

An aerial photograph of a large agricultural field, likely a strawberry field, with rows of plants and several workers visible. The workers are wearing light-colored shirts and dark pants, and some are carrying baskets. The field is densely packed with rows of plants, and the workers are scattered throughout, engaged in manual labor.

Homing in on H-2A: An Overview of the Temporary Agricultural Program



Overview:

H-2A Temporary Agricultural Program

1. Statutory language
2. Adverse Effect Wage Rate (AEWR)
3. Employer Obligations
4. H-2A Certification Process
5. Data/Legislation/Cases

What is the H-2A Temporary Agricultural Worker Program?

- Allows agricultural employers to solicit and sponsor foreign workers to work in temporary positions for a limited amount of time.



Immigration and Nationality Act (amended 1986)

(a) (15) The term “immigrant” means every alien except . . .

(H) an alien . . .

(ii) (a) having a residence in a foreign country which he has no intention of abandoning who is coming **temporarily** to the United States to perform **agricultural labor or services**, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26, agriculture as defined in section 203(f) of title 29, and the pressing of apples for cider on a farm, **of a temporary or seasonal nature**, or

(b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform **other temporary service or labor** if unemployed persons capable of performing such service or labor cannot be found in this country,

Two Primary Criteria for Employer H-2A Certification

(a) (1) A petition to import an alien as an H-2A worker . . . may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that

(A) **there are not sufficient workers** who are ***able, willing,*** and ***qualified,*** and who will be ***available*** at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services **will not adversely affect the wages and working conditions** of workers in the United States similarly employed.



H-2A Temporary Agricultural Program

1. Statutory language
- 2. Adverse Effect Wage Rate (AEWR)**
3. Employer Obligations
4. H-2A Certification Process
5. Data/Legislation/Cases



Adverse Effect Wage Rate (AEWR)

- H-2A-specific special "minimum wage"
- Updated yearly by Dept. of Labor regulation

the employment of the alien in such labor or services *will not adversely affect the wages and working conditions* of workers in the United States similarly employed.

AEWR: Range vs Non-Range Occupations

- Range:
 - workers on call up to 24/7
 - spend more than 50% of workdays in herding or production of livestock on the range
- Non-Range:
 - All other temporary/seasonal agricultural work



AEWR: Range Occupations

- Monthly rate:
 - Base calculation from 2015 rule: $\$7.25 \times 48 \text{ hours} \times 4.333 \text{ weeks}$ per month (\$1,507.88)
 - Adjusted annually based on Employment Cost Index from BLS
 - Feb. 3, 2026—\$2,132.41/month

91 FR 2373 Notice, "Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations" (Jan. 20, 2026) <https://www.federalregister.gov/documents/2026/01/20/2026-00906/labor-certification-process-for-the-temporary-employment-of-foreign-workers-in-agriculture-in-the>

§ 655.211 Herding and range livestock wage rate. <https://www.ecfr.gov/current/title-20/section-655.211>

DOL, H-2A Adverse Effect Wage Rates <https://flag.dol.gov/wage-data/adverse-effect-wage-rates>

CRS Reports, Concise History of Wage Regulations for the H-2A Agricultural Worker Visa <https://www.congress.gov/crs-product/R48833>

AEWR: Non-Range Occupations

- Hourly rate set by DOL at least annually
- Varies by state
- Previously based on USDA Farm Labor Survey data
- Recent updates 

AEWR: Recent Updates

- Feb. 28, 2023: Rule Published in Federal Register, "Adverse Effect Wage Rate (AEWR) Methodology for the Temporary Employment of H-2A Nonimmigrants" ([88 FR 12760](#))
- May 8, 2024: DOL ratified ([89 FR 38838](#))
 - **Uses DOL OEWS data instead of USDA Farm Labor survey data (broader data)**

AEWR: Recent Updates

2023 AEWR Methodology Rule: Vacated

Teche Vermilion Sugar Cane Growers Assoc. Inc v. Su, No. [6:23-cv-00831](#). (W.D. La.)

- Sept. 18, 2024—preliminary injunction
 - "under Loper Bright Chevron's rule of deference is no longer applicable"
 - H-2A sugar cane truck drivers and domestic heavy truck drivers not "similarly situated."
- Aug. 26, 2025—rule vacated
 - "arbitrary and capricious," violation of APA



AEWR: Recent Updates

Farm Labor Survey Discontinued

- Sept. 3, 2025: USDA notice ([90 FR 42560](#))
 - USDA has deemed the FLS “duplicative and/or no longer necessary” because “recent improvements to the Department of Labor (DOL) Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) program make the OEWS the superior barometer for measuring farm wages.”

AEWR: Oct. 2025 Interim Final Rule

- Published Oct. 2, 2025 ([90 FR 47914](#))
- Main changes:
 - Uses OEWS data
 - Divides non-range H-2A occupations into 2 skill levels
 - Allows downward adjustment of hourly rate for employer-provided housing



FEDERAL REGISTER
The Daily Journal of the United States Government



® Rule

Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States

A Rule by the Employment and Training Administration on 10/02/2025

PUBLISHED DOCUMENT: 2025-19365 (90 FR 47914)

DOCUMENT HEADINGS

Department of Labor
Employment and Training Administration
20 CFR Part 655
[DOL Docket No. ETA-2025-0008]
RIN 1205-AC24

AGENCY:
Employment and Training Administration, Department of Labor.

ACTION:
Interim final rule, request for comments.

SUMMARY:
The Department of Labor (Department or DOL) is issuing this interim final rule (IFR) to amend its

AEWR Non-Range Occupations: Skill Level I

- No formal education or training required
- No or very little work experience (0-2 months) necessary or several weeks of on-the-job training required
- Instructions given from a supervisor
- Work “closely monitored, tracked, and assessed for quality, accuracy, and production results”
- Computed at 17th percentile of occupational wage distribution

<https://www.federalregister.gov/d/2025-19365/p-305>

See also Lucas Smith and Richard Stup, Major H-2A Wage Changes: Overview of New AEWR Methodology, Cornell University

<https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-aewr-methodology/>

AEWR Non-Range Occupations: Skill Level II

- Education, training, experience, knowledge or skills are necessary to perform the full job duties of the SOC code.
- Work experience (3+ months) required
- A demonstration on how to perform their job is not generally required
- May be assigned to more complex tasks
- Work may not be as closely monitored
- Computed at 50th percentile of occupational wage distribution

<https://www.federalregister.gov/d/2025-19365/p-307>

See also Lucas Smith and Richard Stup, Major H-2A Wage Changes: Overview of New AEWR Methodology, Cornell University

<https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-aewr-methodology/>

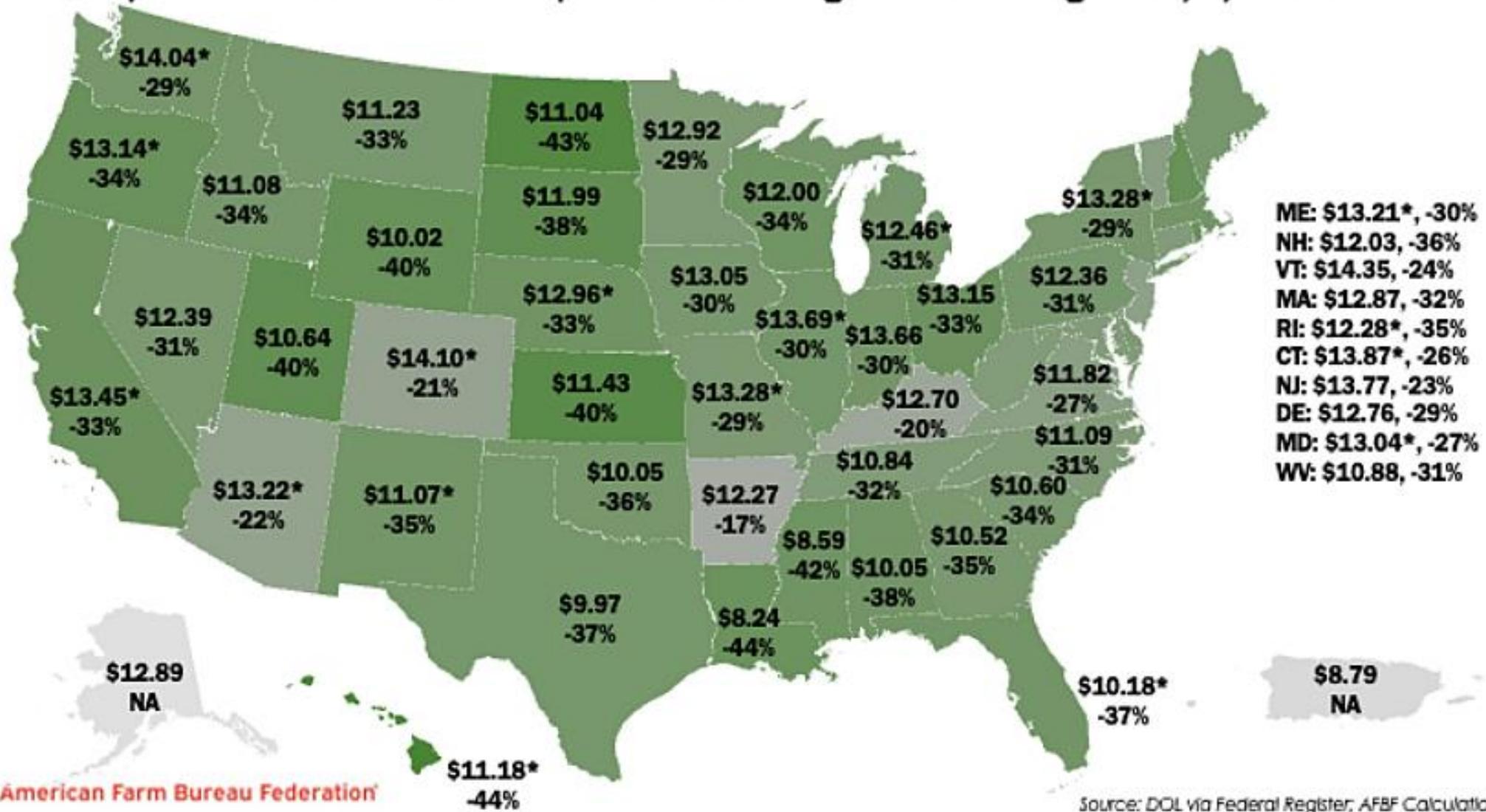


State Title	AEWRs for U.S. Workers Field and Livestock Worker Category [±]		AEWRs for H-2A Workers Field and Livestock Worker Category [±]		H-2A Adverse Compensation Adjustment ⁽³⁾
	Skill Level I ^(1A)	Skill Level II ^(2A)	Skill Level I ^(1B)	Skill Level II ^(2B)	
Alabama	\$11.25	\$14.95	\$10.05	\$13.75	(\$1.20)
Alaska	\$14.79	\$20.01	\$12.89	\$18.11	(\$1.90)
Arizona	\$15.32	\$18.01	\$13.22	\$15.91	(\$2.10)
Arkansas	\$13.40	\$16.18	\$12.27	\$15.05	(\$1.13)
California	\$16.45	\$18.71	\$13.45	\$15.71	(\$3.00)
Colorado	\$16.28	\$20.02	\$14.10	\$17.84	(\$2.18)
Connecticut	\$15.93	\$18.20	\$13.87	\$16.14	(\$2.06)
Delaware	\$14.61	\$19.63	\$12.76	\$17.78	(\$1.85)
District of Columbia	\$17.47	\$23.80	\$14.83	\$21.16	(\$2.64)
Florida	\$12.47	\$15.06	\$10.18	\$12.77	(\$2.29)
Georgia	\$12.27	\$16.22	\$10.52	\$14.47	(\$1.75)
Hawaii	\$14.36	\$18.49	\$11.18	\$15.31	(\$3.18)
Idaho	\$12.92	\$17.07	\$11.08	\$15.23	(\$1.84)
Illinois	\$15.48	\$18.75	\$13.69	\$16.96	(\$1.79)
Indiana	\$14.93	\$19.22	\$13.66	\$17.95	(\$1.27)
Iowa	\$14.20	\$18.87	\$13.05	\$17.72	(\$1.15)
Kansas	\$12.69	\$18.14	\$11.43	\$16.88	(\$1.26)
Kentucky	\$13.94	\$17.99	\$12.70	\$16.75	(\$1.24)
Louisiana	\$9.59	\$14.84	\$8.24	\$13.49	(\$1.35)
Maine	\$14.81	\$18.95	\$13.21	\$17.35	(\$1.60)
Maryland	\$15.35	\$18.21	\$13.04	\$15.90	(\$2.31)
Massachusetts	\$15.29	\$17.57	\$12.87	\$15.15	(\$2.42)
Michigan	\$13.78	\$17.47	\$12.46	\$16.15	(\$1.32)
Minnesota	\$14.60	\$19.33	\$12.92	\$17.65	(\$1.68)
Mississippi	\$9.74	\$14.92	\$8.59	\$13.77	(\$1.15)
Missouri	\$14.56	\$18.74	\$13.28	\$17.46	(\$1.28)
Montana	\$13.03	\$18.48	\$11.23	\$16.68	(\$1.80)

