

Labor Issues That the H-2A Temporary Agricultural Worker Policy Attempts to Resolve in Florida¹

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Introduction

Labor is a critical component of an effective operation, especially within the agricultural and food sectors. In 2020 the United States Department of Agriculture released a statistic showing that 10.3% of total US employment was related to the agricultural and food sectors (Kassel and Martin 2022). Agricultural production is important to a well-functioning society, and necessitates a substantial agricultural labor force, especially for labor-intensive commodities such as tomatoes, strawberries, and other hand-picked crops. However, labor availability and supply has historically been and continues to be a significant economic problem for producers who attempt to maintain competitiveness in crop production and marketing.

The H-2A Temporary Agricultural Workers Program is one solution that provides an opportunity for producers navigating the labor crisis within Florida and other US states. The purpose of this publication is to review the agricultural labor crisis in Florida and to analyze how the H-2A program addresses the related concerns. This publication is intended to address the questions and concerns of stakeholders, including producers, consumers, labor activists, and government officials and entities.



Figure 1. UF/IFAS Extension agent inspecting growing tomato vines. Credits: UF/IFAS file photo

Stakeholder Relevance

The Florida agricultural labor crisis affects most Florida communities and their stakeholders. From an economic perspective, the Florida agriculture sector ranks second to tourism in annual economic impact within the state, with a value reaching \$156.8 billion in 2019 (Court et al. 2023).

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This macroeconomic influence on the Florida economy helps to maintain competitive food prices and provides more domestic options for products from avocados, blueberries, and citrus, to strawberries, tomatoes, and watermelons. An agriculture industry with sufficient and reliable labor can help the Florida economy continue to grow and supply consumers with a variety of agricultural products and services.

A growing population in the United States leads to higher demand for food, which can exacerbate challenges related to the agricultural labor crisis faced by agricultural producers. Increases in demand necessitate a labor force that can help provide a steady food supply that directly intersects with consumer needs. Labor in the United States is a complex societal issue. Labor activists' awareness campaigns have largely succeeded in making agricultural labor issues human rights issues. Many advocacy groups, such as the Coalition of Immokalee Workers, have called for agricultural operations to act to provide safe and fair work conditions for agricultural workers. The overall goal is to help agricultural industries that employ migrant workers become more equitable and humane. Providing equitable and humane working conditions for the labor force is good for all stakeholders. It helps to secure a steady supply of labor for the industry and alleviates concern for both producers and consumers.

Labor Has Historically Been an Important Agricultural Issue

Agricultural labor has often been a contentious issue due to its connection to immigration law and policy. The issue of agricultural labor availability has sparked controversy due to the frustrations of many stakeholders such as prospective agricultural laborers with proper legal status because their access to job opportunities may be limited by the use of undocumented laborers. Furthermore, undocumented workers are less likely to complain about harsh or inhumane conditions because of their illegal status (American Public Health Association 2005).

Another major group to take into consideration is the farm operators themselves. These individuals have experienced significant challenges regarding labor with respect to availability and search costs, which places upward pressure on operating costs. This can reduce profit margins, which can threaten the viability of these operations. For instance, the USDA ERS reported that wages and salaries of workers on payroll make up 43% of total nursery and greenhouse production expenses, while wages and salaries of workers

on payroll in fruit and nut tree operations make up 39% of total production expenses (Castillo and Simnitt 2022). Florida farmers can only expect this cost to increase for domestic labor, as the state of Florida has increased wages through legislative reform and initiative (Trujillo 2021). In fact, the Department of Labor reports that, effective January 1, 2023, the Adverse Effect Wage Rate (AEWR) in Florida will be \$14.33 per hour (US Department of Labor 2023). The Adverse Effect Wage Rate is the minimum rate which “must be offered and paid to US and alien workers by agricultural employers of non-immigrant H-2A visa agricultural workers” (Federal Register).

