

# H-2A Agricultural Worker Program: *Trends in Health Care Access and Employer Visa Certification*

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Migrant and Community Health Forum  
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# AGENDA

- Introductions
- H-2A Program Overview and Trends
- Effect of COVID-19 on Farmworker Communities
- Strategies for Outreach to H-2A Communities
- Questions



# FARMWORKER JUSTICE

Farmworker Justice is a nonprofit organization that seeks to empower farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice

[www.farmworkerjustice.org](http://www.farmworkerjustice.org)





# NCFH

National Center for Farmworker Health, Inc.

The National Center for Farmworker Health (NCFH) is a private, not-for-profit corporation located in Buda, Texas dedicated to improving the health status of farmworker families. We provide information services, training and technical assistance, and a variety of products to community and migrant health centers nationwide, as well as organizations, universities, researchers and individuals involved in farmworker health.

<http://www.ncfh.org/>

# PARTICIPATION POLL

- Have you heard of the H-2A program?
- Have you served or worked with H-2A workers?
- Do you think the number of H-2A workers in your state is increasing, decreasing or about the same?



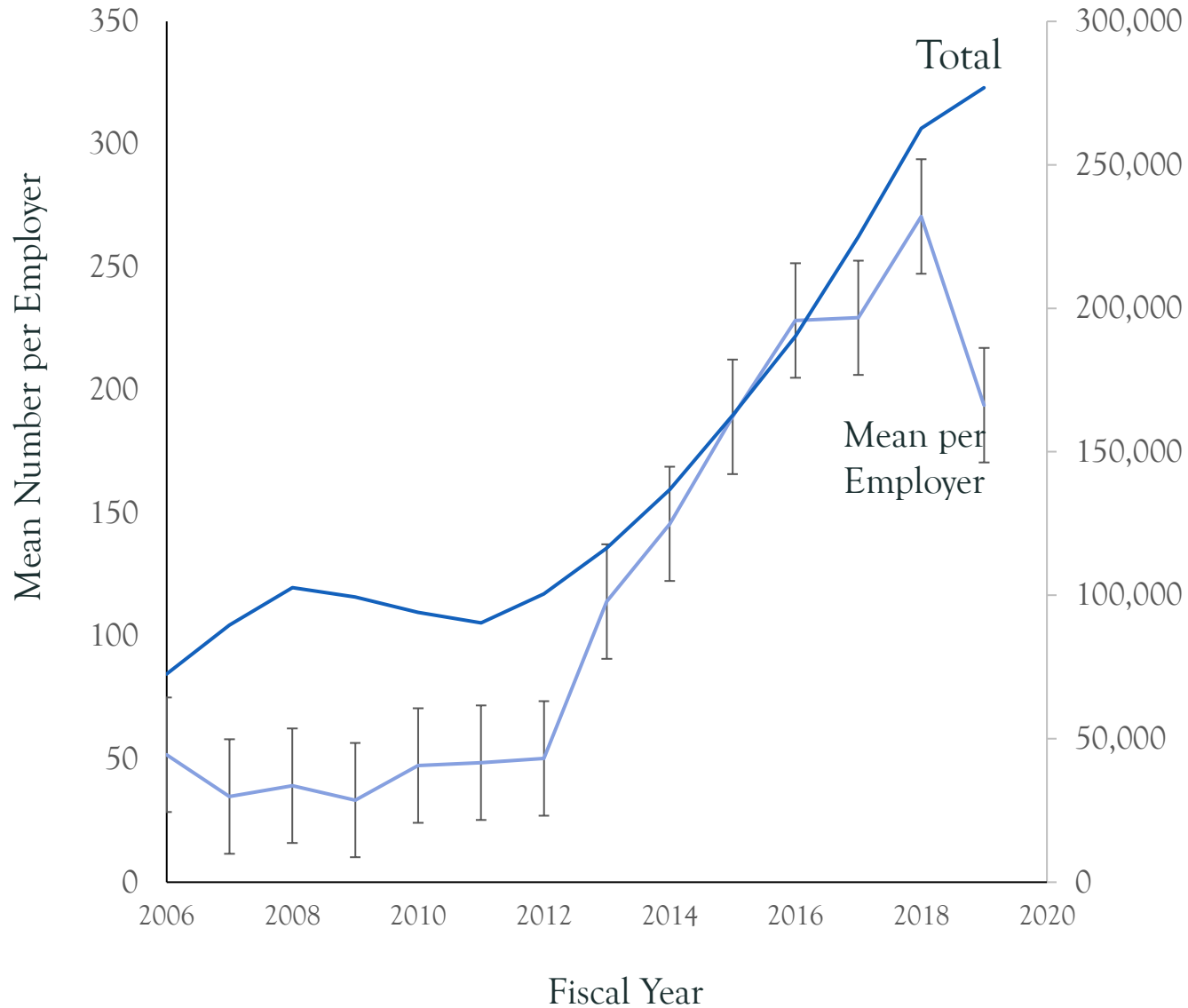


# What is the H-2A Program?

- Permits temporary employment of foreign agricultural workers, provided:
  - Insufficient number of U.S. workers available
  - Wages and working conditions of workers in the U.S. will not be “adversely affected”
- Job offer (“clearance order”) listed in the agricultural recruitment system
- H-2A temporary non-immigrant visas:
  - Position certified by the U.S. Dept. of Labor
  - Tied to employers who sponsored them
  - Require employer provide: a wage at or above a minimum rate, housing, transportation to and from country of origin and workers’ compensation insurance



## H-2A Positions Certified



## H-2A PROGRAM GROWTH (2006 – 2019)

- Over 2 million positions certified since 2006
- Total positions certified increasing since 2010
- Mean number per employer increasing up to 2018
- FY 2020, 275,430 H-2A positions were certified



# WHO ARE H-2A FARMWORKERS?

- 96% from Mexico<sup>(2)</sup>
  - Other top sending countries: Jamaica, Canada, South Africa, Guatemala
- 94% men<sup>(3)</sup>
  - Women often told H-2A jobs only available to men<sup>(4)</sup>



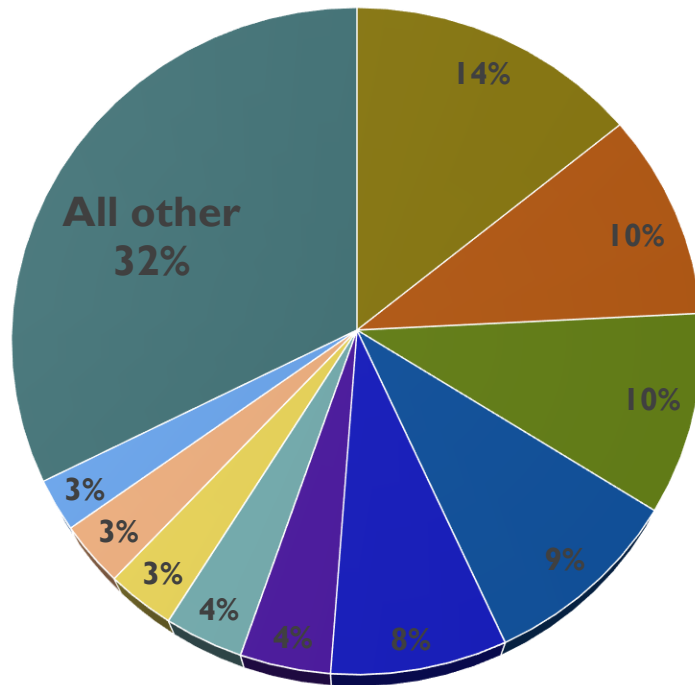
# COUNTRIES OF ORIGIN



Source: Department of Homeland Security.<sup>(5)</sup> (Range of workers per country: 3 - 277,340)

# WHERE ARE H-2A WORKERS?

Positions Certified (FY 2020)