State Title	AEWRs for U.S. Workers Field and Livestock Worker Category [±]		AEWRs for H-2A Workers Field and Livestock Worker Category [±]		H-2A Adverse Compensation Adjustment ⁽³⁾
	Skill Level I ^(1A)	Skill Level II ^(2A)	Skill Level I ^(1B)	Skill Level II ^(2B)	
Nebraska	\$14.20	\$19.26	\$12.96	\$18.02	(\$1.24)
Nevada	\$14.54	\$18.40	\$12.39	\$16.25	(\$2.15)
New Hampshire	\$13.99	\$16.14	\$12.03	\$14.18	(\$1.96)
New Jersey	\$16.05	\$19.41	\$13.77	\$17.13	(\$2.28)
New Mexico	\$12.51	\$16.20	\$11.07	\$14.76	(\$1.44)
New York	\$15.68	\$18.75	\$13.28	\$16.35	(\$2.40)
North Carolina	\$12.78	\$16.39	\$11.09	\$14.70	(\$1.69)
North Dakota	\$12.31	\$18.98	\$11.04	\$17.71	(\$1.27)
Ohio	\$14.38	\$18.11	\$13.15	\$16.88	(\$1.23)
Oklahoma	\$11.27	\$16.01	\$10.05	\$14.79	(\$1.22)
Oregon	\$15.25	\$17.62	\$13.14	\$15.51	(\$2.11)
Pennsylvania	\$13.88	\$17.99	\$12.36	\$16.47	(\$1.52)
Rhode Island	\$14.15	\$17.17	\$12.28	\$15.30	(\$1.87)
South Carolina	\$12.14	\$15.92	\$10.60	\$14.38	(\$1.54)
South Dakota	\$13.19	\$17.48	\$11.99	\$16.28	(\$1.20)
Tennessee	\$12.44	\$16.64	\$10.84	\$15.04	(\$1.60)
Texas	\$11.81	\$15.67	\$9.97	\$13.83	(\$1.84)
Utah	\$12.48	\$16.86	\$10.64	\$15.02	(\$1.84)
Vermont	\$15.96	\$19.23	\$14.35	\$17.62	(\$1.61)
Virginia	\$13.90	\$18.40	\$11.82	\$16.32	(\$2.08)
Washington	\$16.53	\$19.00	\$14.04	\$16.51	(\$2.49)
West Virginia	\$12.00	\$16.15	\$10.88	\$15.03	(\$1.12)
Wisconsin	\$13.29	\$18.22	\$12.00	\$16.93	(\$1.29)
Wyoming	\$11.34	\$17.23	\$10.02	\$15.91	(\$1.32)
Guam	\$9.70	\$10.89	\$7.35	\$8.54	(\$2.35)
Puerto Rico	\$9.50	\$10.37	\$8.79	\$9.66	(\$0.71)
Virgin Islands	\$10.98	\$14.34	\$9.39	\$12.75	(\$1.59)

SKILL LEVEL I AEWWR WITH ADVERSE COMPENSATION ADJUSTMENT

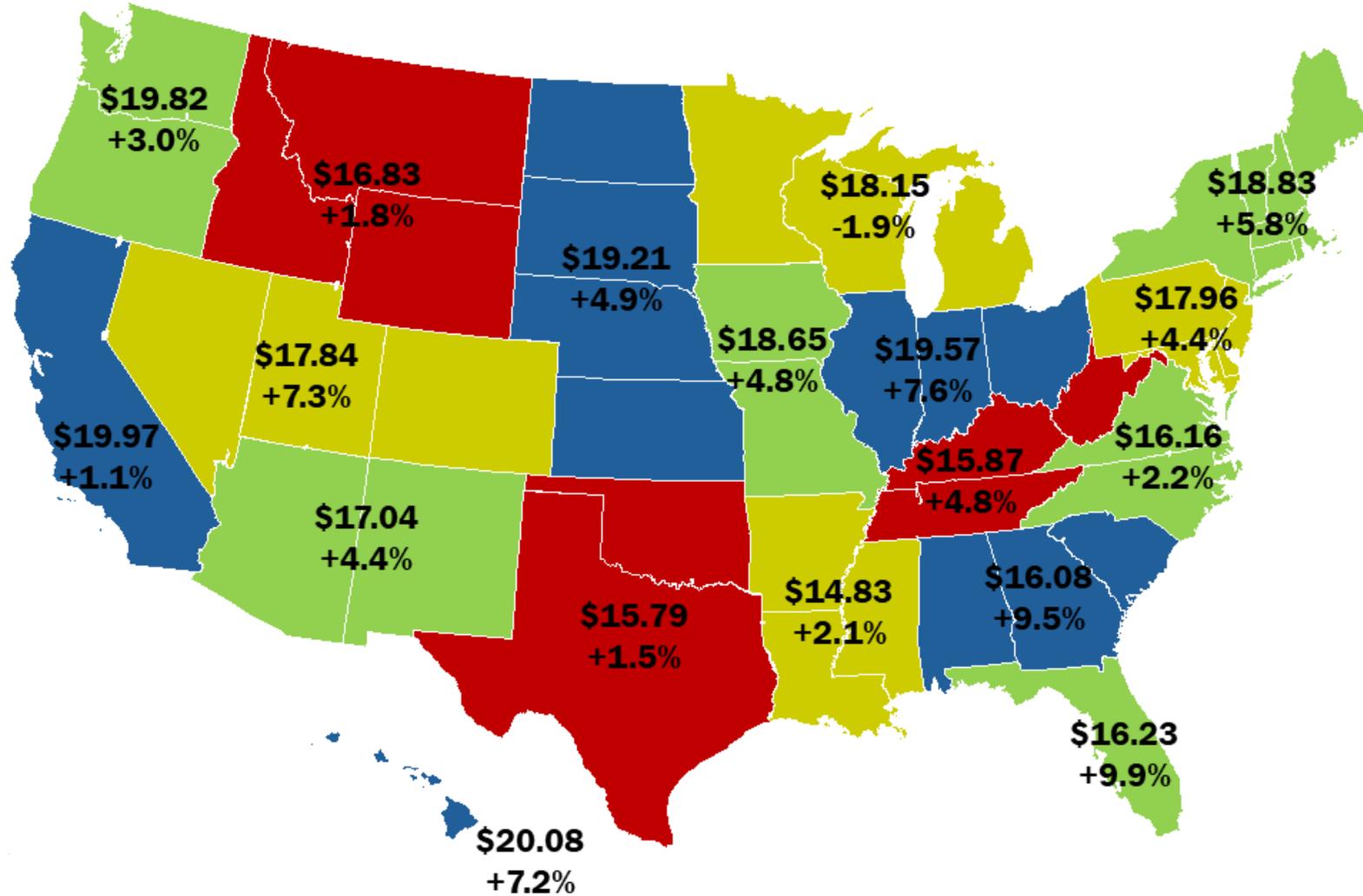
Compared to 2025 FLS AEWWR | *Below State Ag Minimum Wage on 1/1/2026



AFB American Farm Bureau Federation

Source: DOL via Federal Register; AFBF Calculations

2025 Adverse Effect Wage Rate

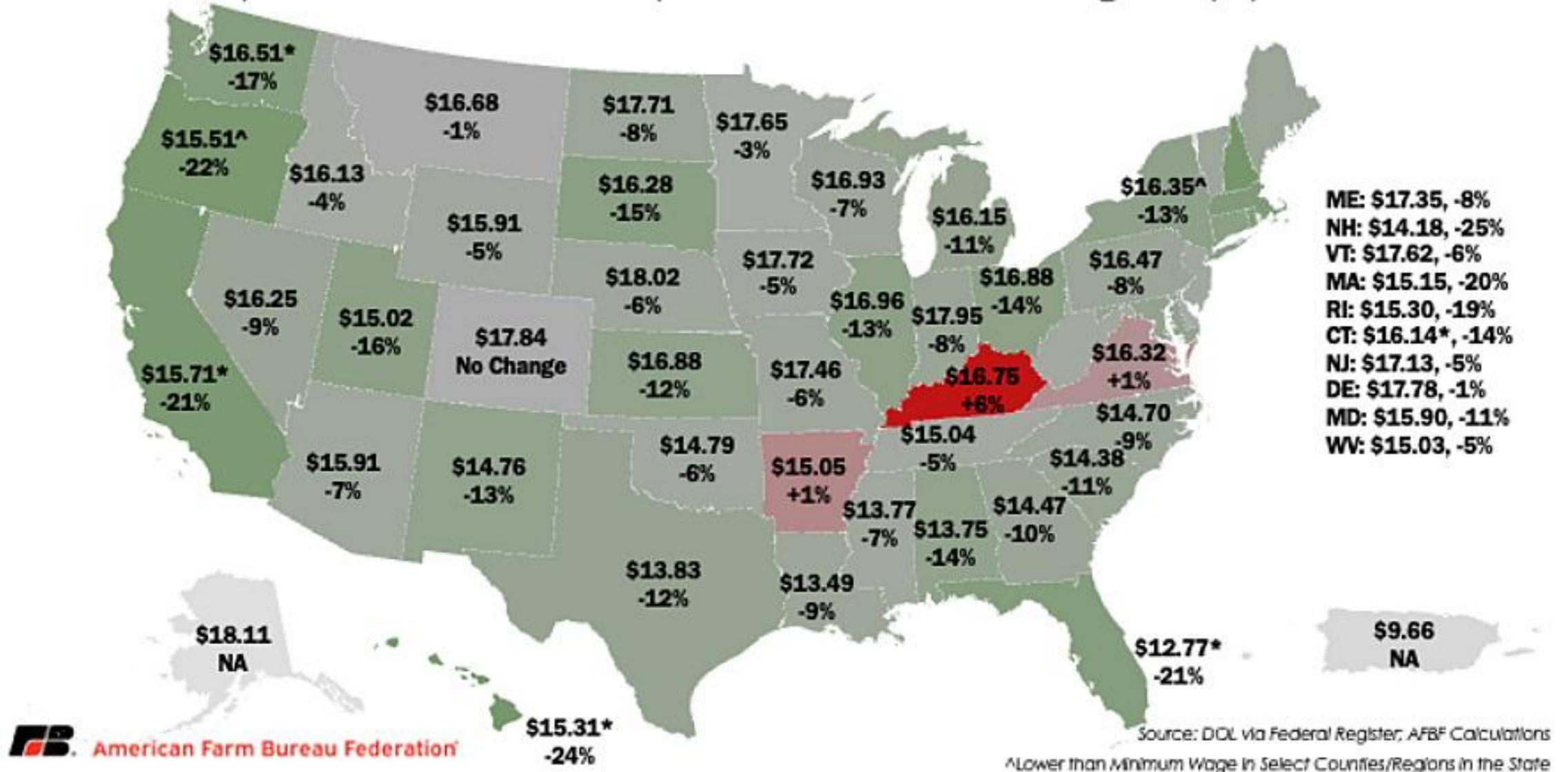


Powered by Bing
© GeoNames, Microsoft, TomTom

Source: USDA NASS

SKILL LEVEL II AEWWR WITH ADVERSE COMPENSATION ADJUSTMENT

Compared to 2025 FLS AEWWR | * Below State Minimum Wage on 1/1/2026



AFBF American Farm Bureau Federation

Adverse Effect Wage Rate (AEWR) Review

- H-2A-specific special "minimum wage"
- Updated yearly by Dept. of Labor regulation
- Range occupations
 - Monthly rate
- Non-range occupations
 - Hourly rate, New rule
 - Skill I/Skill II
 - Downward adjustment for employer-provided housing
 - Rate based on occupation worker will spend most time doing

the employment of the alien in such labor or services **will not adversely affect the wages and working conditions** of workers in the United States similarly employed.



