

Who are H-2A Workers and How Can We Connect Them to Health Insurance Under the Affordable Care Act



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MIDWEST STREAM FORUM FOR AGRICULTURAL WORKER HEALTH

SAN ANTONIO, TX

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

Agenda



- Introductions
- Overview of H-2A program
- ACA and H-2A workers
- Challenges and Successful Strategies
- Resources

Participant Poll #1



- How many have heard of the H-2A program?
- Have you served or worked with H-2A workers?
- What questions do you have or hope to have answered during this workshop?

What is the H-2A Program?



- H-2A workers are in the U.S. on temporary non-immigrant visas
 - Visas are tied to employers who sponsored them
 - Positions are up to 10 months, certified by the U.S. Dept. of Labor
 - Employers must provide housing, transportation to and from their home country, and workers' compensation insurance
- The program is growing: In FY 2015, 140,000 were certified, up from 48,000 in FY2005.
 - TX: In FY2015, there were 2856 certified positions. During FY2014, there were 2511 and FY 2013, there were 2043 certified positions
 - ✦ TX ranked #14 among H-2A receiving states



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H-2A Agricultural Guestworker Program Protections



- DOL certification process
- U.S. recruitment protections and 50% rule
- Housing
- Transportation
- 3/4 Guarantee
- Adverse Effect Wage Rate
- Workers' Compensation



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Who are H-2A Workers?



- Most H-2A workers are young men between 18 and 35 years old
- Vast majority are from Mexico
- H-2A workers from Central America and Haiti may be on the rise

New Trends

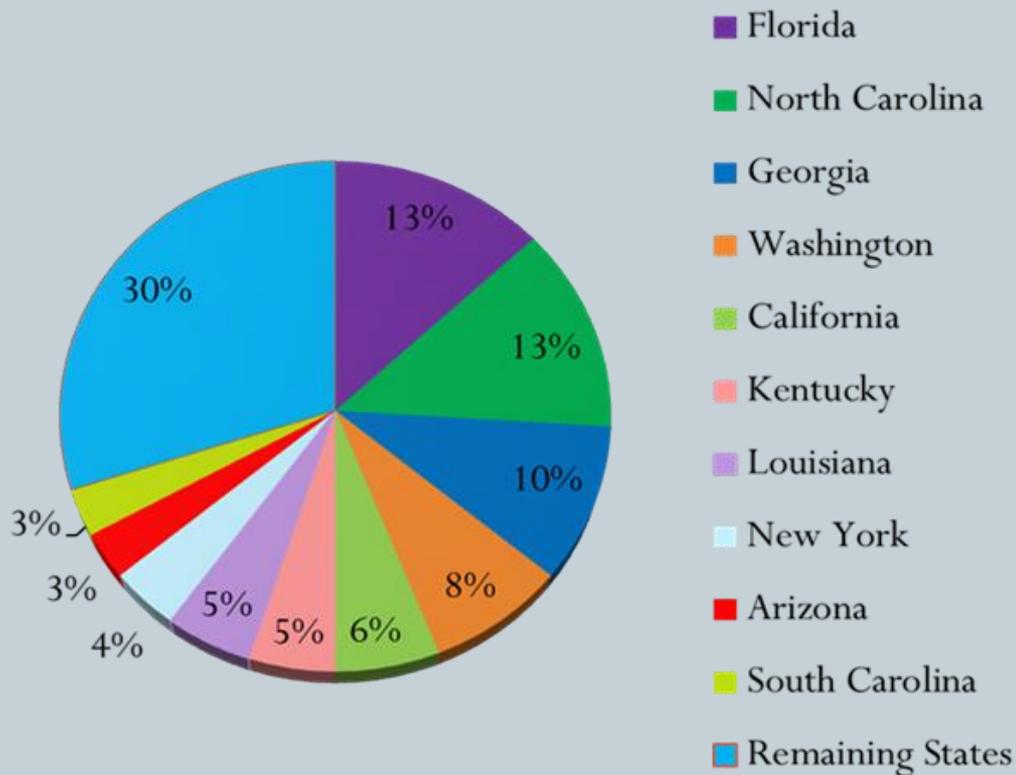


- From FY2014 to FY2015, several states saw significantly large increases in program usage
 - 42% increase in California
 - 39% increase in Georgia
 - 32% increase in Florida
 - 30% increase in Washington
- Rise in H-2A labor contractors
 - Workers move around and are harder for outreach workers to locate
 - Many workers are housed in hotels and other off-site housing

Where are H-2A Workers?