State	Positions Certified (FY 2020)
Florida	39,064
Georgia	27,614
Washington	26,832
California	25,453
North Carolina	22,052
Louisiana	11,332
Michigan	9,912
Arizona	8,602
New York	8,482
Kentucky	6,952

Data Source: Office of Foreign Labor Certification<sup>(1)</sup>

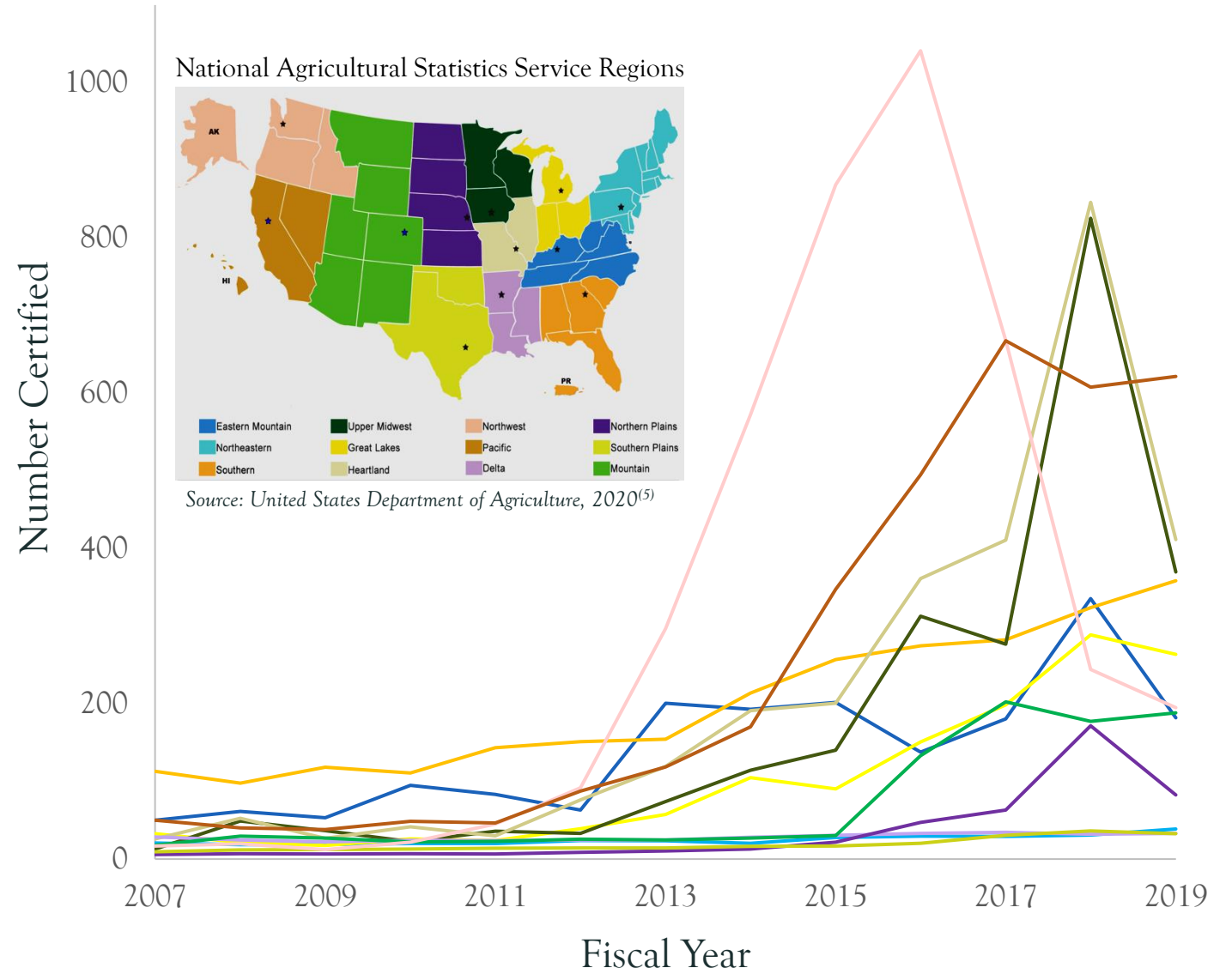


# TRENDS IN H-2A CERTIFICATION BY EMPLOYER

- Higher mean numbers of visas certified per employer in Northwest and Pacific before 2017
- Recent increase in mean number visas per employer in Heartland and Upper Midwest