H-2A Temporary Agricultural Program

1. Statutory language
2. Adverse Effect Wage Rate (AEWR)
- 3. Employer Obligations**
4. H-2A Certification Process
5. Data/Legislation/Cases

H-2A: Employer Obligations

1. U.S. Worker Recruitment
2. No Preferential Treatment
3. Wage Requirements
4. 3/4 Guarantee
5. Housing
6. Meals
7. Inbound/Outbound Expenses
8. Transportation
9. Disclosure
10. Record Keeping

- *there are not sufficient workers* who are *able, willing, and qualified*, and who will be *available* at the time and place needed, to perform the labor or services involved in the petition, and
- the employment of the alien in such labor or services *will not adversely affect the wages and working conditions* of workers in the United States similarly employed.

H-2A Employer Obligations: *U.S. Worker Recruitment*

BEFORE filing an H-2A Petition, Employers must

- Contact formerly employed U.S. workers & invite them back
- Hire all able, willing and qualified applicants during recruitment period
- Create and maintain a recruitment report detailing all recruitment activities:
 - Recruitment activity & date (advertisements, etc.)
 - Name & contact info each U.S. applicant or referral
 - Confirmation of contact w/ U.S. applicants
 - Outcome of each U.S. applicant, explanation of lawful reasons for not hiring

See DOL Fact Sheet #26A: Recruitment Requirements under the H-2A Visa Program
<https://www.dol.gov/agencies/whd/fact-sheets/26a-recruitment-requirements-H-2A>

H-2A Employer Obligations: No Preferential Treatment

“Corresponding Employee”

- Not H-2A workers but performing work under the job order

Employers may not give preferential treatment to H-2A workers

- “May not offer benefits to H-2A workers that are not offered to U.S. workers”
- “May not impose job requirements on U.S. workers that are not also imposed on H-2A workers”
- “Must provide employment to any qualified, eligible U.S. worker who applies during the applicable recruitment period”

H-2A Employer Obligations: *Wage Requirements*

H-2A Employers must offer & pay at least the highest of

- Federal/State minimum wage
- Prevailing hourly rate or piece rate
- Agreed-upon collective bargaining wage
- The Adverse Effect Wage Rate (AEWR)

20 CFR 655.120(a) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.120\(a\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.120(a));
DOL Fact Sheet #26F: Wage Requirements under the H-2A Visa Program
<https://www.dol.gov/agencies/whd/fact-sheets/26f-wage-requirements-H-2A>

the employment of the alien in such labor or services **will not adversely affect the wages and working conditions** of workers in the United States similarly employed.

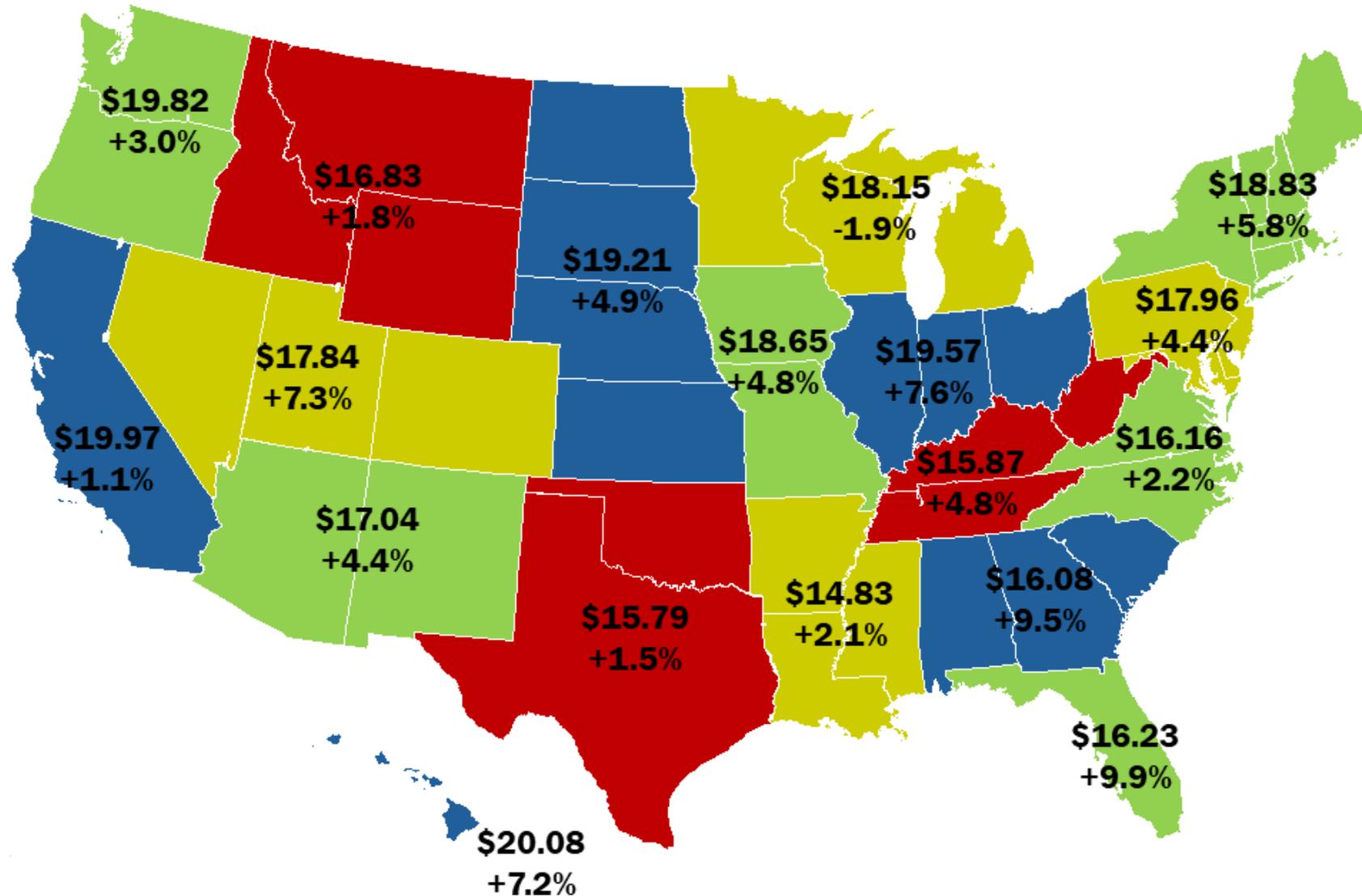
H-2A Employer Obligations: *Wage Requirements*

H-2A Employers must offer & pay at least the highest of

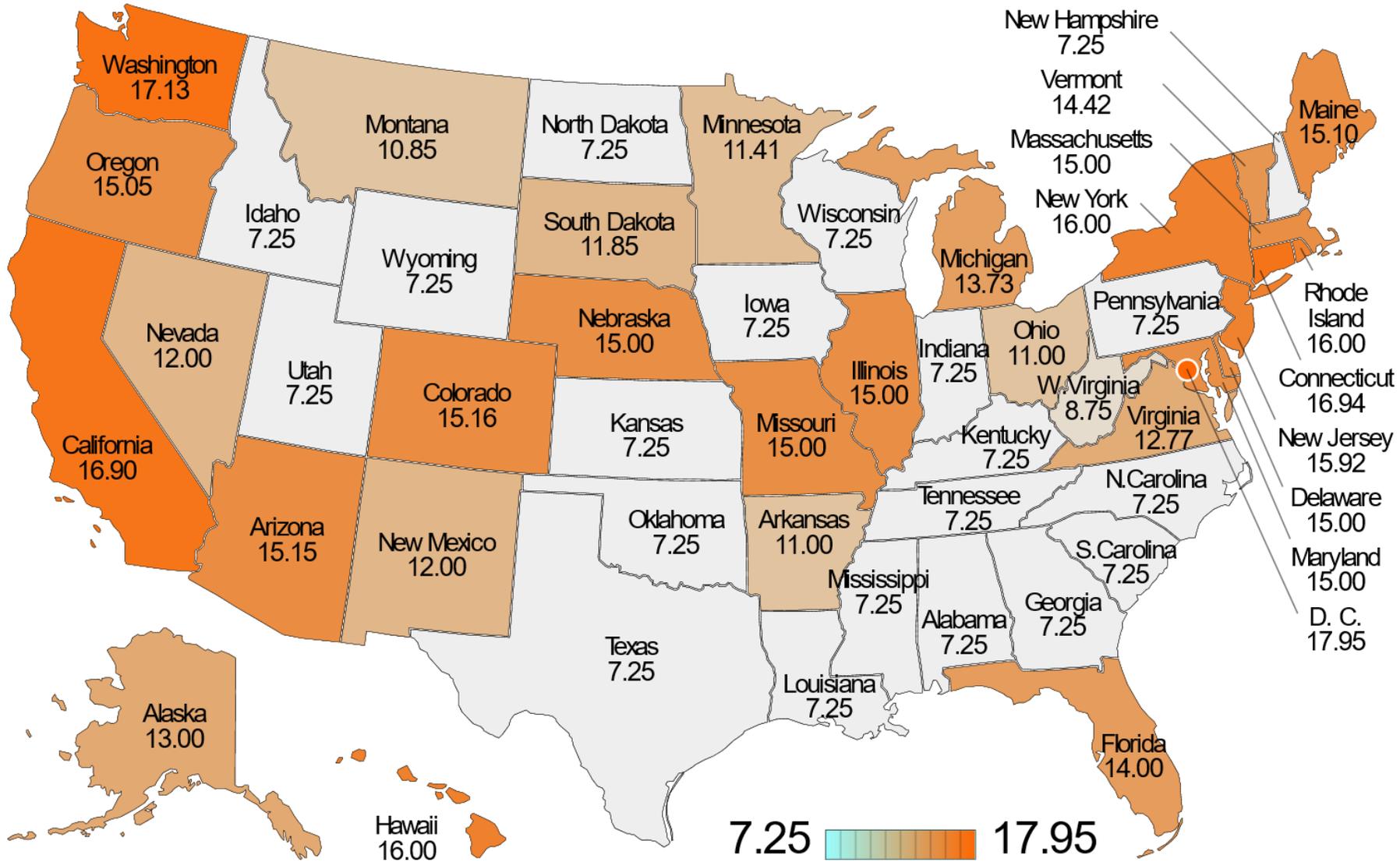
- Federal/State minimum wage
- Prevailing hourly rate or piece rate
 - *Hernandez v. Su*, No. 23-35582 (9th Cir.) "[w]hen the prevailing wage is a piece-rate, § 655.120(a) requires that an H2A employer offer it."
 - Must still be at least advertised (AEWR) or higher
- Agreed-upon collective bargaining wage
- The Adverse Effect Wage Rate (AEWR)