H-2A Certifications FY 2015



Florida	17,942
North Carolina	17,696
Georgia	14,393
Washington	11,844
California	8,591
Louisiana	7,787
Kentucky	6,722
New York	5,039
Arizona	3,763
South Carolina	3,594

H-2A Workers' Labor Rights



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

H-2A Workers & Labor Trafficking



- **Signs:**
 - Confiscation of passport, visa, or other documents;
 - Threats or intimidation by an employer, supervisor, or recruiter;
 - The worker is in debt;
 - Was recruited through false promises concerning the nature and conditions of his/her work;
 - Fear of employer or authorities
- Contact local legal aid or the trafficking hotline [[National Human Trafficking Resource Center Hotline](#) at 1-888-373-7888 or text HELP to BeFree (233733)]

Outreach to H-2A Workers



- To find out where H-2A workers are in your area, you can go to the Dept. of Labor's iCERT portal – <https://icert.doleta.gov/>



Outreach to H-2A Workers



- Search for a job order on iCERT

UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

A to Z | Site Map | FAQs | Forms | About DOL | Contact Us | Español

Enter Search Term Search

ETA Home Find Job & Career Info Business & Industry Workforce Professionals Grants & Contracts TAA Program Foreign Labor Certification Performance & Results Regions & States

ETA Home > iCERT Portal > Public Job Registry

Public Job Registry

Advanced Search

Quick Search

ETA Case Number:

Case Type:

Status:

State or Territory of Intended Employment:

Job Location within: of ZIP Code:

Job Title:

Employer Name:

Job Order Posting Date Range: From: To:

Industry: Search NAICS Code

Search Reset

ETA Case Number	Job Posting Date	Case Type	Status	Employer Name	State	Work Start Date	Work End Date	Job Title	Job Order	Cert
H-300-15212-788	08/06/2015	H-2A	ACTIVE	Severt's Tree Farm...	VA	09/17/2015	12/20/2015	Farmworker		
H-300-15205-324	07/31/2015	H-2A	ACTIVE	WOODBINE FARMS ...	VA	09/09/2015	11/03/2015	farmworker laborer c...		
H-300-15207-655	07/31/2015	H-2A	INACTIVE	Springwood farm	VA	09/10/2015	10/31/2015	Farmworkers and lab...		
H-300-15203-424	07/30/2015	H-2A	ACTIVE	Mt. Clifton Fruit Co...	VA	09/08/2015	12/10/2015	Orchard Worker		
H-300-15205-324	07/29/2015	H-2A	INACTIVE	NICHOLS FARM LC	VA	09/08/2015	11/03/2015	Farmworker and Lab...		
H-300-15203-779	07/28/2015	H-2A	INACTIVE	FRED L. GLAIZE, L.C.	VA	09/08/2015	10/30/2015	Farmworker and Lab...		
H-300-15205-697	07/27/2015	H-2A	ACTIVE	RUSSELL ORCHARDS	VA	09/08/2015	11/06/2015	Farmworker and Lab...		
H-300-15195-450	07/23/2015	H-2A	INACTIVE	FRUIT HILL ORCHA...	VA	09/01/2015	10/31/2015	Farmworker and Lab...		
H-300-15195-145	07/22/2015	H-2A	INACTIVE	Westwood Farm Inc	VA	09/01/2015	10/16/2015	Farmworker and Lab...		
H-300-15195-658	07/22/2015	H-2A	INACTIVE	Timber Ridge Fruit ...	VA	09/03/2015	10/30/2015	Farmworker and Lab...		

