

FARMWORKER POLICY BRIEF



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Immigration Legislation

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Summary of AgJOBS:

Agricultural Job Opportunities, Benefits and Security Act of 2005

The Agricultural Job Opportunities, Benefits and Security Act of 2005 (“AgJOBS”) represents a major compromise on farmworker immigration and labor policy between farmworker advocates (including the United Farm Workers of America, AFL-CIO) and agricultural employers. AgJOBS is numbered S. 359 in the Senate and H.R. 884 in the House of Representatives. Its major sponsors include Senators Larry Craig (R.-Idaho) and Edward Kennedy (D.-Mass.), and Reps. Chris Cannon (R.-Utah) and Howard Berman (D.-Cal.). If enacted, this legislation would

- create an “earned adjustment” program enabling some undocumented farmworkers and H-2A guestworkers to obtain temporary immigration status with the possibility of becoming permanent residents of the U.S. and
- revise the existing agricultural guestworker program, the H-2A temporary foreign agricultural worker program.

Earned Adjustment for Farmworkers

This compromise only applies to workers in the agricultural industry, primarily employees of farms and ranches. Undocumented farmworkers and recent H-2A guestworkers wishing to become immigrants would have to complete a two-step process.

Step One: Apply for Temporary Resident Status. Under this law, a farmworker could apply for temporary residency through a government-approved organization or a licensed attorney. The application period would begin seven months after the law is enacted and would last 18 months. Eligible workers are those who can prove to the government that they:

- worked in U.S. agriculture at least 100 days during any 12 consecutive months between July 1, 2003 and December 31, 2004; and
- are not excluded by certain immigration laws (for example, as to criminal convictions).

Temporary residents would receive authorization to work in any job, not only in agriculture, and to cross the border. The temporary status would last up to 6 years.

Step Two: Earn Legal Permanent Resident Status: Prospective Work Requirement. After becoming a temporary resident, participants must do the following to earn a “green card”:

- work in agriculture for at least 360 days in the six-year period after the law is passed. Within those 360 days and the six-year period,
 - at least 240 of those work days must be during the first 3 years after enactment;
 - the worker must do at least 75 days of agricultural work per year in at least three years.

Workers who don't meet these requirements, who are found to have filed a fraudulent application, or who don't apply for permanent status by the seventh year would lose their temporary resident status and would be required to leave the country. Conviction of a felony or three misdemeanors also would end the temporary resident status.

Immediate Family of Farmworkers. When the worker becomes a temporary resident, his/her spouse and minor children who are living in the U.S. will be protected from deportation if they are undocumented, but will not be given a legal immigration status or employment authorization. Once the worker fulfills the requirements of the earned adjustment program and receives permanent resident status, his/her spouse and minor children also will be granted immigration status as long as they meet other requirements under immigration law. (Minor children who become adults during the process are covered, too.)

Reform of H-2A Temporary Foreign Agricultural Worker Program

The compromise would modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guestworkers to fill agricultural jobs that last no longer than ten months. Most basic H-2A requirements to protect U.S. workers from adverse effects and to protect foreign workers from exploitation would continue, including the “50% rule” requiring the hiring of U.S. workers who apply during the first half of the season, the “¾ minimum work guarantee,” workers’ compensation coverage, and transportation cost reimbursement.

The bills would modify some current H-2A requirements in important ways.

- The program’s application process would be streamlined to become a “labor attestation” program, rather than the current “labor certification” program, to respond to employers’ demands to reduce paperwork, delay and government oversight.
- H-2A employers must provide free housing to non-local U.S. and foreign workers but, under AgJOBS, could choose to provide a monetary housing allowance if the state’s Governor has certified that there is sufficient farmworker housing available in that area.
- Employers would still offer the highest of the “Adverse Effect Wage Rate” (AEWR), the prevailing wage or the federal or state minimum wage. AgJOBS would set the AEWR at the levels that were in effect on January 1, 2003 for a period of 3 years. During this 3-year period, the Congressional General Accountability Office (“GAO”) and a special commission would issue studies and recommendations as to the appropriate wage rate formula. If Congress fails to enact a new formula within 3 years after enactment, the AEWRs will be adjusted by the previous years’ inflation in the consumer price index (up to 4% per year), and annually thereafter on March 1.
- H-2A workers would have the right to file a federal lawsuit to enforce their wages, housing benefits, transportation cost reimbursements, minimum-work guarantee, motor vehicle safety protections, and the other terms of the written H-2A job offer.

No schedule has been issued yet for consideration of AgJOBS.

*Further analysis and updates on the status of these bills will be posted on www.fwjjustice.org
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