See DOL Fact Sheet #26F: Wage Requirements under the H-2A Visa Program
<https://www.dol.gov/agencies/whd/fact-sheets/26f-wage-requirements-H-2A>

2025 Adverse Effect Wage Rate



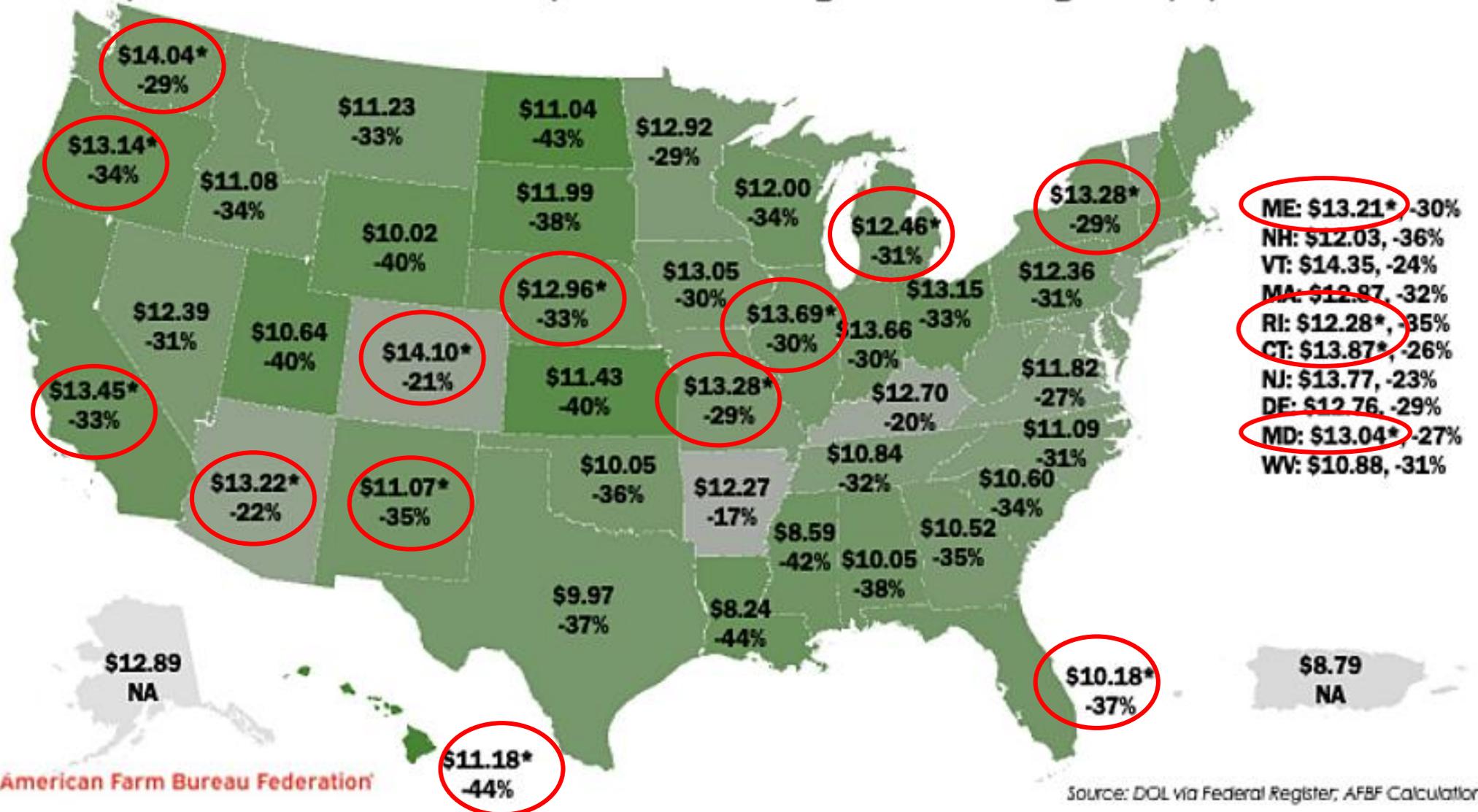
State minimum wages, in dollars. Jan. 1, 2026



Map of US hourly minimum wage by state, in dollars.
https://upload.wikimedia.org/wikipedia/commons/7/76/Map_of_US_minimum_wage_by_state.svg

SKILL LEVEL I AEWB WITH ADVERSE COMPENSATION ADJUSTMENT

Compared to 2025 FLS AEWB | *Below State Ag Minimum Wage on 1/1/2026



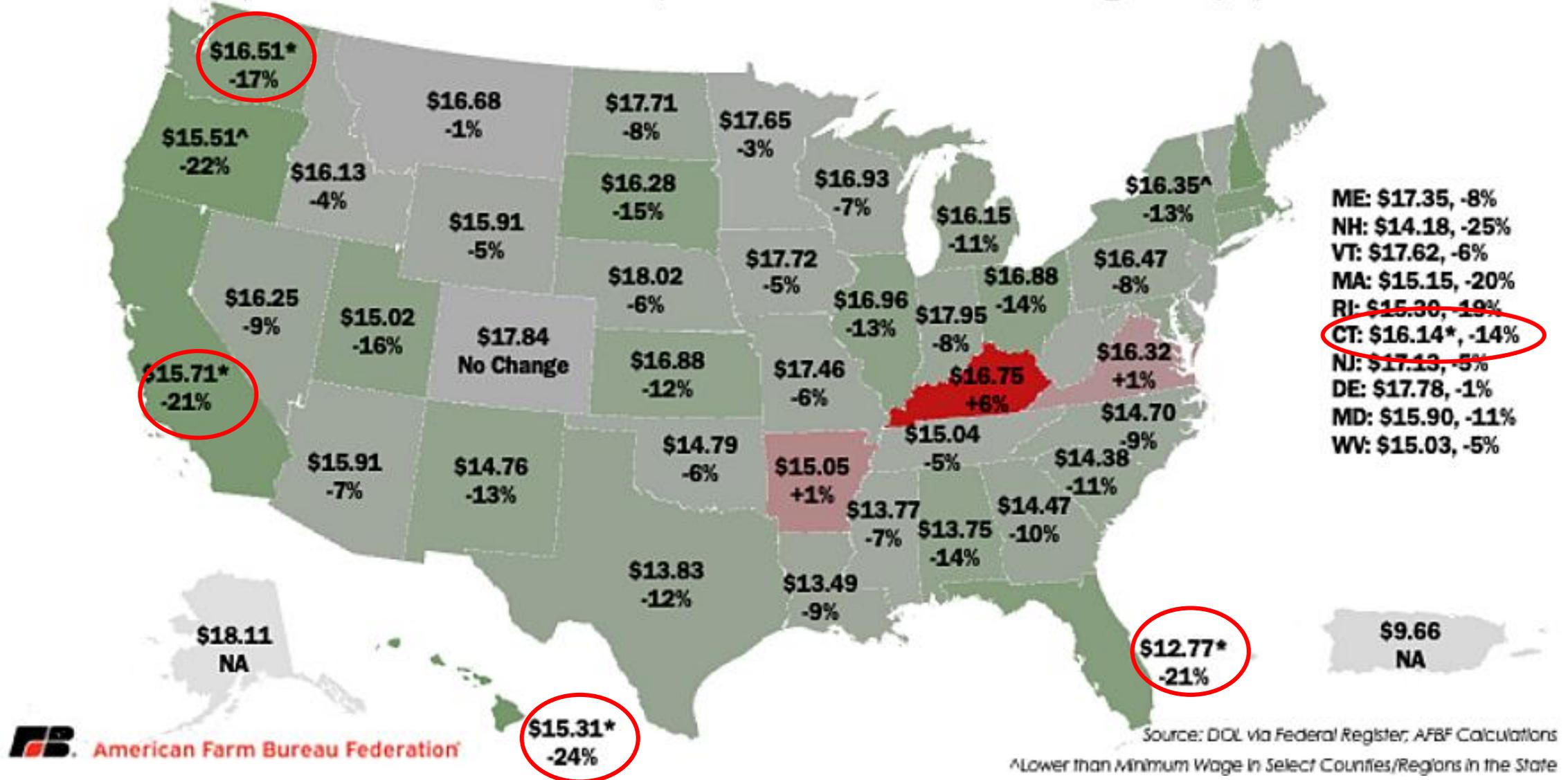
Source: DOL via Federal Register; AFBF Calculations

Samantha Ayoub, Farm Labor Wage Changes Coming to H-2A, American Farm Bureau (Oct. 7, 2025) <https://www.fb.org/market-intel/farm-labor-wage-changes-coming-to-h-2a>

See also Lucas Smith and Richard Stup, Major H-2A Wage Changes: Overview of New AEWB Methodology, Cornell University <https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-aewb-methodology/>

SKILL LEVEL II AEWWR WITH ADVERSE COMPENSATION ADJUSTMENT

Compared to 2025 FLS AEWWR | * Below State Minimum Wage on 1/1/2026



AFBF American Farm Bureau Federation

H-2A Employer Obligations: *3/4 Guarantee*

- "Employers must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total contract period"
- Full time = 35 hours/week
- Ex from DOL: 10-week contract for 6 days per week, 8 hours per day (480 total hours)= guaranteed employment for at least 360 hours
- May not require worker to work more hours in job order
- May count all hours actually worked

H-2A: Employer Obligations

1. U.S. Worker Recruitment
2. No Preferential Treatment
3. Wage Requirements
4. 3/4 Guarantee
5. Inbound/Outbound Expenses
6. Housing
7. Meals
8. Transportation
9. Disclosure
10. Record Keeping

- *there are not sufficient workers* who are *able, willing, and qualified*, and who will be *available* at the time and place needed, to perform the labor or services involved in the petition, and
- the employment of the alien in such labor or services *will not adversely affect the wages and working conditions* of workers in the United States similarly employed.

H-2A Employer Obligations: Inbound Transportation

Arrival:

- Employer must pay for transportation and subsistence (\$14/day) from place of recruitment
 - the “most economical and reasonable common carrier transportation charges”
- Must advance transportation costs if prevailing practice or if extended to similarly situated H-2A workers
- Must provide transportation/subsistence by the time worker has completed 50% of work contract period

H-2A Employer Obligations: Outbound Transportation

Departure—If worker

- completes contract period or
- Is terminated w/out cause, employer must pay transportation & subsistence
 - To place of recruitment or
 - To next employer (unless new employer agrees to pay)
- Must pay transportation for displaced workers

H-2A Employer Obligations: *Housing*

- Must provide housing at no cost to the H-2A employee
 - And corresponding employees if unable to return to residence
- Housing must meet OSHA standards AND local/state health & safety standards ([see PA vs. DOL](#))
- Housing must be certified by DOL before workers occupy
- Must maintain housing

See 20 CFR 655.122(d) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122\(d\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122(d)) ;
DOL Fact Sheet #26G: H-2A Housing Standards for Rental and Public Accommodations
<https://www.dol.gov/agencies/whd/fact-sheets/26g-housing-standards-for-rental-and-public-accommodations-H-2A>