\*\*Preliminary means\*\*

## Employer Annual Mean H-2A Certifications by Worksite Region



Data Source: Office of Foreign Labor Certification<sup>(1)</sup>

# H-2A AGRICULTURAL GUESTWORKER PROGRAM PROTECTIONS<sup>(7)</sup>

- Wage Floor
  - Highest of:
    - Adverse Effect Wage Rate,
    - Prevailing Wage,
    - Federal or State Minimum Wage, or
    - Collective Bargaining Wage
- Protections for Domestic Workers
  - Recruitment Obligations
  - 50% Rule
- Recruitment Protections
  - 3/4<sup>th</sup> Guarantee
  - Travel Reimbursements
- Housing Guarantee

# H-2A WORKERS' LABOR RIGHTS

- Federally funded legal aid programs can serve H-2A workers.<sup>(8)</sup>
- H-2A workers are protected by the Fair Labor Standards Act and state contract & employment laws.<sup>(9)</sup>
- The Department of Labor, Wage and Hour Division can enforce the H-2A protections.<sup>(10)</sup>
- H-2A workers are not currently covered by AWPA (the Migrant and Seasonal Agricultural Worker Protection Act).<sup>(11)</sup>

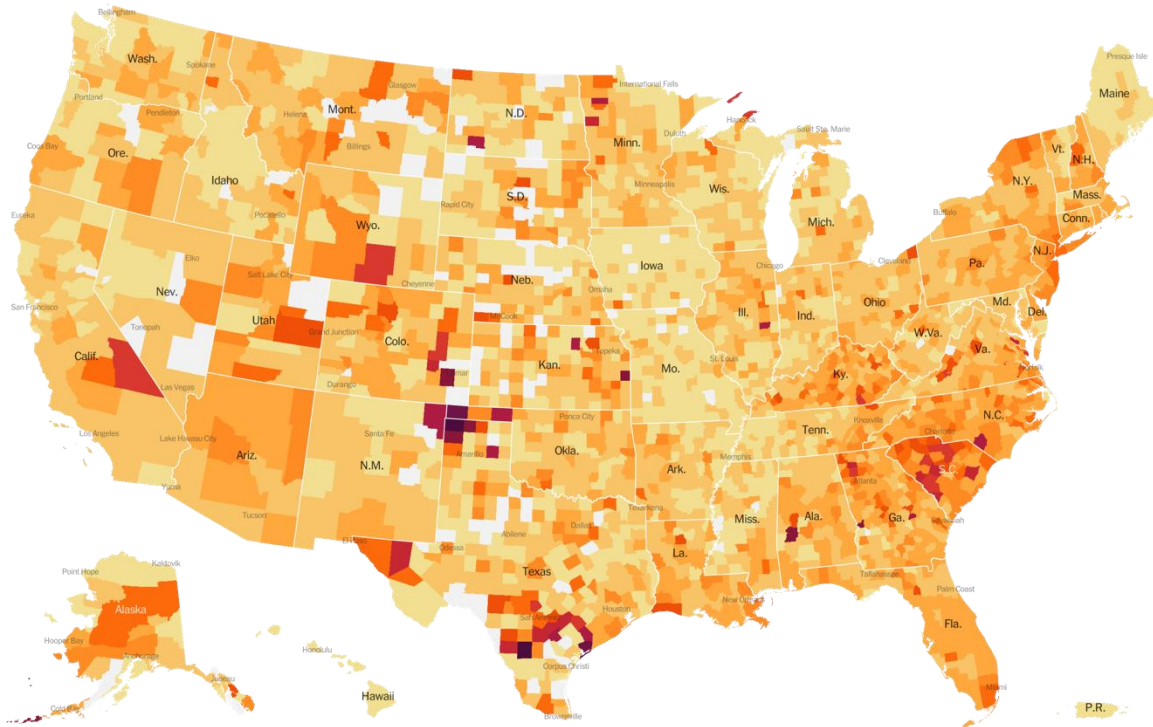


# FEDERAL STANDARDS: OSHA'S UPDATED GUIDANCE<sup>(12)</sup>

- No new legal obligations
  - Reminds employers that they are “responsible for providing a safe and healthy workplace free from recognized hazards likely to cause death or serious physical harm.”
- Best Practices
  - Hazard assessment to identify where and how workers might be exposed to COVID-19 at the workplace
  - Measures to limit the spread of COVID-19
  - Reasonable accommodations for high-risk workers
  - Communication in a language workers understand
  - Non-punitive policies to allow workers to stay home if they are sick
  - Paid Sick Leave
  - Enhanced cleaning
  - Reporting
  - Protection from retaliation
  - Vaccine distribution

# STATE STANDARDS

- California
- Michigan
- Oregon
- Virginia
- Washington





## WHAT MAKES H-2A WORKERS PARTICULARLY VULNERABLE TO COVID-19?

- Overcrowded Housing
- Transportation
- Lack of PPE
- Language



# BARRIERS TO GENERAL HEALTH CARE ACCESS

- Workers have limited access to clinics
  - More isolated than general farmworker population
  - Reliance on employer for transportation
  - Fears of increased immigration enforcement