10 / 9 10 84 Row(s)

Disability Access: If you have a disability and are unable to access some of the information contained on the Job Registry portion of this Website because of its format or other features, please email H-2A@registry.chicago.dol.gov or call 1-312-866-8000. Your request will be referred to the appropriate Department of Labor office responsible for providing assistance to you in this regard. In order to help us serve you better, please provide us with a description of your disability and your contact information so we can reach you in the event questions arise while identifying or addressing a solution to your request.

Outreach to H-2A Workers



- Sample job order

U.S. Department Labor #26
Employment and Training Administration

Agricultural and Food Processing Clearance Order ETA Form 790
Orden de Empleo para Obreros/Trabajadores

Control No. 1205-0134
Expiration Date: October 31, 2015

RECEIVED
SEP 2 2015
AGRICULTURAL SERVICES

(Print or type in each field block - To include additional information, go to block # 21 - Please follow Step-By-Step Instructions)
(Favor de usar letra de molde en la solicitud - Para incluir información adicional vea el punto # 21 - Favor de seguir las instrucciones paso-a-paso)

Nos. 4 through 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL	
1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número Calle, Ciudad, Estado y Código Postal): The Nuthouse Inc. 1680 Horse Pasture Rd Roseboro, NC 28382	4. SOC (O'NET) Occupational Code / Código Industrial: 45-2092
a) Federal Employer Identification Number (FEIN) / Número federal de identificación del Empleador: [REDACTED]	5. Job Order No. / Num. de Orden de Empleo: 10415624
b) Telephone Number / Número de Teléfono: (910) 564-2421	a. SOC (O'NET) Occupational Title / Título Ocupacional: Farmworkers & Laborers
c) Fax Number / Número de Fax: (910) 564-5459	5. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radica la oferta (incluya el número de teléfono): P.O. Box 27625 Raleigh, NC 27611
d) E-mail Address / Dirección de Correo Electrónico: lbp@intrstar.net	a. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (incluya el número de teléfono de su línea directa): W.L. Grant
2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo: 1680 Horse Pasture Rd, Roseboro, Sampson County, NC 28382 See attached map with driving directions. Fixed-site employer. Employer owns and/or controls the worksite.	7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo: 9-2-15
3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda: 1680 Horse Pasture Rd, Roseboro, Sampson County, NC 28382 See attached map with driving directions.	8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo: Exempt
a) Description of Housing / Descripción de la vivienda: DWMH (Cap > 2)	9. Anticipated Period of Employment / Período anticipado o previsto de Empleo: From / Desde: 11/01/2015 To / Hasta: 08/27/2016
	10. Number of Workers Requested / Número de Trabajadores Solicitados: 2
	11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: 35 Sunday / Domingo: 0 Thursday / Jueves: 6 Monday / Lunes: 8 Friday / Viernes: 6 Tuesday / Martes: 8 Saturday / Sábado: 5 Wednesday / Miércoles: 6
	12. Anticipated range of hours for different seasonal activities / Rango previsto de horas por alas diferentes actividades de la temporada: 7 a.m. to 3 p.m.
	13. Collect Calls Accepted from / Aceptan Llamadas por Cobrar de:

Potential Barriers to General Health Care



- **Workers have limited access to clinics**
 - More isolated than general farmworker population
 - Reliance on employer for transportation
- **Workers may be reluctant to go to a doctor or access medical care**
 - Fear of employer retaliation (especially for work-related injuries)
 - May not trust health care provider or outreach worker
- **Follow-up treatment may be difficult, especially once they leave the U.S.**

Questions so far...