AREA OF CONCERN	PDA CH 82	USDOL (OSHA) BUILT AFTER 4/80	USDOL (ETA): BUILT BEFORE 4/80
INSPECTIONS			
§82.2. Permit to operate.	Pre-season (prior to occupancy) <ul style="list-style-type: none"> - Camp must be move in ready for inspection. - H2A camps must be 100% in compliance before permit issued and approved for occupancy. - Occurs ~30 days prior to worker date of need. In-seasons (while occupied) <ul style="list-style-type: none"> - Occurs mid-growing season. - Includes inspection of site and field. Additional inspections as necessary to verify compliance.	- Certificate of housing inspection §500.135	
OCCUPANTS RESPONSIBILITY			
§82.18. Occupant concurrent responsibility. §82.19. Obligations of owners and operators.	<ul style="list-style-type: none"> - Occupant held legally responsible concurrently with the permittee of the camp with §82.4 -site; §82.6 (a)(b) – cleanliness; §82.9(k) – toilet facilities; §82.11(f) – laundry, handwashing & bathing facilities; §82.13 (a)(c)(e) – refuse <ul style="list-style-type: none"> o PROVIDED: Department found camp in compliance prior to occupancy and occupant has been informed of the applicable requirements in writing and in native language and has acknowledged responsibility for these requirements in a written inspection report provided by the Department §82.18(a) - Nothing relieves owner/operator/permittee of any responsibility imposed by §82 or any other Law or Regulation 	No specific mention	No specific mention
OCCUPANCY			
How many?	<ul style="list-style-type: none"> - Determined by square ft of useable floor space in sleeping – §82.5(a)(1) - Dorm/sleeping rooms (unrelated workers) = 50 sq ft/adult, 25 sq ft/occupant under age 14 	- At least 50 sq ft/person - CFR 1910.142 (b)(2)	<ul style="list-style-type: none"> - >50 sq ft/person for single beds - 40 sq ft/person for double bunks in dorms only – 20 CFR 654.407 9 (c)(1) and (c)(2)
Sleeping Rooms contents	- Each occupant provided with bed, mattress & cover, pillow & case, sheets, and blankets §82.5b(a)	- Provided with beds, cots, bunks – 29 CFR 1910.142 (b)(3)	- Provided with beds, cots, bunks, clean mattress, clean and sanitary linens – 20 CFR 654.416 (a)&(b)

http://www.pa.gov/content/dam/copapwp-pagov/en/pda/documents/business-industry/farm-labor-camp-housing/documents/FLC_HOUSING_COMPARISON.pdf

H-2A Employer Obligations: Meals

- Must either provide 3 meals per day or free cooking facilities
 - Must also be provided to corresponding workers on same basis
- Job offer must state if meals are provided
- Employer may charge for up to \$14/day for meals, must state in job offer
 - No kickbacks!
- Employers must ensure safe food handling & storage
- Kitchen facilities must include refrigeration

20 CFR 655.173 <https://www.ecfr.gov/current/title-20/section-655.173>

20 CFR 655.122(g) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122\(g\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122(g))

See DOL Fact Sheet #26D: Meal Obligations for H-2A Employers

<https://www.dol.gov/agencies/whd/fact-sheets/26d-meal-obligations-H-2A>

H-2A Employer Obligations: Transportation

- Employer must provide transportation between housing and worksite
- Transportation must comply with all applicable local, state, and federal laws
- *2024 Worker Protection Rule:*
 - If a vehicle is required by Department of Transportation to be manufactured with seat belts all occupants must wear seat belts
 - ***June 2025—DOL suspended enforcement***

20 CFR 655.122(h)(3)-(4) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122\(h\)\(3\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122(h)(3))
DOL, US Department of Labor Issues New Guidance to Provide Clarity for Farmers on H-2A Worker Regulations (June 20, 2025) <https://www.dol.gov/newsroom/releases/whd/whd20250620>

H-2A Employer Obligations: Disclosure

- Must provide copy of written work contract to all H-2A workers
 - Must be in a language worker understands
 - Before worker applies for visa or at time of job offer

20 CFR 655.122(q) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122\(q\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122(q))
Fact Sheet #26B: Disclosure of the Job Order and Notice of Worker Rights under the H-2A Visa Program
<https://www.dol.gov/agencies/whd/fact-sheets/26b-disclosure-job-order-notice-H-2A>

H-2A Employer Obligations: Disclosure

What must be disclosed?

- Job qualifications and requirements
- Job duties
- Free and safe housing
- Workers' compensation insurance
- Free tools, supplies, and equipment
- Meals or kitchen facilities
- Inbound & outbound transportation
- Free and safe daily transportation
- Three-fourths guarantee
- Hours of work offered
- Hours and earnings statement
- Rate of pay
- Frequency of pay
- Deductions
- Abandonment or termination of employment
- Contract impossibility
- *****Employers may not charge employees a fee as a condition of employment!***

20 CFR 655.122(q) [https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122\(q\)](https://www.ecfr.gov/current/title-20/part-655/subpart-B#p-655.122(q))
Fact Sheet #26B: Disclosure of the Job Order and Notice of Worker Rights under the H-2A Visa Program
<https://www.dol.gov/agencies/whd/fact-sheets/26b-disclosure-job-order-notice-H-2A>

H-2A Employer Obligations: Record Keeping

- Must keep all records from three years from H-2A certification:
 - The H-2A job order, the approved Application, the H-2A Petition (DHS Form I-129) and supporting documents and records.
 - Proof of recruitment efforts, Evidence of contact with U.S. workers who applied for the job opportunity, Final recruitment report
 - Records of each worker's total earnings, hours offered and worked, location(s) of work performed, and other information.
 - Records of when and how much the employer reimbursed workers for transportation and subsistence costs.
 - If using a third party to recruit H-2A workers, a contract with the third party prohibiting the collection of prohibited fees.
 - Proof of worker's compensation insurance or State law coverage.

H-2A Violation Example

Wholesale plant nursery, locations in Georgia & Texas, Feb. 2023 DOL investigation found

- Required U.S. applicants to have certain nursery work experience & provide reference when not required for foreign workers
- Job order did not state actual contract terms & conditions, did not have worker housing camp address
- Did not provide 2 workers with copy of contract
- Pay stubs did not have work hours or federal EIN
- Housing with "excessive debris, fire alarms without batteries, water and mold damage, floors with holes, unclean restrooms and food storage, and a lack of proper lighting."
- DOL assessed \$200K in penalties/back wages

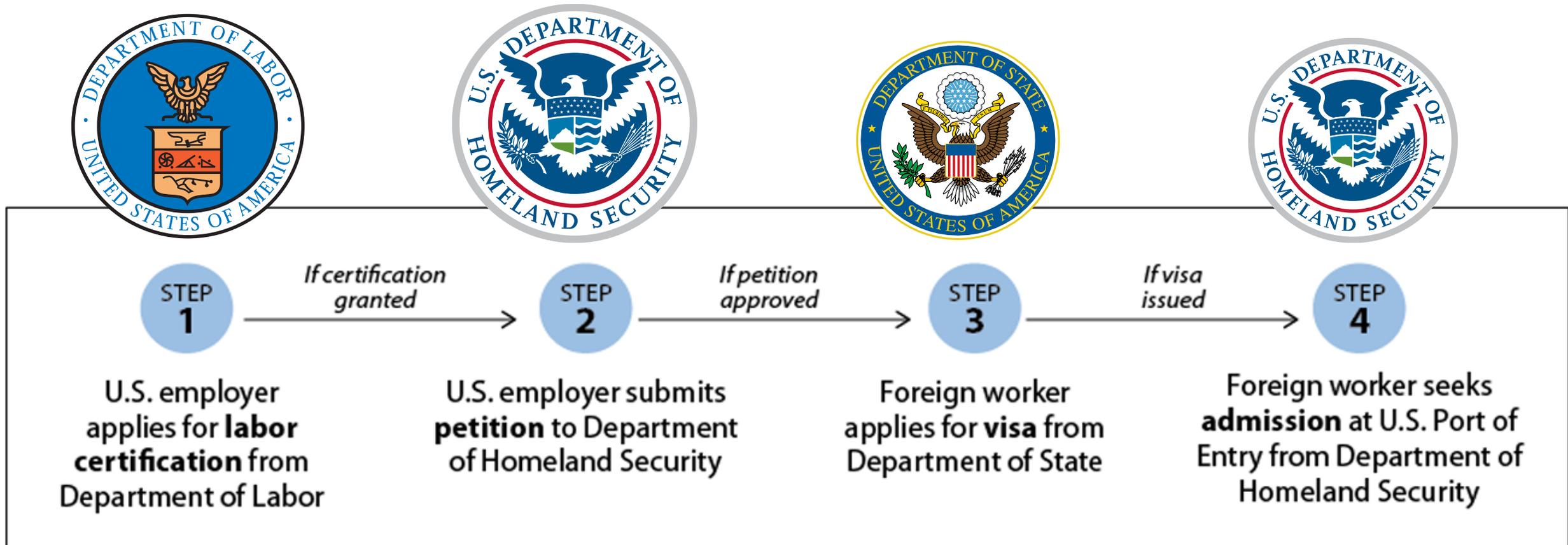


Overview:

H-2A Temporary Agricultural Program

1. Statutory language
2. Adverse Effect Wage Rate (AEWR)
3. Employer Obligations
- 4. H-2A Certification Process**
5. Data/Legislation/Cases

H-2A Process Overview



Step 1: DOL Temporary Labor Certification (TLC)



STEP
1

U.S. employer
applies for **labor
certification** from
Department of Labor

1. File Job Order with **State Workforce Agency**
2. File H-2A Application with **National Processing Center**
3. Conduct Recruitment for U.S. Workers
4. Complete Temporary Labor Certification Process

DOL Labor Certification: Job Order

1. File Job Order with State Workforce Agency (SWA)

- 75 to 60 calendar days before the start date of work
- Submit ETA **790/790A** via FLAG system:

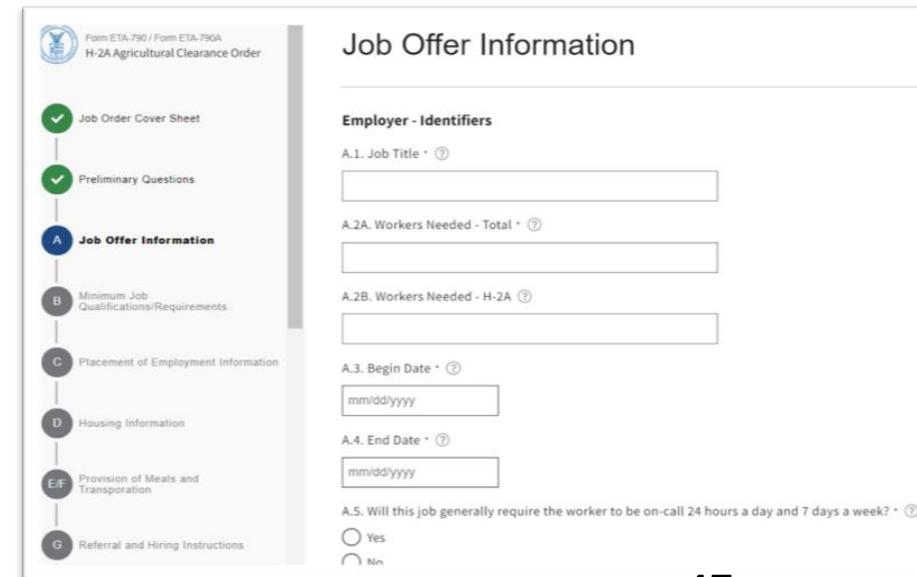


FLAG.DOL.GOV

This is your contract with the government!

