Health Equity Forward

20 C.F.R. § 655.122 and H-2A Worker Regulations Policy Breakdown

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Overview

Agricultural workers are one of the most vulnerable classes of workers in the United States. The Farm Labor Survey (FLS) of USDA's National Agricultural Statistical Service estimates that only around 56% of these workers are American citizens. The lack of secure immigration status and absence of federal labor protections make many farm laborers vulnerable to exploitation. It is up to the states to offer protection to these workers, but only 14 out of the 50 states currently guarantee workers' compensation for agricultural workers without exceptions. This article examines the policies governing H-2A workers, a non-immigrant class of agricultural workers who are increasingly being awarded visas to come work on farms across the country.

Unlike other classes of migrant workers covered by the federal rules in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), H-2A workers are covered by administrative codes embedded in the legal body of the Department of Labor (DOL). Additionally, unlike most visa-application processes, the Immigrant and Nationality Act (INA) requires employers to first get approval from the DOL before administering visas through the Department of Homeland Security. Section 218 of the INA also gives the Department of Labor the power to administer H-2A holder protections, which are outlined in 20 C.F.R. § 655. While many of the protections here exceed those given to domestic workers and even those listed in the MSPA, the issues lie in the enforcement and real-life expression of this policy. While H-2A workers are granted more protections on paper, it is important to realize that their lack of access to representation in the country means they often work in toxic environments with no way to voice their concerns.

Who it affects

In 2026, 13,438 employers were approved for H-2A visas, and while this represents less than 5% of agricultural employers, H-2A workers are estimated to make up around 16% of the labor force (U.S. Citizenship and Immigration Services, n.d.). This means that H-2A workers are often concentrated in farms, with top employers in the country recruiting thousands of foreign workers through the program. This not only affects the workers themselves and the employers, but domestic workers in the market as well.

The DOL's H-2A regulations address domestic workers in two major ways, with the first protecting domestic workers' right to work in the economy. The DOL requires documentation from employers before H-2A recruitment that demonstrates the lack of positions being filled on the farm by domestic workers. This is mainly currently done through online job postings and supplying the number of applications made through those websites. The second way is through

requiring equal treatment of domestic workers and H-2A workers on the same farm. Under chapter 122 section a, “the employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers” (20 C.F.R. § 655.122(a), 2026). With H-2A workers being offered more labor protections on paper, domestic workers directly benefit when working on farms that use the program.

With strict OSHA housing guidelines and mandatory workers’ compensation, the DOL mandates a higher level of attention to worker health in H-2A visas, backed up by systems of enforcement through the department itself. Additionally, the program requires that travel and application costs for each individual be covered to and from the place of employment. This incentive brings workers to the US in search of fair compensation, without worry about intermediate costs to their livelihoods. The policy also notes that if the farm provides family housing for domestic workers, they must provide family housing for H-2A workers too, allowing family support systems to transcend country lines.

Strength of Policy

The direct beneficiaries of the policy are agricultural employers. The domestic labor market for agricultural workers has been shrinking, steadily declining since the 1950s. With fewer workers available to work on larger farms, especially in Florida, California, Georgia, and Washington, the reliance on the H-2A visa program has risen by around 500% since 2012, meaning that there is a need for these temporary workers (Bustillo, 2026). Since H-2A workers’ visas are tied to single employers, the visa program offers a stable and steady base of workers for larger agricultural employers, without worry of competitors.

The program has also kept alive a historic economic alliance with Mexico, the Bracero program. Allowing foreign workers to do seasonal work in the states allows them a livelihood while still keeping ties to their homeland. While this was not the original intention of the policy, it has allowed thousands of workers to find stable work in a country that needs the help.

Shortcomings of Policy

What makes this policy beneficial for employers is also what makes it detrimental for H-2A workers. Since their legal documents are tied to the employer, and they are not allowed to change workplaces once in the United States, H-2A workers are vulnerable to exploitation. If their employer has not created a safe working environment, or if there are arguments with the employer, the worker can either quit and have to head back home immediately, or stay in fear of speaking out and getting blacklisted, as the H-2A program is mainly dominated by only a handful of agricultural labor contractors.

In fear of being blacklisted from H-2A labor contractors, it is hard to understand and bring to light the issues workers face on the farm, but the minimal existing case studies highlight exactly what H-2A workers often deal with on farms. Cruz-Cruz vs. McKenzie Farm is a legal case filed by H-2A workers in Kentucky who filed suit to recover wage theft. While a settlement deal was reached with the original farmers to receive back pay, following motions highlight Taurus's interference from the law firm contracted by the farm. Instances of coercion through the threat of visa termination were highlighted by plaintiffs and brought to court. The law firm did not

deny the allegations, and instead filed affirmative denials, or aimed to convince the court that regardless of what the firm might've said, they cannot be held legally responsible.

Additionally, though the policy mandates employers prove a lack of a domestic market, research has shown that farmers often find loopholes to bypass this requirement as well, at the expense of local, often immigrant laborers looking for jobs during harvest season. Since most workers in local areas often apply and find recurring jobs in person, farmers have been using online application numbers to justify H-2A workers, when this doesn't accurately represent domestic labor markets. Not only are H-2A workers often brought in at the expense of local laborers, but the requirement for domestic workers in identical jobs to receive the same benefits as H-2A workers is often bypassed through being placed in different fields or being given different tasks to do while on the farm.

Not only are the enforcement mechanisms of certain regulations in the policy like this weak, but also they are constantly changing. Being an administrative code means it is much easier to change the regulations, as it does not have to go through the legislature at all. Current changes to the calculation of H-2A wage rates and definitions of temporary workers show just how volatile the policy is. Protections cannot be guaranteed in the long term through this policy, yet it is the only body providing protections to H-2A workers. Either stronger enforcement mechanisms need to be implemented, or the policy must be solidified through legislation for meaningful change to be made.

Possible Improvements

The first and most obvious improvement is to make this policy a statute. By making the provisions of this law more permanent, it allows more stable protections not influenced by ever-changing politics, and also allows a standard that is more easily enforceable. Along those same lines, creating more rigorous enforcement procedures. Studies show that less than 10% of workers are investigated by the Wage and Hour Division, but 84% of those investigations reveal substandard conditions. This goes to show that many of the H-2A workers are currently being exploited with no action from the DOL.

Second would be to gather more input from H-2A workers themselves by allowing private courses of action to recover damages and challenge parts of the provisions that govern them. Currently, the MSPA (from which they are exempt), allows migrant workers to file suit, but this is absent from the H-2A provisions. By allowing them to represent themselves in the American legal system, we can create a more robust policy that can also benefit other domestic workers working on farms with H-2A holders.

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Resources

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