AG LABOR REVIEW

# H-2A program difficult, but useful for farm operators

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Amid serious and growing nationwide agricultural labor shortages, growers increasingly look to the federal H-2A visa program for workers. This raises questions in the minds of some; will "local" workers be displaced, will "foreign workers" depress wages, or will guest workers be in abusive employment situations? The facts are that guest workers cost employers significantly more than domestic workers, they do good work, they benefit from significantly more government scrutiny of employer and workplace, and it is documented that each seasonal guest worker generates two to three year-round local jobs.

H-2A is the only U.S. visa program for temporary agricultural workers. Because of additional costs, complicated application process and paperwork, visa stay limitations, along with significant inflexibility versus farming's unpredictability based on weather and markets, H-2A workers are only about 10 percent of agriculture's seasonal workforce.

The H-2A employer is the most highly regulated employer in agriculture, being scrutinized by multiple divisions of three federal agencies, at least one state agency, and having their information openly available to the public.

H-2A employers must apply with their State Workforce Agency (SWA) for a specific number of workers. Then they apply to the U.S. Department of Labor (DOL) for certification, months in advance of the day the worker is needed. If the employer receives approval from DOL they must actively recruit domestic workers. This is costly and continues until the contract is 50 percent complete. During this period, the employer is obligated to hire every U.S. worker able to perform the job, and pay them the same rate paid to the H-2A workers.

For those who believe H-2A workers are paid "low wages," every H-2A worker must be paid an Adverse Effect Wage (AEWR). AEWRs are significantly higher than minimum wage and are determined by USDA wage surveys. They range from a low of $10.38 per hour (Mississippi, Arizona, Louisiana) to a high of $13.79 per hour (Kansas, Nebraska, South Dakota, North Dakota), versus the federal minimum wage of $7.25 per hour. Domestic workers working with H-2A workers are considered "corresponding workers" and must also receive the AEWR while there are H-2A workers being employed.

On top of wages, H-2A workers must be provided free housing and meal provision. Corresponding domestic workers receive the same benefits.

Employers must pay inbound and outbound travel costs, and all paperwork and recruiting costs for H-2A workers, and for corresponding U.S. workers who must travel to accept employment.

All said and done, the average H-2A worker's cost is close to $20 per hour.

The H-2A program requires employers to provide workers' compensation insurance for all H-2A and corresponding workers. Nearly half of all states exempt agriculture if they do not employ H-2A workers.

H-2A employers expect to be audited by DOL Wage and Hour Division (WHD) and/or their state auditors at least annually. WHD audits are very rigorous and look for wage theft, short-pay, illegal deductions, improper charges to employees, documentation, recruiting, housing or other illegal charges in addition to rigorous housing inspections.

WHD auditors always look for evidence of illegal child labor, trafficking, and payroll violations, and whether H-2A (and corresponding workers) are paid for at least three-fourths of the total hours promised in the contract.

Although H-2A is costly and highly regulated, employers utilize the program for one reason – it is the best way to secure enough work-eligible employees needed to remain in business. Because of contract guarantees multiple layers of government and public interest group oversight, scrutiny of H-2A is significantly less forgiving of mistakes and either inadvertent or intentional abuse. H-2A employers assume they will be the target of multiple regulatory audits annually. In return, employers get highly motivated workers who come to the United States to earn more than they could have at home to improve the lives and futures of their families.

Although difficult, the program works. Is H-2A fair to both workers and employers? Each must speak for themselves but the high percentage of workers returning to the same employer year after year indicates an overall fair and equitable exchange of value for both sides.

Now is the time to register for NCAE's fourth annual Ag Labor Forum in Las Vegas, Nov. 29 to Dec. 1. We expect registration to sell out this year with so many issues and uncertainty going into 2018, so register now at www.NCAEonline.org. **VGN**