

# **Overview of the Labor Certainty for Food Security Act**

## **YEAR-ROUND AGRICULTURAL GUEST WORKER PROGRAM**

### *Establishes At-Will Agricultural Guest Worker Visa Program*

- Establishes a year-round agricultural guest worker program that will be administered by the U.S. Department of Agriculture (USDA)
- Defines 'agricultural labor and services' and includes:
  - Agricultural labor as defined in Sec. 3121(g) of the Internal Revenue Code of 1986
  - Agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938
  - The handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state up to the point it is to be sold to a warehouse for wholesale distribution
  - All activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) or fish or shellfish, for further distribution
  - Forestry-related activities up to the point of wholesale to a distribution facility
  - Aquaculture activities up to the point of wholesale distribution
  - Activities related to the breeding, management, training, and racing of equines

### *Employment Process for Agricultural Guest Worker Program:*

- Establishes a process by which employers are able to employ temporary agricultural guest workers
- For the purposes of the program, 'employer' includes:
  - A single or joint employer
  - An association acting as a joint employer with its members
  - Any association of farmers that is operated on a cooperative basis

### *Protections for U.S. Workers Regarding Employment and Wages:*

- Requires agricultural employers to hire American workers before being able to petition for agricultural guest workers
- Ensures that the employment of agricultural guest workers does not result in the displacement of U.S. workers
- Establishes the process by which agricultural employers are required to recruit workers
- Establishes a \$2,500 fee to recover the cost of processing petitions
- Permits the Secretary of Agriculture to enforce provisions of the agricultural guest worker program with investigations and audits

### *Costs Associated with the Agricultural Guest Worker Program:*

- Establishes a \$2,500 fee to recover the cost of processing petitions

- Employers are not required to provide housing or transportation for at-will agricultural guest workers

#### Wages for Agricultural Guest Workers:

- Employers of agricultural guest workers are required to pay the highest of:
  - 115% of the federal minimum wage
  - The state minimum wage
  - The actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question
- Employers may also utilize a piece rate or other alternative wage payment system as long as the wage rate equals or exceeds the amount required under the previous section

#### Agricultural Guest Worker Visa Length:

- The visa length for agricultural guest workers is 3 years, with renewal available up to 6 months prior to expiration of the visa.
- Agricultural guest workers are able to be present for 7 days prior to the beginning of employment and 14 days to find employment after termination

#### Unauthorized Workers in the United States:

- Agricultural workers who are unlawfully present in the U.S. and worked for a certain amount of hours over a two-year period
- Unauthorized workers who are present in the U.S. must pay a \$2,500 fine in order to be eligible to apply to the program
- Immediate family members of unauthorized workers who are accepting into the program will be eligible to remain in the United States so long as the worker is enrolled into the program

#### Biometric Identification Card:

- Agricultural workers in the program will be issued a biometric identification card
- Each card will have a unique 15-digit identification code associated with it for tax withholdings and employment verification
- The card will include a photograph on the front of the card and it will store the following information in a smart chip: fingerprints, retinal scans, DNA, blood type, and facial recognition
- For purposes of program integrity, the card may only be replaced once in a 3-year period
- The card will include the start and end date of the period of approved stay for the guest worker

#### Biometric Identification Card:

- The Secretary of Homeland Security is required to develop or designate a card reader for agricultural guest workers to check in and verify their place of employment
- Each U.S. Postal Service office shall reserve a space to place AG guest worker card readers
- Employers of agricultural guest workers may request card readers for their place of employment, and the Secretary of Homeland Security may charge the employer a fee for that card reader
- Agricultural guest workers will be required to check in each quarter of the calendar year

- If an agricultural guest worker fails to check in, the worker will be required to contact the Secretary of Agriculture to explain the occurrence
- If the guest worker fails to check in for 2 consecutive quarters, the guest worker will be removed from the program and will be ineligible to reapply to the program for 3 years

#### Prohibition of Social Security Numbers

- Agricultural guest workers will not be permitted to be issued a social security account number
- In the case a social security number would be necessary, the guest worker identification number that is issued by the Secretary of Agriculture shall be used

#### Expedited Approval for Agricultural Guest Workers

- The Secretary of Homeland Security shall establish a process for expediting agricultural guest worker applications for workers who have been approved for two consecutive petitions

#### Expansion of Consulates:

- The Secretary of State is permitted to expand consulates in countries where aliens are likely to apply to become seasonal agricultural workers