- Workers may be reluctant to go to a doctor or to access medical care
  - Concern about cost of visit or treatment
  - Fear of employer retaliation (especially for work-related injuries)
  - May not trust health care provider or outreach worker
  - Use of traditional medicine and home remedies
- Workers may find it hard to communicate with or understand health care providers
  - Language barriers
  - Education/literacy levels


# EFFECTS OF THE PANDEMIC ON FARMWORKERS

- Excess Mortality<sup>(17)</sup>
  - 39% increase in mortality among food/agricultural workers
  - 59% increase in mortality among Latino food/agricultural workers
- Financial Consequences<sup>(18)</sup>
  - 52% reported decreased work time, resulting in lost income
  - 69% reported increased difficulty paying for food during the pandemic
  - 50% reported extra burdens paying for childcare
  - 59% reported cost/lack of insurance as a significant barrier to accessing healthcare

# OUTREACH TO H-2A WORKERS

An official website of the United States government [Here's how you know](#) ▼

U.S. DEPARTMENT OF LABOR

 SEASONALJOBS.DOL.GOV

HOME FIND JOBS ADVANCED SEARCH

## YOUR ONE-STOP SOURCE FOR SEASONAL AND TEMPORARY JOBS

Have a seasonal job or location to work in mind? Enter them below and we'll help get you connected to find the job that's right for you.

**Search**  
By Occupation, Job Title, Industry, Employer Name, Case Number

**Location**  
City, State, or ZIP code

To find data on H-2A certifications, including where H-2A workers are located in your state, you can go to the Department of Labor's Seasonal Job database at [seasonaljobs.dol.gov](https://seasonaljobs.dol.gov)



# HOW TO SEARCH FOR A JOB ORDER

 An official website of the United States government [Here's how you know](#) 

U.S. DEPARTMENT OF LABOR



SEASONALJOBS.DOL.GOV

HOME | FIND JOBS | ADVANCED SEARCH

## Search

By Occupation, Job Title, Industry, Employer Name, Case Number

e.g., Orchard, "Orchard Picker", Farming, Smith Orchard, "H-300-11212-614705"

## Location


By State or Territory

CALIFORNIA 

[Search Jobs](#)

## Filters

**Begin on or after Date**

03/17/2021 

**Job Type**

Agricultural 

**Job Status**

Active 

[Clear All](#)