In the United States, statistics have shown that the domestic workforce has been moving away from agricultural employment. The USDA National Agricultural Statistical Service's Farm Labor Survey reported that, between 1950 and 1990, the number of family and self-employed farmworkers declined from 7.6 million to 2.0 million (Lovejoy 1991; Castillo and Simnitt 2022). This decline is a function of many factors, perhaps most notably increased mechanization and efficiency on farms. Despite the decline in farm employment, US agricultural output has increased over this period. Nevertheless, this trend is an example of important shifts within the agricultural profession. It should be noted that, while the number of family and self-employed farmers fell by nearly 74 percent between 1950 and 1990, the number of hired farmworkers fell only by about 52 percent (Figure 2). Thus the proportion of hired employees increased over the period.

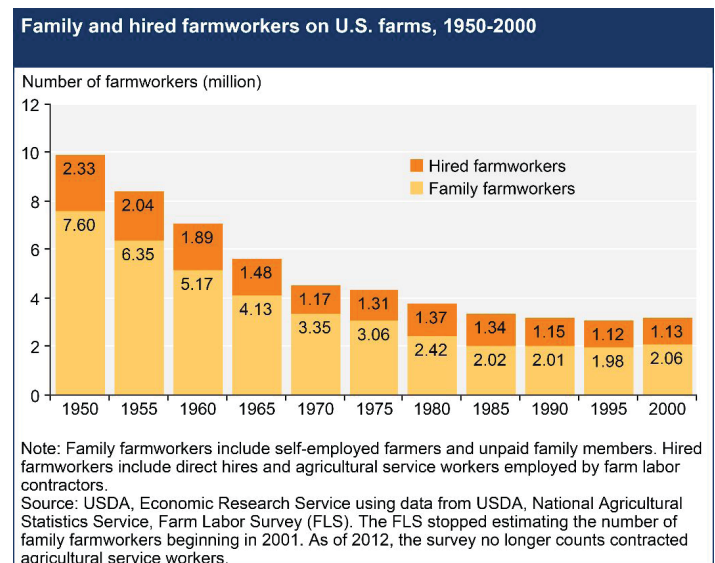


Figure 2. Declining family and hired farmworker values from 1950 to 2000.

Credits: Castillo and Simnitt

Florida agriculture generates significant revenues from taxation, employment, and Gross Domestic Product (GDP),

which drive many programs across the state. Florida agricultural operations under increasing stress from labor shortages need government leadership to help develop solutions that make a difference in the industry and help to secure the economic viability of Florida's second largest economic sector.

Agricultural labor shortages have increasingly become one of the most important challenges faced by Florida agriculture, creating the potential for critical failure for much of the industry. Thus, there is need for solutions like the H-2A Temporary Agricultural Workers Program.

Modern H-2A Temporary Guest Worker Program

According to Citizenship and Immigration Services, the H-2A program (developed in 1986) "allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs" (U.S. Citizenship and Immigration Services 2022). The program, according to the Bipartisan Policy Center, addresses the issue of low domestic agricultural labor availability, and discusses the US history of hiring foreign agricultural workers, beginning with the Bracero Program for Mexican workers in 1942 (Nepal 2021). While the list of countries eligible to provide H-2A workers is very broad and includes countries from Europe (e.g., Spain), Asia (e.g., Thailand), and Africa (e.g., Zimbabwe), 93% of the H-2A visas issued in FY2021 went to citizens of Mexico (Kassel and Martin 2022).

To be eligible for the program, the agricultural operation in question must fulfill the following criteria (U.S. Citizenship and Immigration Services 2022):

- Offer occupations that are temporary or seasonal in nature.
- Demonstrate the need for such migrant labor due to a lack of accessible and willing domestic labor.
- Ensure that H-2A labor will not have low wages or experience adverse working conditions in comparison to employed domestic labor.
- Submit proper labor certifications and documentations to the United States Department of Labor, with exceptions taken into consideration by the department.