- **Job Offer Information: job title, duties, hours of work**
- Minimum Job Qualifications/Requirements
- Placement of Employment Information
- Housing Information
- Provision of Meals and Transportation
- Referrals and Hiring Instructions

6. Under “Job Offer Information,” complete the required fields.



The screenshot shows the FLAG.DOL.GOV interface for Form ETA-790 / Form ETA-790A, H-2A Agricultural Clearance Order. On the left is a vertical progress bar with steps: Job Order Cover Sheet (checked), Preliminary Questions (checked), Job Offer Information (selected), Minimum Job Qualifications/Requirements, Placement of Employment Information, Housing Information, Provision of Meals and Transportation, and Referral and Hiring Instructions. The main content area is titled "Job Offer Information" and contains the "Employer - Identifiers" section with the following fields:

- A.1. Job Title *
- A.2A. Workers Needed - Total *
- A.2B. Workers Needed - H-2A *
- A.3. Begin Date *
- A.4. End Date *
- A.5. Will this job generally require the worker to be on-call 24 hours a day and 7 days a week? * Yes No

Job Order—O*NET

- O*NETonline.org—database with 900+ occupation profiles
 - useful website for job descriptions



Occupation keyword search

Q electrician Go

Help Find Occupations Advanced Searches O*NET Data Crosswalks

Share Sites

Farmworkers and Laborers, Crop, Nursery, and Greenhouse

45-2092.00

Updated 2026

Manually plant, cultivate, and harvest vegetables, fruits, nuts, horticultural specialties, and field crops. Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives. Duties may include tilling soil and applying fertilizers; transplanting, weeding, thinning, or pruning crops; applying pesticides; or cleaning, grading, sorting, packing, and loading harvested products. May construct trellises, repair fences and farm buildings, or participate in irrigation activities.

Sample of reported job titles: Farm Laborer, Farmer, Field Irrigation Worker, Gardener, Greenhouse Worker, Grower, Harvester, Nursery Worker, Orchard Worker, Picker

Summary Details Custom Easy Read Veterans Español

Contents

Occupation-Specific Information

Tasks

5 of 27 displayed

- Record information about crops, such as pesticide use, yields, or costs.
- Direct and monitor the work of casual and seasonal help during planting and harvesting.
- Participate in the inspection, grading, sorting, storage, and post-harvest treatment of crops.
- Harvest plants, and transplant or pot and label them.
- Repair and maintain farm vehicles, implements, and mechanical equipment.

Technology Skills

5 of 8 displayed

DOL Labor Certification: Job Order

1. File Job Order with State Workforce Agency (SWA)

Also at this stage (75 to 60 calendar days before the start date of work):

- Prepare worker housing/Arrange housing inspection
- Obtain workers' compensation insurance

DOL Labor Certification: H-2A Application

2. File H-2A Application with National Processing Center

- No less than 45 calendar days before the start date of work
- Submit Form ETA-9142A to NPC via FLAG system
 - NPC will review w/in 7 days
- If NPC accepts—Notice of Acceptance
 - NPC places Job Order on electronic job registry (seasonaljobs.dol.gov)
 - Sends Job Order to other states

DOL Labor Certification: H-2A Application

3. Conduct Recruitment for U.S. Workers

- Contact former U.S. workers
- Accept referrals of eligible U.S. workers
- Conduct additional recruitment as directed by the NPC
- Document all above!

DOL Labor Certification: H-2A Application

4. Complete Temporary Labor Certification Process

- Submit recruitment report
- Submit proof of housing inspection
- Submit proof of workers' compensation insurance

DOL Agencies Involved in H-2A

<p>Occupational Safety and Health Administration</p> 	<p>Inspects housing built after April 1980</p>
<p>Employment and Training Administration (ETA)</p>	<p>Inspects housing built before April 1980</p>
<p>ETA Office of Foreign Labor Certification (OFLC)</p>	<p>Job Certification (790/Flag System)</p>
<p>Wage and Hour Division</p> 	<p>Enforces employer obligations, housing, work contract, etc.</p>

H-2A Application Process Flowchart for Employers

February, 2023

State Workforce Agency (SWA)

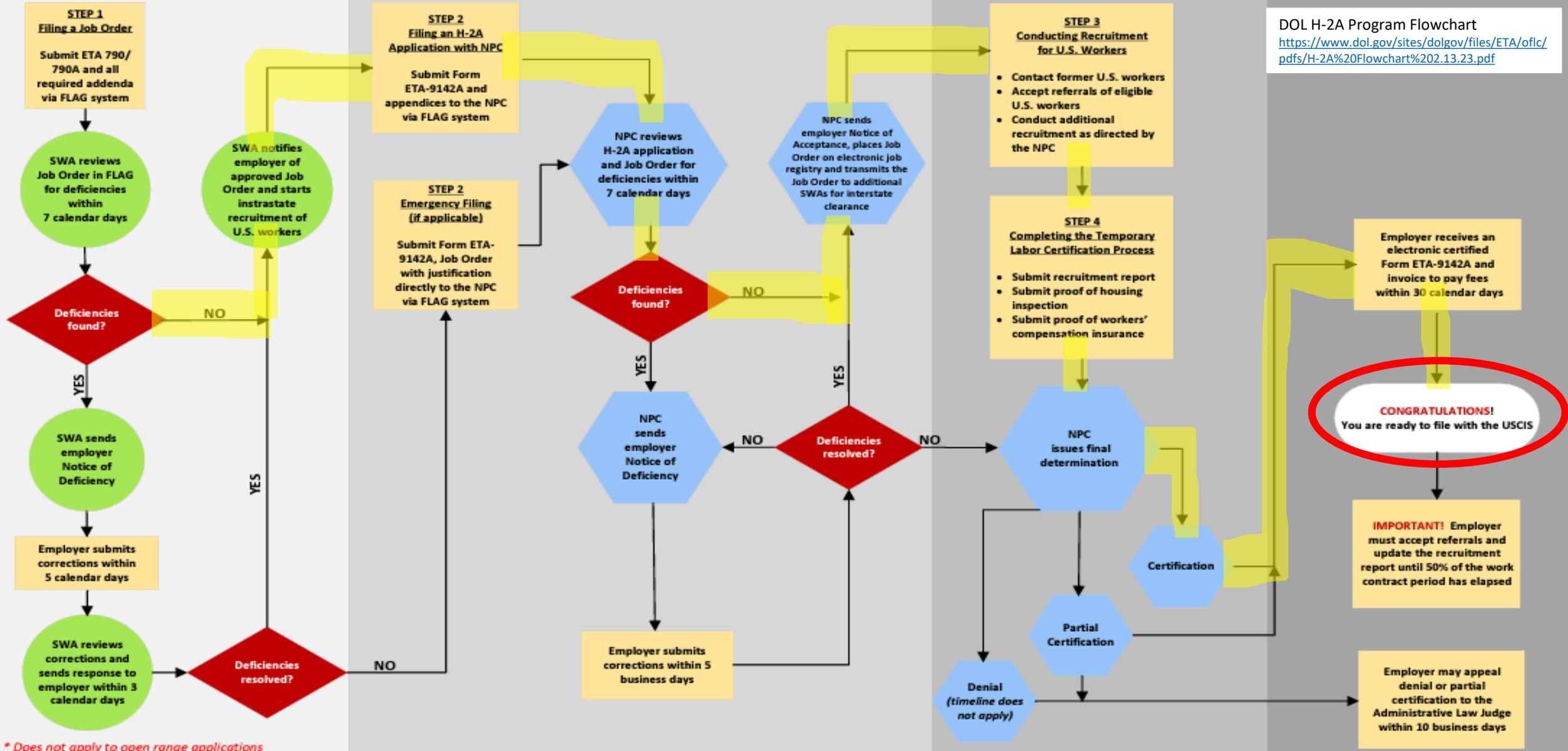
75-60 days before the first date of need*

National Processing Center (NPC)

No less than 45 days from the first date of need

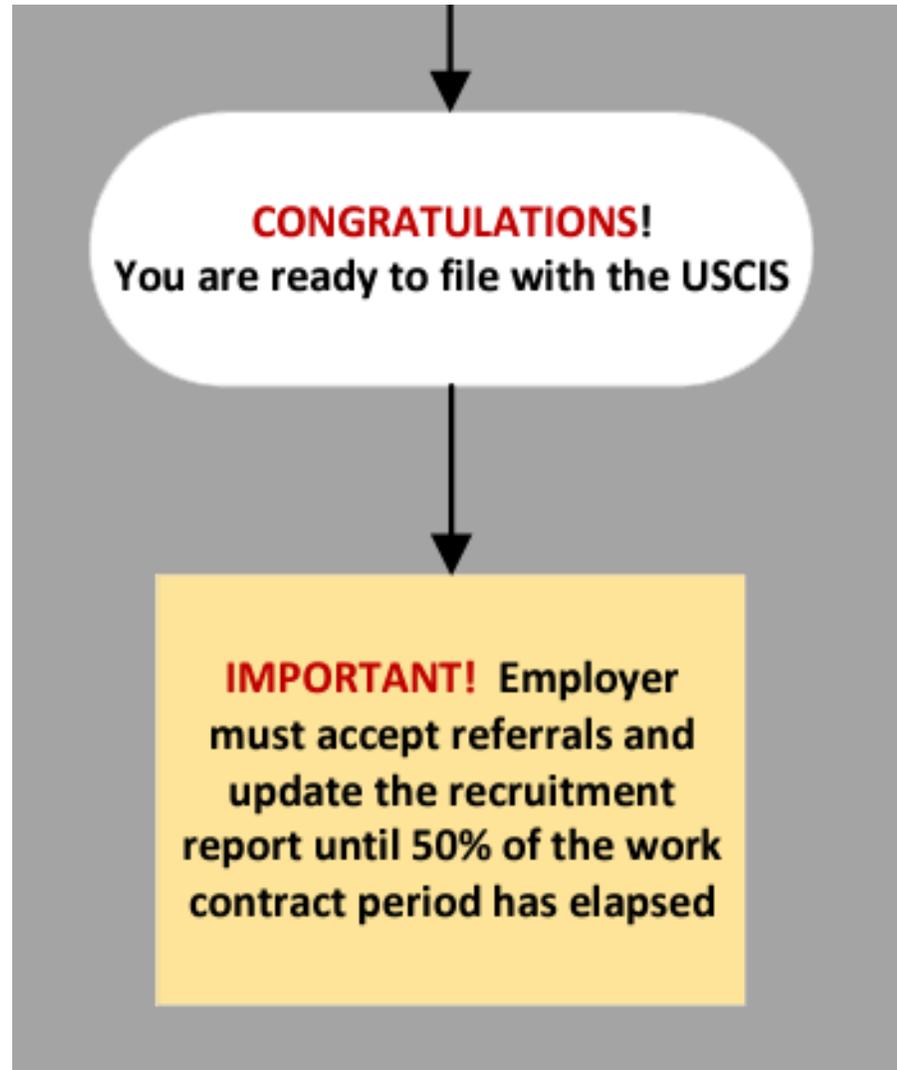
30 days before the first date of need

Post Determination

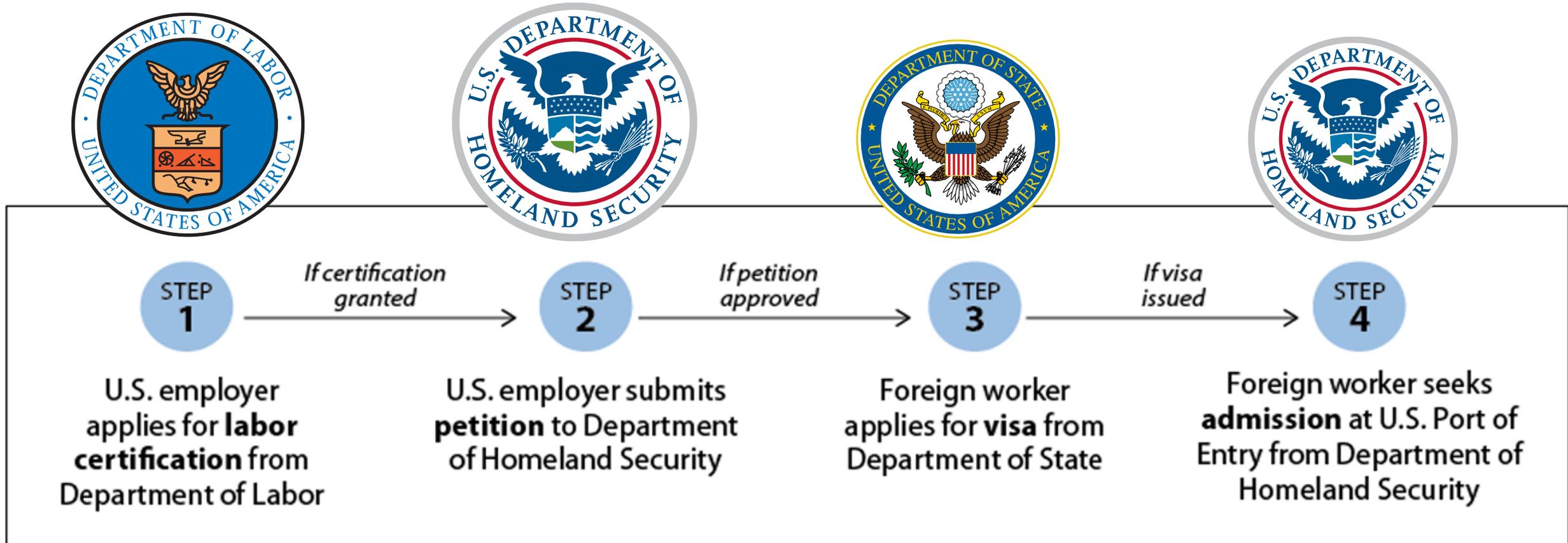


DOL H-2A Program Flowchart
<https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A%20Flowchart%20202.13.23.pdf>