Showing 10 of 184 Results

SORT BY:

Relevancy 

### Farmworkers and Laborers, Crop

Boavista Farms  
Santa Maria, CA  
\$14.77 per hour

Begin date: 03/18/2021  
End date: 12/31/2021

**ACTIVE**

### Farmworkers and Laborers, Crop

Boavista Farms  
Santa Maria, CA

Begin date: 03/18/2021  
End date: 12/31/2021

\$14.77 per hour

[View Job Order](#) 



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

**A. Job Offer Information**

1. Job Title * Farmworkers and Laborers, Crop								
2. Workers Needed *		a. Total	b. H-2A	Period of Intended Employment				
35		35	3. Begin Date * 3/18/2021		4. End Date * 12/31/2021			
5. Will this job generally require the worker to be on-call 24 hours a day and 7 days a week? If "Yes", proceed to question 8. If "No", complete questions 6 and 7 below.						<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
6. Anticipated days and hours of work per week *						7. Hourly work schedule *		
48	a. Total Hours	8	c. Monday	8	e. Wednesday	8	g. Friday	a. <u>7</u> : <u>00</u> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
0	b. Sunday	8	d. Tuesday	8	f. Thursday	8	h. Saturday	b. <u>3</u> : <u>30</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
<b>Temporary Agricultural Services and Wage Offer Information</b>								
8a. Job Duties - Description of the specific services or labor to be performed. * <i>(Please begin response on this form and use Addendum C if additional space is needed.)</i>								
17 Workers will be transplanting crops: -Unloading racks from bins and then loading trays from racks onto tractor; -Seating on tractor to remove plant from tray and drop into transplanting machine; -Follow behind tractor and fill in any spots that were missed by those on the tractor;								

### C. Place of Employment Information

1. Address/Location * 4630 Orcutt Road				
2. City * Santa Maria	3. State * California	4. Postal Code * 93455	5. County * Santa Barbara	
6. Additional Place of Employment Information (If no additional information, enter " <b>NONE</b> " below) * NONE				
7. Is a completed <b>Addendum B</b> providing additional information on the places of employment and/or agricultural businesses who will employ workers, or to whom the employer will be providing workers, attached to this job order? *				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

### D. Housing Information

1. Housing Address/Location * 907 N. Miller Street				
2. City * Santa Maria	3. State * California	4. Postal Code * 93454	5. County * Santa Barbara	
6. Type of Housing * One-Story Home			7. Total Units * 1	8. Total Occupancy * 18
9. Housing complies or will comply with the following applicable standards: *			<input checked="" type="checkbox"/> Local <input checked="" type="checkbox"/> State <input checked="" type="checkbox"/> Federal	
10. Additional Housing Information. (If no additional information, enter " <b>NONE</b> " below) * House has four (4) bedrooms with 18 beds, two (2) full bathrooms, living room, dining room with enough tables and chairs, laundry room with washer and dryer, and a fully equipped kitchen with cooking and eating utensils. Kitchen has two(2) stoves/oven combo and three (3) refrigerators. House has been inspected and approved for 18 workers by HCD.				

# POTENTIAL QUESTIONS TO ASK H-2A WORKERS

- How many years have you worked as an H-2A worker? What is your home country?
- Did you have to pay someone in your home country in order to receive this job?
- Did you receive your contract or work order?
- Are you paid by hour or by piece rate? Are you making the promised wage?
- How many hours of work per week were you promised? How many hours per week are you currently working?
- Did you receive a safety training?
- What happens if you're injured at work? Do you know who to report an injury to?
- Are you working with pesticides?
- Do you have free kitchen facilities or is your employer providing meals? How often do you get to go to the grocery store? Does your employer offer you transportation there?

**Expect it to take time to build trust with H-2A workers – return visits are important!**



# IDENTIFYING LOCAL PARTNERS

## Workforce Development and Foreign Labor Certification Office

- Can help connect domestic workers to H-2A jobs, and Foreign Labor Certification Office can clarify questions about H-2A job orders, as well as take complaints

## Migrant Education

- Provide ESL and/or additional education classes to H-2A workers.