Participant Poll #2



- H-2A workers are not subject to the ACA's individual mandate while in the U.S.
 - Yes or No
- H-2A workers are eligible for Medicaid
 - Yes or No
- H-2A workers are eligible to purchase health insurance in the Marketplace and may qualify for tax credits, even below 100%FPL
 - Yes or No

Rights and Responsibilities of H-2A Workers under the ACA



- Eligible for health insurance through the marketplaces
- Eligible for financial assistance and cost-sharing reductions to lower the cost of health insurance
- The “individual mandate” applies!
 - Must have comprehensive health insurance during their time in the U.S. or will be subject to a tax penalty, unless qualify for an exemption

How are H-2A Workers' Rights and Responsibilities under the ACA Different from Other Workers?



- **Not eligible for Medicaid**
 - H-2A workers are eligible for tax credits below 100% FPL
- **Only responsible for health insurance coverage during their time in the U.S.**
 - Should not be responsible for the penalty during the months of the year that they are in their home countries
 - Qualify for “certain noncitizen” exemption (exemption “C”) during the months they are outside of U.S.
- **Must disenroll from health insurance before leaving the U.S.**

Note about Workers' Compensation



- Workers' compensation \neq Minimum essential coverage



Workers must have comprehensive health insurance, either from their employer or through the Marketplace, to comply with the individual mandate

Special Considerations



- Many H-2A workers arrive outside of open enrollment
 - Eligible for 60-day Special Enrollment Period that starts the day they enter the U.S.
 - Triggering event = “gaining lawful status”
- Workers must disenroll from health insurance before leaving the U.S.
- Migrant H-2A workers who work for labor contractors
 - Migrant workers qualify for “permanent move” SEP (see [guidance](#) from CMS)



Special Considerations - Taxes



- Confusion about the responsibility of H-2A workers to file taxes
- Workers from Mexico may be able to claim dependents in Mexico on their Marketplace application
 - Dependents must meet IRS definitions
 - Dependents need ITINs
 - ✦ Mexican consulate can assist Mexicans with this process
- Generally, H-2A workers must file as single, married filing jointly, or as head of household to be eligible for tax credits under the ACA*
- H-2A workers who enroll in health insurance should obtain an SSN before they file their taxes
- Substantial presence test – If workers file as non-resident aliens, they qualify for the certain noncitizen exemption

Substantial Presence Test



NUMBER OF DAYS YOU HAVE BEEN IN THE U.S.

THE CURRENT YEAR (YEAR YOU ARE PAYING TAXES ON):

Number of days =

THE PREVIOUS YEAR:

_____ / 3
Number of days divided by 3 =

THE YEAR BEFORE THE PREVIOUS YEAR:

_____ / 6
Number of days divided by 6 =

TOTAL (add the above 3 rows) =

183

If total is 183 days or more, considered a resident alien for tax purposes

Special Considerations - Exemptions



- **Certain noncitizen exemption**
 - If worker files taxes as non-resident alien
 - H-2A workers can claim this exemption for the months they are not in the U.S.

- **Other exemption H-2A workers may qualify for:**
 - Affordability
 - Short Coverage Gap
 - Below tax filing threshold
 - Hardship

Special Considerations – Employer-provided Health Insurance



- **Seasonal worker exemption**
 - Large employers whose workforce over the 50 FTE threshold are seasonal workers who work for fewer than 120 days in a calendar year **ARE NOT** included in the employer mandate
 - H-2A workers are counted towards the employer mandate
- **Newly hired seasonal employees vs. non-variable hour employees**
 - Seasonal employees = customary employment is 6 months or less
 - Employers can use an initial measurement period between 3 and 12 months to determine if the newly-hired employee works on average 30 hours/week
- **Workers declining employer offers of health insurance**
 - Pressure from employers/contractors to decline coverage
 - Are workers aware that they are declining health insurance?
 - Workers who decline employer offers of health insurance are likely not eligible for financial assistance to purchase health insurance in the Marketplace

Challenges and Strategies for O&E



Photo courtesy of NC Farmworkers Project

Enrollment Challenges



- Limited time frame for enrollment - 60 day SEP
- Unfamiliarity with the Affordable Care Act
- Confusion about differences between workers' compensation and comprehensive health insurance
- Tax questions
- Moving/frequent address changes
- Difficulties with enrollment and limited enrollment options
- Limited O&E capacity