* Does not apply to open range applications



H-2A Process Overview



H-2A Eligible Countries, USCIS (effective Nov. 18, 2024)

Andorra	Canada	The Kingdom of Eswatini	Ireland	Malta	Norway	Serbia	Taiwan*
Argentina	Chile	Fiji	Israel	Mauritius	Panama	Singapore	Thailand
Australia	Colombia	Finland	Italy	Mexico	Papua New Guinea	Slovakia	Timor-Leste
Austria	Costa Rica	France	Jamaica	Monaco Mongolia**	Paraguay*	Slovenia	Turkey
Barbados	Croatia	Germany	Japan	Montenegro	Peru The Phillipines**	Solomon Islands	Tuvalu
Belgium	Czech Republic	Greece	Kiribati	Mozambique	Poland	South Africa	Ukraine
Belize Bolivia	Denmark	Grenada	Latvia	Nauru	Portugal	South Korea	United Kingdom
Bosnia and Herzegovina	Dominican Republic	Guatemala	Liechtenstein	The Netherlands	Republic of Cyprus	Spain	Uruguay
Brazil	Ecuador	Haiti	Lithuania	New Zealand	Romania	St. Vincent and the Grenadines	Vanuatu
Brunei	El Salvador	Honduras	Luxembourg	Nicaragua	Saint Lucia	Sweden	
Bulgaria	Estonia	Hungary	Madagascar	North Macedonia	San Marino	Switzerland	

<https://www.uscis.gov/newsroom/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs>



STEP 2

U.S. employer submits petition to Department of Homeland Security



Petition for a Nonimmigrant Worker

Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS Form I-129 OMB No. 1615-0009 Expires 12/31/2027

For USCIS Use Only	Receipt	Partial Approval (explain)	Action Block
	Class: _____ No. of Workers: _____ Job Code: _____ Validity Dates: _____ From: _____ To: _____		<input type="checkbox"/> Classification Approved <input type="checkbox"/> Consulate/POE/PFI Notified At: _____ <input type="checkbox"/> Extension Granted <input type="checkbox"/> COS/Extension Granted

▶ START HERE - Type or print in black ink.

Part 1. Petitioner Information

If you are an individual filing this petition, complete Item Number 1. If you are a company or an organization filing this petition, complete Item Number 2.

1. Legal Name of Individual Petitioner

Family Name (Last Name) _____ Given Name (First Name) _____ Middle Name _____

2. Company or Organization Name

3. Mailing Address of Individual, Company or Organization

(USPS ZIP Code Lookup)

In Care Of Name _____

Street Number and Name _____ Apt. Ste. Flr. Number _____

City or Town _____ State _____ ZIP Code _____

Province _____ Postal Code _____ Country _____

4. Contact Information

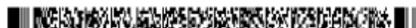
Daytime Telephone Number _____ Mobile Telephone Number _____ Email Address (if any) _____

Other Information

5. Federal Employer Identification Number (FEIN)

▶ _____

6. Are you a nonprofit organized as tax exempt or a governmental research organization? Yes No



DHS: File I-129

Also online filing



File Online

Forms and Document Downloads

[Form I-129 \(PDF, 2.19 MB\)](#)

[Instructions for Form I-129 \(PDF, 691.32 KB\)](#)

[Form I-129H2A \(PDF, 687.45 KB\)](#)

[Instructions for Form I-129H2A \(PDF, 410.35 KB\)](#)

[Optional Checklist for Form I-129 H-1B Filings \(PDF, 286.56 KB\)](#)

TLC Not Needed for Initial I-129

BUT! Oct. 2025 rule ([90 FR 47507](#))

- Allows “exception to the existing requirement that a valid temporary agricultural labor certification [TLC] must be provided at the time of filing for [electronically-filed] H-2A petitions requesting unnamed beneficiaries.”



STEP
2



STEP
1

U.S. employer submits
petition to Department
of Homeland Security



USCIS Petition—Additional Info

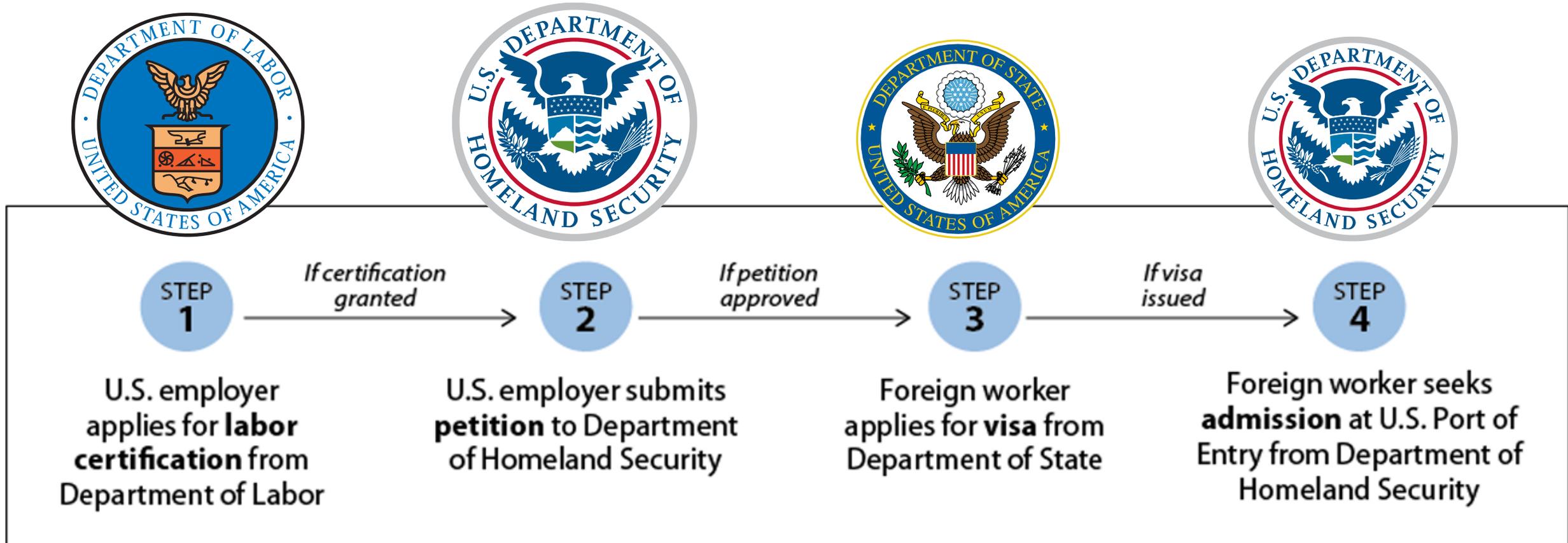
- May generally file 1 USCIS petition for all H-2A workers
 - Up to 25 named workers/petition
- Need more than 1 petition if filing for named & unnamed workers
- Total workers/beneficiaries cannot be more than DOL-approved TLC workers



H-2A Workers—Family Members

- Spouse and unmarried children under 21 may seek H-4
- H-4 status not eligible for employment

H-2A Process Overview



H-2A Time Limits, Extensions

- Visa generally granted for time of temporary labor certification (TLC)
- May be extended by 1 year increments
 - Must have new TLC for each request
- Max period of stay—3 years
 - May "reset" with 60 day absence from U.S.



Overview:

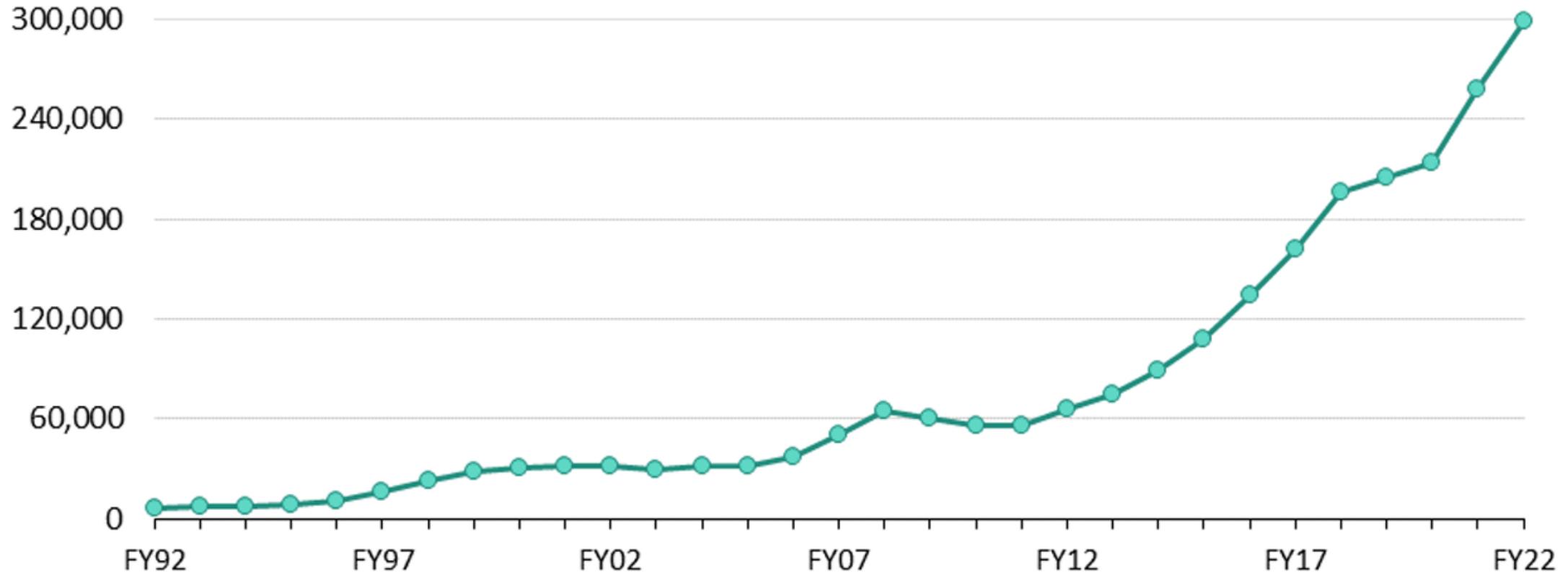
H-2A Temporary Agricultural Program

1. Statutory language
2. Adverse Effect Wage Rate (AEWR)
3. Employer Obligations
4. H-2A Certification Process
- 5. Data/Legislation/Cases**



