriculture struggle to fill open jobs on the farm by not currently having access to the H-2A program due to its seasonal requirement. Producers with both seasonal needs and year-round labor needs must be eligible to participate in the H-2A guest worker program without arbitrary limits.
  - **Stabilizing wages.**
    - Farmers need a predictable, economically feasible wage rate that enables them to budget and ensure their businesses remain competitive internationally. The existing wage methodology is based on a flawed survey-based approach.
- **Farm workers, who have played an essential role throughout the pandemic, continue to face uncertainty in this country.** A solution to ag labor reform must include a path to earned legal status to ensure the stability of American agriculture. Bottom line: U.S. agriculture needs a solution for farm workers to stay and work in agriculture legally. This is not amnesty.
- **Without immediate relief, the future of American agriculture and our nation’s food security is in jeopardy, as many American farms will struggle to stay open and our reliance on other nations for food will increase.** We urge the Senate to pass its own bipartisan legislation, that addresses outstanding inadequacies in the ag labor reform legislation passed by the House in March. Farmers and ranchers seek further improvements to the legislation in the Senate and support is needed now to address the crisis facing U.S. agriculture.

# 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 AEWR 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.

Farmers have had a lot thrown at them in the past few years—an export dampening trade war, weather disasters that have prevented crop planting and harvesting, and a pandemic that strained the supply chain to near the breaking point. Even with everything else that farmers must deal with, the biggest challenge for most is finding the workers they need to help run their farms and ranches.

Regardless of what Mother Nature or market forces throw at farmers, if they do not have the help to pick crops or care for animals through good years and bad, it's all for not. This is a nationwide challenge, from lettuce farmers in California, to dairy producers in upstate New York, to tomato growers in northwest Ohio or citrus farmers in Florida—all face it.

This crisis has been building for many years, despite the best efforts of farmers. Even offering substantially more than minimum wage to attract more workers has not solved the problem. In many cases, it is not the money that makes these jobs unappealing to many Americans. Rather, the main factors are the often transitory and difficult nature of the work. With businesses across the economy ramping up hiring coming out of the pandemic, Americans simply have other employment opportunities and are not seeking to work on the farm.

[Insert any information on the impact that immigration will have in your state or local area.]

Existing guest worker programs like the H-2A program could, in theory, offer an avenue to find workers. Unfortunately, the program is deeply flawed and in need of significant overhaul to meet the current needs of agriculture. In particular, the program is limited to seasonal farm work; producers who need employees year-round—such as dairy, livestock and horticulture—cannot utilize the program.

While the current seasonality requirements prevent year-round producers from being able to access the program, other producers find the cumbersome application process and added expenses associated with using the H-2A program a hindrance as well. Requirements to provide free housing and transportation and pay the Adverse Effect Wage Rate, an inflated wage rate based on a flawed survey, result in added input costs that many farmers cannot sustain.

Further, many of the existing 1-2 million on-farm employees—estimated between 50 and 70 percent—are not legally authorized to work in the U.S., though many of these workers show farmers documents that look genuine. Failing to provide a way to stabilize over half of the ag workforce would be detrimental to the entire industry.

Farmers and ranchers need Congress to fix these problems. That is why a group of over 120 organizations representing agricultural employers work together as the Agricultural Workforce Coalition (AWC), to speak with one voice and to find a path forward on ag labor reform. The AWC feels any proposal must deal with both current experienced agricultural workers as well as provide for agriculture's future workforce needs. Only by addressing both aspects will America's farmers have access to a stable and secure workforce now and for years to come.

In response to recent congressional attention to this important issue, our organizations are calling on the Senate to begin work on legislation that would help America's farmers keep the workers they already have and more easily find the workers they need to continue to produce this country's safe and nutritious bounty.



## DRAFT LETTER TO THE EDITOR

America's farmers, ranchers and growers need labor reform that can help ensure that we have the workers to pick crops and care for animals both now and in the future. Time and time again, agricultural producers have learned a hard, simple fact—there are simply not enough Americans willing to work on our farms and ranches. We need the Senate to act now on this issue before more fruit and vegetables are left to rot in the fields, more farmers go out of business and more production of our food moving overseas. It's also something that has broad impacts across America, since each on-farm job supports two to three more further down the value chain.

Getting this issue right is vitally important to the future of agriculture and our elected representatives have a unique chance to have a positive impact on our country for generations to come.