## Religious Groups

- Visit H-2A workers to provide emotional and spiritual support

## Farmworker Law Offices

- Educate and empower workers about their legal rights, in order to prevent exploitation and abuse

# COMMUNITY- BASED STRATEGIES

- Addressing “specialized needs” improves overall health
- Medical providers may be the only contact H-2A workers have outside of their employment while they are in the U.S.
  - H-2A workers do not qualify for public benefits, except for emergency Medicaid.
- In Michigan, community health workers and Farmworker Legal Services work together to visit camps, make referrals, and educate workers on both medical and legal issues.
  - Presence of medical services can be good “cover” for legal aid outreach workers to speak with H-2A workers, if worried about retaliation.

QUESTIONS?

# REFERENCES

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- 2) Department of Homeland Security. 2021. Nonimmigrant admissions 2019 data tables. Retrieved from <https://www.dhs.gov/immigration-statistics/nonimmigrant>
- 3) Need source from FJ
- 4) Centro de los Derechos del Migrante and U of Penn. L. Sch. Transnational L. Clinic, Engendering Exploitation: Gender Inequality in U.S. Labor Migration Programs (2018), <https://cdmigrante.org/wp-content/uploads/2018/01/Engendered-Exploitation.pdf>.
- 5) Source: Nonimmigrant Admissions by Selected Classes of Admission and Sex and Age. Department of Homeland Security. <https://www.dhs.gov/immigration-statistics/readingroom/NI/NonimmigrantCOAsexage>
- 6) U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS). (2020). Regional Offices. Accessed December, 2020. [https://www.nass.usda.gov/Statistics\\_by\\_State/RFO/index.php#skipnav](https://www.nass.usda.gov/Statistics_by_State/RFO/index.php#skipnav).
- 7) 29 CFR § 501
- 8) Legal Services Corporation. Program Letter 2000-02, Part 1626 Eligibility for H-2A Workers Temporarily Outside the U.S.. Retried from <https://www.lsc.gov/program-letter-2000-02>.
- 9) 29 CFR § 501
- 10) 29 CFR § 501.15
- 11) 29 U.S.C. §§ 1802(8)(B)(ii) and 1802(10)(B)(ii)
- 12) U.S. Department of Labor (DOL), Occupational Safety and Health Administration. Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. Retrieved from <https://www.osha.gov/coronavirus/safework>.
- 13) COVID-19 Prevention, §3205 (2020), <https://www.dir.ca.gov/title8/3205.html> (California’s Emergency Temporary Standards, adopted by the California Department of Industrial Relations)
- 14) Temporary Rule Addressing COVID-19 Workplace Risks, 437-001-0744 (2020), <https://osha.oregon.gov/OSHARules/div1/437-001-0744.pdf> (Oregon’s rule establishing mandatory guidance for workplaces adopted by the Oregon Occupational Safety and Health Division)
- 15) General Coronavirus Prevention Under Stay Safe – Stay Healthy Order (December 22, 2020), <https://lni.wa.gov/dA/36e85758be/DD170.pdf> (Washington’s directive for enforcing workplace safety requirements adopted by the Department of Labor and Industries)
- 16) Emergency Temporary Standard Infectious Disease Prevention, §16VAC25-220 (July 15, 2020), <https://www.doli.virginia.gov/wp-content/uploads/2020/07/COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-FINAL-7.17.2020.pdf> (Virginia’s emergency temporary standard adopted by the Safety and Health Codes Board).
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- 18) *Always Essential, Perpetually Disposable: California Farmworkers and the COVID-19 Pandemic*, CALIFORNIA INSTITUTE FOR RURAL STUDIES (2020), [covid19farmworkerstudy.org](https://covid19farmworkerstudy.org) (reporting data from quantitative surveys and in-depth interviews with farmworkers)