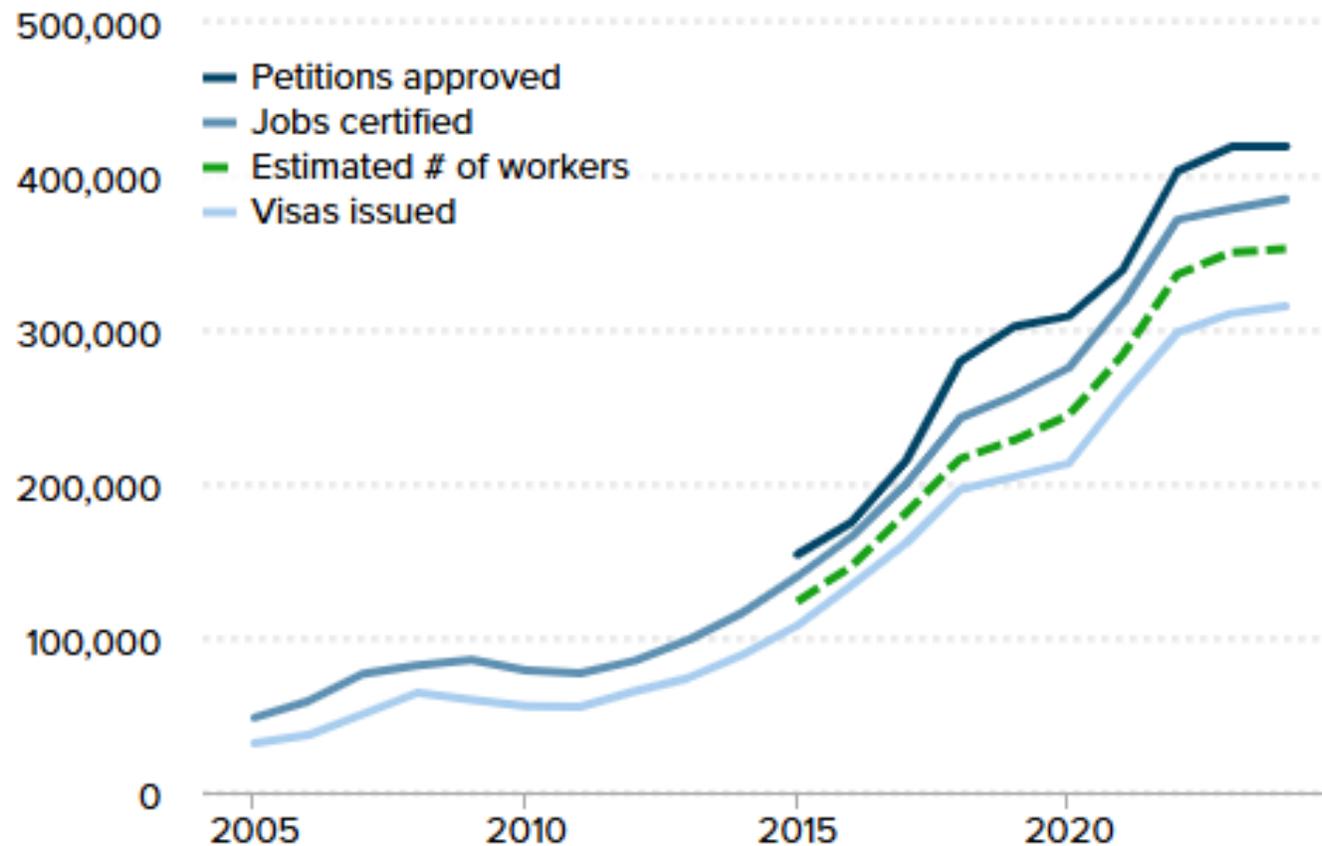
Figure 2. H-2A Visas Issued, FY1992-FY2022

Source: CRS Reports, H-2A and H-2B Temporary Worker Visas: Policy and Related Issues <https://crsreports.congress.gov/product/pdf/R/R44849> (May 2023)



The H-2A visa program had more than 350,000 workers in 2024, nearly tripling over the past decade

H-2A jobs certified and visas issued, 2005–2024, H-2A petitions approved and estimated number of workers, 2015–2024



EPI, Working Economics Blog
<https://www.epi.org/blog/trumps-new-h-2a-wage-rule-will-radically-cut-the-wages-of-all-farmworkers-new-estimates-show-farmworkers-stand-to-lose-4-4-to-5-4-billion-annually-under-dols-updated-adverse-effec/>

H-2A Positions Certified, FY 2024

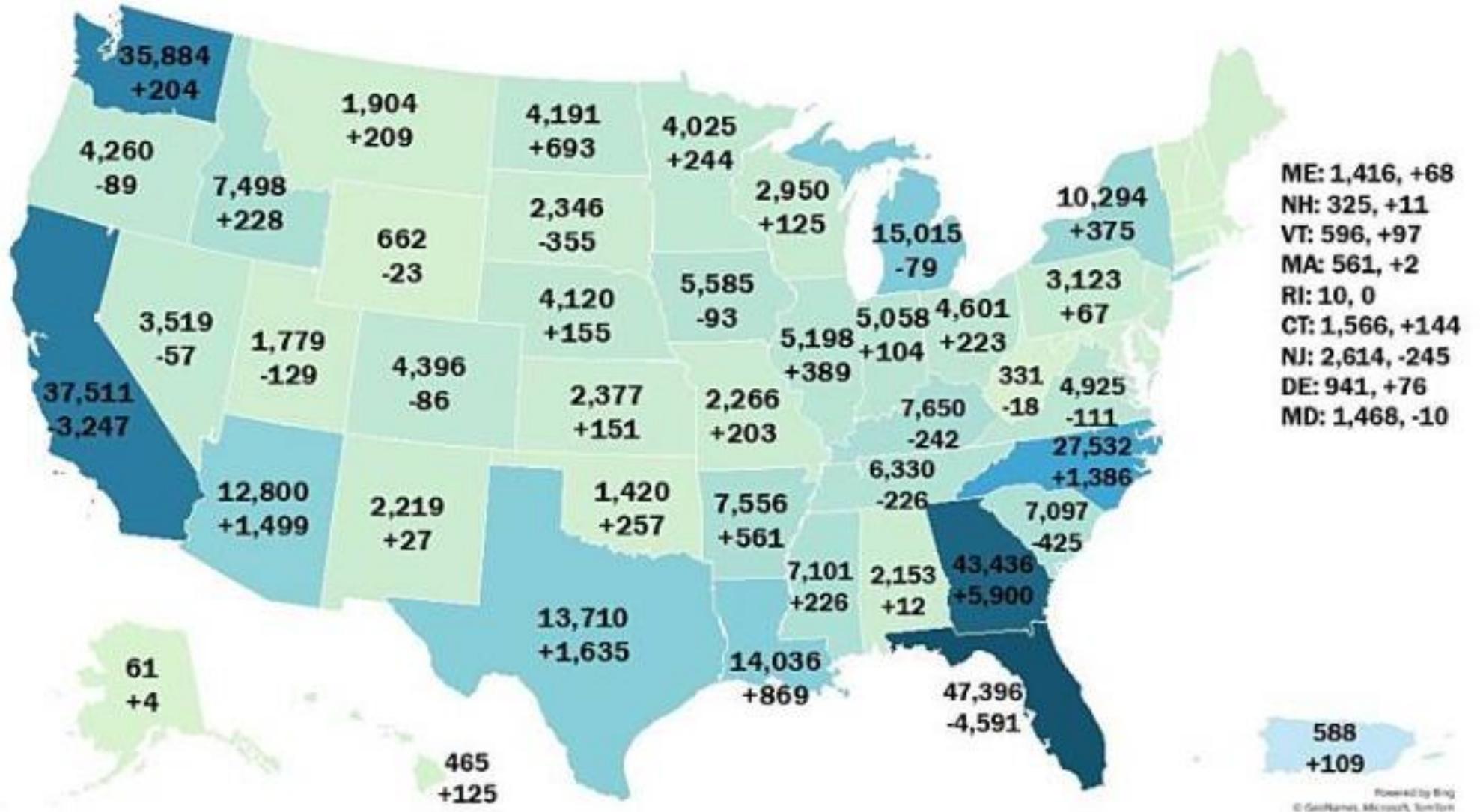


Table A-1. Top 10 States Granted H-2A Labor Certifications: FY2021 and FY2022

Rankings based on number of positions certified

Ranking	FY2021		FY2022	
	State	Positions Certified	State	Positions Certified
1	Florida	44,706	Florida	50,973
2	Georgia	35,205	California	43,760
3	California	32,333	Georgia	34,974
4	Washington	28,727	Washington	33,049
5	North Carolina	23,479	North Carolina	25,624
6	Louisiana	12,473	Michigan	15,524
7	Michigan	11,376	Louisiana	13,770
8	Arizona	10,842	Arizona	13,731
9	New York	9,192	Texas	11,655
10	Texas	8,553	New York	9,876
	Subtotal	216,886	Subtotal	252,936
	Total, All States	317,619	Total, All States	371,619

Source: CRS Reports, H-2A and H-2B Temporary Worker Visas: Policy and Related Issues
<https://crsreports.congress.gov/product/pdf/R/R44849> (May 2023)

Source: CRS presentation of data from U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, *H-2A Temporary Agricultural Program - Selected Statistics, Fiscal Year (FY) 2021*, and *H-2A Temporary Agricultural Program - Selected Statistics, Fiscal Year (FY) 2022*.

Legislation

- [H.R.1778](#) - Dairy and Sheep H-2A Visa Enhancement Act (3/14/19)
- [H.R.1603](#) - Farm Workforce Modernization Act of 2021
 - Passed House 3/18/21
- [H.R.4708](#) - H-2 Improvements to Relieve Employers Act (7/18/23)
- [H.R.3227](#) - Farm Workforce Modernization Act of 2025 (5/7/25)

U.S. Rep. Thompson says agriculture workforce visas will be focus of upcoming legislation

WPSU | By Anne Danahy

Published August 12, 2025 at 10:09 AM EDT



Sydney Roach / WPSU

"We need to have provisions in place," Thompson said after the summit.

"Like the legislation I'm preparing to introduce to make sure we have a continuity in the pipeline for the agricultural workforce."

<https://radio.wpsu.org/2025-08-12/u-s-rep-thompson-legislation-migrant-agriculture-work-visas>

United Farm Workers v. U.S. Dep't Labor, No. [1:25-cv-01614](#) (E.D. Ca.)

- Complaint filed Nov. 21, 2025 challenging Oct. 2025 Interim Final Rule
- Alleges that skill level tiers will result in most H-2A positions classified as Skill Level I
- Claims that IFR
 - “deliberately lowers AEWs (and thus many farmworker wages),”
 - “creates an adverse effect on those wages”
 - “contravenes DOL’s statutory mandate to ensure that the employment of H-2A workers will not adversely affect the wages of similarly employed U.S. workers”

Sun Valley Orchards, LLC v. U.S. Dep't Labor, No. [23-2608](#) (3d Cir.)

- July 29, 2025 Opinion: NJ farm entitled to have H-2A job violation case decided by Article III court instead of DOL ALJ
 - DOL argued case about immigration—public rights
- **"Job order functions as a work contract"**
- **H-2A labor regulations "mainly concern federal government's local interest in domestic wages," = not public rights**
- Feb. 12, 2026: DOL filed Pet. Cert w/ Supreme Court



Sun Valley Orchards Questions Presented

Dep't Labor

"Whether Article III of the Constitution precludes **Congress from assigning to the Secretary of Labor the initial adjudication of proceedings** to collect monetary remedies from employers who violate the terms and conditions of participating in the H-2A visa program."

Sun Valley Orchards

"Whether Article III of the Constitution precludes the **Department of Labor from adjudicating proceedings** to collect monetary remedies from employers who have **allegedly** violated the terms and conditions of employment of H-2A workers **and domestic workers in corresponding employment.**"

Figure 2. H-2A Visas Issued, FY1992-FY2022

Homing in on H-2A: An Overview of the Temporary Agricultural Program

