



House of Representatives

Judiciary Committee

Chairman Bob Goodlatte

AGRICULTURAL GUESTWORKER ACT

The Ag and Legal Workforce Act of 2018

The Problem: The current agricultural guestworker program, known as the H-2A program, is expensive, flawed, and plagued with red tape. H-2A employers are burdened with costly mandates and exposed to frivolous litigation. The unnecessarily burdensome requirements of the program place H-2A employers at a competitive disadvantage and threaten the future of U.S. agricultural production.

The Solution: The bill replaces the outdated and broken H-2A program with a reliable, efficient, and fair program known as “H-2C,” ensuring that farmers and ranchers will have access to a legal, stable supply of workers for seasonal as well as year-round work. Under this legislation, 450,000 visas will be available each year for H-2C workers. The following are some of the key components of the bill.

Expands Eligible Agriculture Sectors and Provides Generous Visa Allocation:

- In addition to meeting seasonal agricultural labor needs, the H-2C program is available to year-round agricultural employers, such as aquaculture operations, dairies, raw food processors, and others.
- The total number of visas available each year includes 40,000 visas for workers employed in meat and poultry processing and 410,000 for all other agricultural workers.
- Returning H-2A and H-2B workers, and previously unauthorized farmworkers who participate legally in H-2C, will not count toward the annual visa cap on non-meat and poultry processing workers.
- The bill includes an automatic escalator to increase the cap on non-meat and poultry processing visas should the allocation be reached in a given year and limited discretion for the Secretary of Agriculture to allocate additional visas in the event of a labor shortage.

Allows Experienced Unauthorized Agricultural Workers to Participate in the New Program:

- The bill allows experienced farmworkers who are currently illegally present in the U.S. to get pre-certified to join the H-2C program, and after leaving the U.S. briefly, begin working legally.

Provides Flexible Visa Term Lengths and Touchback Requirements:

- All H-2C workers will be eligible for a 3-year visa.
- The H-2C program includes a meaningful, yet workable, touchback requirement. Workers may meet their touchback requirement by accruing time through multiple periods of absence from the U.S. Specifically, a worker must accrue 60 days, or a time period equal to 1/12th of their stay, whichever is less, before becoming eligible for a subsequent visa.



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Requires Reasonable Wages and Ends Excessive Regulatory Burdens

- Employers must pay H-2C workers not less than the State or local minimum wage, 115% of the Federal minimum wage (150% in the case of meat or poultry processing jobs), or the actual wage level paid by the employer to similarly situated workers in the same job, whichever is greatest.
- The H-2C program gives employers the option of providing housing and transportation for their workers, but does not require them to do so.
- In order to discourage abusive litigation, farmers and H-2C workers can agree to binding arbitration and mediation of any grievances, and H-2C workers are not eligible for taxpayer funded legal assistance under the Legal Services Corporation Act.
- H-2C workers are eligible for 36-month visas but must accrue 60 days outside the U.S. before becoming eligible for a subsequent visa.
- Once agricultural employers are required to use E-Verify, H-2C workers already in the U.S. can seek at-will employment with registered farmers (who still need to comply with program requirements) during the time of their work authorization.

Ensures Effective Enforcement

- Employers must report any H-2C workers who abandon their jobs within 72 hours.
- H-2C workers who do not return home as required are barred from reentry to the U.S.
- Employers will deposit 10% of H-2C workers' wages into a trust fund. Workers can only access the escrowed amounts by going to a U.S. embassy or consulate in their home country.
- H-2C workers cannot bring spouses and minor children, unless they are also guestworkers.

Protects U.S. Taxpayers

- H-2C workers are ineligible for federal public benefits, Obamacare subsidies, and for federal refundable tax credits (the Earned Income Tax Credit and the Child Tax Credit).
- H-2C workers are required to have health insurance in order to protect taxpayers from footing the bill for expensive medical care.



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The Facts

- E-Verify is a web-based program that discourages illegal immigration by ensuring jobs are only made available to those authorized to work in the U.S. Created in 1996 and operated by U.S. Citizenship and Immigration Services (USCIS), E-Verify checks the social security numbers of newly hired employees against Social Security Administration and Department of Homeland Security records to help ensure that they are genuinely eligible to work in the U.S.
- E-Verify is free, quick, and easy to use. It quickly confirms nearly 99% of work-eligible employees and takes less than two minutes to use. Nearly 800,000 American employers currently use E-Verify.

Summary

- Repeals I-9 System: The provisions repeal the current paper-based I-9 system and replaces it with a completely electronic work eligibility check, bringing the process into the 21st century. However if an employer chooses to keep using the paper-based I-9 system they may do so.
- Gradual Phase-In: Phases-in mandatory E-Verify participation for new hires in six month increments beginning on the date of enactment. Within six months of enactment, businesses having more than 10,000 employees are required to use E-Verify. Within 12 months of enactment, businesses having 500 to 9,999 employees are required to use E-Verify. Eighteen months after enactment, businesses having 20 to 499 employees must use E-Verify. And 24 months after enactment, businesses having 1 to 19 employees must use E-Verify. Allows a one-time six month extension of the initial phase-in. It also requires that employees performing “agricultural labor or services” are subject to an E-Verify check within 24 months of the date of enactment.
- Voluntary Use: In addition to new hires, the bill allows employers to use E-Verify to check the work eligibility of their current employees as long as they do so in a nondiscriminatory manner and of all employees who are in the same geographic location or in the same job category.
- States as Partners: Preempts duplicative state laws mandating E-Verify use but gives states prominent roles in enforcing the law. Specifically, it retains the ability of states and localities to condition business licenses on the requirement that the employer use E-Verify in good faith under federal law. In addition, the bill allows states to enforce the federal E-Verify requirement and incentivizes them to do so by letting them keep the fines they recover from employers who violate the law.



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- Protects Against Identity Theft: The bill allows individuals to lock their Social Security number (SSN) so that it can't be used by another person to get a job. It also allows parents or legal guardians to lock the SSN of their minor child. And if a SSN shows a pattern of unusual multiple use, DHS is required to lock the SSN and alert the owner that their personal information may have been compromised.
- Safe Harbor: Grants employers safe harbor from prosecution if they use the E-Verify program in good faith, and through no fault of their own, receive an incorrect eligibility confirmation.
- Strengthened Penalties: The bill raises penalties on employers who knowingly hire illegal immigrants in violation of the requirements of the bill. The bill also creates a penalty for individuals (employees or employers) who knowingly submit false information to the E-Verify system.
- Identity Authentication Pilot Programs: The bill requires DHS to conduct at least two pilot programs aimed at using technology within the E-Verify system to help further prevent identity theft in the system.