Strategies for H-2A Worker Enrollment



- Partner navigators/assisters with outreach staff
 - Outreach staff should establish a “warm hand-off” to assisters to build trust between the worker and the assister
- Ensure workers have basic health insurance literacy
 - Assisters should help workers understand their health insurance options and discuss their health priorities prior to enrollment
 - Health insurance literacy should continue post-enrollment
- Provide consumer-friendly materials in languages understood by the workers



Strategies for H-2A Worker Enrollment



- Partner with other organizations that work with H-2A workers
 - Legal services organizations, community-based organizations, Mexican Consulates
- Partner with local growers
 - Arrange visits to provide information about the ACA and the role of the assister
 - Some assisters have been able to work with growers to arrange transportation to enrollment sites or enrollment events at farms.
 - Growers may not be aware that H-2A workers have rights and responsibilities under the ACA



Strategies for H-2A Worker Enrollment



- Make sure workers have all of the information needed to fill out the application
 - I-94 card, W-2/pay stub, employer information, information about household size and members
- Work with the call center representative to ensure that documents are entered correctly



Strategies for H-2A Worker Enrollment



- **Ensure sustained on-site in-person assistance**
 - Assisters should be flexible in scheduling appointments, providing enrollment assistance at the workers' homes at nights or on Sundays
 - Enrollment requires intensive follow-up with multiple visits pre- and post-enrollment*



Needs Assessment



- What organizations in your area work on ACA education and enrollment?
 - Do they have the resources or capacity to offer assistance outside of Open Enrollment?
- Are in-person assisters able to work at night or on weekends? Do they speak Spanish or have interpreters?
 - Can your organization offer enabling services?

Resources – North Carolina



Legal Aid NC- Farmworker Unit— Resources on the ACA and taxes for H2A workers <http://www.farmworkerlanc.org/es/publicaciones/ley-del-cuidado-de-la-salud>

NC Justice Center—H2A Workers, Taxes, and the Affordable Care Act
http://www.ncjustice.org/sites/default/files/H-2A%20workers%20and%20taxes%20and%20ACA_FINAL.pdf

Helping H-2A Workers Enroll 2015 Webinar Series from NCCHCA

- Part I: Overview of H-2A Worker Program and Affordable Care Act (password: outreach) <https://vimeo.com/122754566>
- Part II: Practical Tips for Connecting with Workers and Helping Them Enroll (password: outreach) <https://vimeo.com/123450486>

NC Farmworkers Project Enrollment Booklet

<http://www.farmworkerlanc.org/es/wp-content/uploads/2015/08/7.10.-15-NC-Farmworkers-Project-Follow-Up-Enrollment-Booklet.pdf>

Farmworker Justice Resources



- [H-2A Fact Sheet](#)
- [ACA and H-2A Agricultural Workers: Frequently Asked Questions](#)
- [Guide to the Health Insurance Requirement](#) ([Spanish](#)) ([English](#)) ([Creole](#))
- [Guide for H-2A Workers](#) ([Spanish](#)) ([English](#)) ([Creole](#))
- [Guide on Employer-Provided Health Insurance](#) ([Spanish](#)) ([English](#)) ([Creole](#))
- [What Questions Should I Ask About My Health Insurance](#) ([Spanish](#)) ([English](#))
- [Webinar – Strategies for H-2A Worker Enrollment in Health Insurance: Lessons from the Field](#)
- [Medical-Legal Partnership Resource Guide for Farmworker-Serving Health Centers and Legal Services Organizations](#)

ISSUE BRIEF
The Affordable Care Act and H-2A Agricultural Workers
Frequently Asked Questions

La Ley de Cuidado de Salud Asequible y Usted
Una Guía para los Trabajadores H-2A

¿Por qué necesito un seguro médico?

¿Qué pasa si no tengo seguro médico?

The Affordable Care Act and You
A Guide to the Health Insurance Requirement

What does the law require about health insurance?

Who is lawfully present?

Are there exemptions to the penalty?

Thank you!!



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