#### Prohibition of Financial Assistance:

- Agricultural guest workers under the program are ineligible to receive financial assistance from the Federal government on the basis of need

#### Individual Application:

- All applications to the guest worker program from individuals seeking to enroll in the program outside of the U.S. are on an individual basis

#### Review of Agricultural Labor Needs:

- The Secretary of Agriculture shall conduct a review of the following:
  - Indicators of a shortage or surplus of workers performing agricultural labor or services
  - The growth or contraction in the U.S. agricultural industry and whether such growth or contraction has increased or decreased the demand for workers to perform agricultural labor or services
  - The level of unemployment and underemployment of U.S. workers in agricultural labor or services
  - The number of agricultural guest workers who in the preceding year had to depart from the U.S. or be subject to removal because they could not find additional employment
  - The number of agricultural guest workers who in the preceding calendar year received a final order of removal for violations for any reason
  - The estimated number of agricultural guest workers who were issued a visa or otherwise received status during the preceding fiscal years and who remain in the U.S out of compliance with the terms of their status

- Each agricultural employer shall report their estimated labor needs for the following calendar year

*Mandatory Mediation and Binding Arbitration:*

- Agricultural guest workers are required to attempt to reach a resolution through mediation prior to bringing civil actions for damages against employers

*Binding Arbitration:*

- Permits employers of agricultural guest workers to subject agricultural guest workers to binding arbitration and mediation of any grievance related to the employment relationship.

*Health Insurance Requirement:*

- As a condition of employment, agricultural guest workers are required to maintain, at the very least, catastrophic coverage in order to be eligible for the program
- Agricultural guest workers are prohibited from being treated as a citizen or national of the U.S. for purposes of the Affordable Care Act

*Agricultural Worker Employment Pool:*

- The Secretary of Agriculture shall establish a pool, on an electronic, internet-based portal, to connect employers with agricultural guest workers seeking employment at an agricultural employer in the U.S. and to post job opportunities

*Collection of Taxes:*

- Agricultural guest workers shall be required to pay taxes on the wages they receive working for an agricultural employer

*Report to Congress:*

- Not later than 1 year after the program has begun, the relevant Secretaries are required to submit to Congress a report on compliance by agricultural guest workers with the requirements of this bill and the Immigration and Nationality Act
- The report shall identify the provision or provisions of law that have been violated

*Electronic Filing System:*

- The Secretary of Homeland Security, in coordination with the Secretary of Agriculture, is required to establish an electronic filing system by which employers may submit petitions for agricultural guest workers

## H-2A REFORMS

### Administration by Department of Agriculture:

- The administration of the program is moved from the Department of Labor to the Department of Agriculture

### Defining Agricultural Labor:

- Eliminates the seasonal requirement for employers to use the H-2A program
- Expands the definition of “agricultural labor or services” to include:
- Defines ‘agricultural labor and services’ and includes:
  - Agricultural labor as defined in Sec. 3121(g) of the Internal Revenue Code of 1986
  - Agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938
  - The handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state up to the point it is to be sold to a warehouse for wholesale distribution
  - All activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) or fish or shellfish, for further distribution
  - Forestry-related activities up to the point of wholesale to a distribution facility
  - Aquaculture activities up to the point of wholesale distribution
  - Activities related to the breeding, management, training, and racing of equines
  - The pressing of apples for cider on a farm
  - Logging employment
  - The transportation of any agricultural or horticultural product in its unmanufactured state by any person from the farm to a storage facility, to market, or to any place of handling, planting, drying, packing, packaging, processing, freezing, or grading, including at a packing house, a processing establishment, a gin, a seed conditioning facility, a mill, or a grain elevator

### Wage Structure:

- H-2A employers are required to pay the highest of:
  - o 115% of the federal minimum wage
  - o The state minimum wage
  - o The actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question

### Area of Intended Employment:

- Permits the Secretary of Agriculture to consider an increased area of intended employment for an H-2A petition

Extensions:

- Prohibits extensions of the period of authorized stay for H-2A workers

Staggered Start Dates:

- Permits employers to file a single petition for H-2A workers with multiple dates on which the employer requires the labor or services of H-2A workers

Expedited Approval for Certain Workers:

- The Secretary of Homeland Security shall establish a process for expediting H-2A applications for workers who have been approved for previous two consecutive petitions