The application process starts with the specified petitioner (or producer) submitting proper certification to the Department of Labor. Certification will then be followed up with the submission of *Form I-129* to the United States

Citizenship and Immigration Services for processing. Following approval of both documents, the laborer in question must apply for the H-2A visa and/or admission into the United States to finalize the proceedings. These procedures may be accomplished through the Department of State or Customs and Border Protection. These contracts could be reactivated in one-year increments, with a maximum of three years of the specified labor being put into action.

The program, in theory, helps provide producers with the opportunity to acquire effective migrant labor for the United States. The federal government provides safeguards for applicants such as contract limitations and having multiple cooperating government agencies review documentation to ensure accuracy.

However, H-2A has had its fair share of controversy. For example, ethical questions have been raised. Labor activists, like Farmworker Justice, call into question many aspects of the program and whether the application of the program is worker friendly (Newman 2022). Other activists have criticized the imbalance of bargaining power within the program, which has been a central issue for the pro-labor union movements across the country (History.com 2020). Furthermore, Farmworker Justice criticizes the program's incentives toward shifting to migrant labor. The organization notes that the social security tax exemptions embedded within the program do not apply in domestic labor programs. But most notably, the organization reveals how, after approval by the Department of Labor, US candidates can be rejected to fill those positions with migrant labor. Such concerns lead labor organizations like Farmworker Justice to question whether the Department of Labor is effectively attempting to solve the labor shortage problem by authorizing producers to switch their labor force from domestic to immigrant labor. In fact, the H-2A program does give a clearer route for producers to access immigrant labor if it is needed and attempts to provide the government and consumers some assurance that immigrant laborers are being treated equitably and humanely.

Comparisons to Other Temporary Agricultural Worker Programs

While the H-2A program is one that has been integral to US agricultural operations across the years, previous programs have accomplished very similar directives. One notable example was the Bracero Program in 1942, a landmark executive order permitting Mexican men to work on short-term labor contracts during the height of World War II (Thurber 2020).

This executive order primarily served to address agricultural labor shortages that originated from the US participation in World War II. Both programs were created to address difficulties in accessing sufficient domestic labor. Both programs enabled domestic producers to form contracts with agricultural laborers from countries within Latin America. Furthermore, the connection between the Bracero Program and H-2A Program reinforces the historic presence of Mexican citizens laboring for US agricultural operations and illustrates how the United States has tailored programs to attract Mexican laborers, which makes sense given Mexico's geographic proximity to the United States.

The H-2A program is a federal program. State-administered programs of this type do not exist. This is primarily due to the nature of H-2A's immigration and visa-related responsibilities, which are typically exclusive to the federal government unless extraordinary circumstances occur on the state level.

Summary

The agricultural labor crisis is not a simple issue to address. Many concerns prompt producers, advocacy groups, and government agencies to work together to address the challenges of labor availability and labor conditions across the US agricultural industry. The H-2A Program has been established to improve both labor availability and working conditions for agricultural laborers. It provides a certification process for migrant labor to help ensure that producers will have the policy in mind when contracting with laborers and will therefore be more likely to take the appropriate steps to accomplish required directives.

This solution does not completely address the problem, however. In fact, H-2A has brought the agricultural labor crisis to greater public attention. The costs of compliance have been challenging for some operations and have eroded their profit margins. Providing safe, clean housing for workers, for instance, is quite costly. Another notable issue is whether the H-2A program sufficiently addresses concerns about the ethics of migrant labor. Furthermore, the program's focus on serving producers has created new legal and regulatory burdens. Examples of these include rising demands for costly legal counsel and extensive paperwork—several different government agencies administer the H-2A program, each with its own bureaucracy. These compounded issues generate inefficiencies, and higher costs create a difficult operating and marketing environment for farm operations and agribusinesses. Producers must take these issues into consideration when making operating decisions on their farms. Now as always, labor is

a significant challenge for agribusinesses. With the advent of H-2A, decisionmakers now need to understand not only how the decisions they make about labor impact their daily operations on the farm but also how those decisions could change how they market their products to consumers.

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