

The AG Act—A Workable Solution to the Agricultural Labor Crisis

- 1. Agriculture's Concern:** The AG Act does not address the existing, unauthorized members of the agricultural workforce.

Solution: The AG Act offers experienced, unauthorized agricultural workers the ability to participate legally in the H-2C guestworker program. This allows them to attain legal work status and the ability to travel to and from the United States – two of the most commonly requested forms of relief by unauthorized U.S. agricultural workers. Workers can finally come out of the shadows. They can get pre-certified to join H-2C, pre-approved to leave and re-enter the United States, and receive legal H-2C status upon doing so.

Related Myth #1: Unauthorized agricultural workers must return to their country of origin before they can join the H-2C program.

Fact: The AG Act **does not** require members of the unauthorized agricultural workforce to return to their country of origin in order to join the H-2C program. They only need to temporarily leave the U.S.

Related Myth #2: Unauthorized agricultural workers must spend at least 45 days outside of the United States before they can join the H-2C program.

Fact: Workers are permitted to spend as much or as a little time as they like outside the U.S. before joining the H-2C program (until 12 months from the start of the H-2C guest worker program have elapsed). Then, once they enter the program, they must accrue a total of 45 days (or an amount of time equal to 1/12 of the days they spent working in H-2C status, whichever is less) outside the U.S. in order to be eligible for a *subsequent* visa.

- 2. Agriculture's Concern:** Widespread uncertainty regarding whether unauthorized farmworkers will be allowed back into the U.S. could thwart the success of the AG Act.

Solution: To inject critical certainty into the process, the AG Act allows workers to get pre-certified to join the H-2C program before they travel outside the U.S. After becoming pre-certified to join H-2C, a worker will be issued a document authorizing travel, and can re-enter the U.S. without processing through a consulate.

- 3. Agriculture's Concern:** Workers will need to demonstrate that they have non-immigrant intent or deep ties to their home country that they have no intention of abandoning. How will a worker who has been in the U.S. for 10 to 20 years, and has family here in the U.S., achieve that requirement?

Solution: The AG Act simply eliminates the requirement that H-2C workers demonstrate non-immigrant intent.

- 4. Agriculture's Concern:** The number of H-2C visas is “capped.”

Solution: While the visas available for work in meat and poultry processing are limited by a hard cap of 40,000 per year, the estimation of visas available for production

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agriculture is a slightly more complicated calculation. The base number of 410,000 is only the tip of the iceberg.

Each year, a whole new allocation of visas becomes available regardless of how many H-2C workers remain in the U.S. This means that the actual total of H-2C workers can be two or more times greater than the numerical limit in a given year (i.e. not less than 900,000 in the second year and thereafter). Better yet, the AG Act contains an automatic escalator. If the maximum number of visas is exhausted in a given year, up to 10% more visas will be added automatically. With this instant emergency safety valve, the number of available visas can grow year after year to accommodate new workers. This is because each year's *total* visa allocation becomes the baseline for the next year.

In addition, any previously unauthorized farmworkers who participate in the H-2C program will *never* count against the annual cap. H-2A and H-2B workers who return to their employers as H-2C workers will not count toward this annual visa limit either.

5. **Agriculture's Concern:** Agricultural businesses will be required to use E-Verify to confirm their employees' legal status.

Solution: Agricultural businesses will not be required to use E-Verify until the H-2C guestworker program is up and running and authorized agricultural workers have had a chance to adjust to a legal status. The timeline is as follows:

Enactment of the AG Act:	To be determined
H-2C program is implemented:	6 months after enactment
Workers begin process of adjusting to legal status:	6 months after enactment
Opportunity to adjust to legal status ends:	18 months after enactment
Use of E-Verify becomes mandatory for agricultural employers:	2 years after enactment

6. **Agriculture's Concern:** Requiring a worker to spend 45 days outside the U.S. before becoming eligible for a subsequent visa is unworkable and would be disruptive to agricultural businesses.

Solution: The AG Act allows workers to accrue time toward their required touchback as they or their employer see fit. Any absences from the U.S. can be subtracted on a day-for-day basis from the touchback required. Moreover, if an H-2C worker accrues the required days before the end of the work authorization period, the worker is immediately eligible for a new visa while in the United States.

7. **Agriculture's Concern:** Agriculture needs a flexible at-will employment option (i.e., "portability" for workers who wish to transition from one agricultural job to another).

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Solution: The AG Act includes a flexible at-will employment option that safeguards critical H-2C visas. Under the at-will employment provisions, workers who complete the job for which they were petitioned may work in an at-will status for the duration of their work authorization period. The at-will provisions are crafted to ensure that individuals from outside the U.S. do not obtain an H-2C visa and proceed to seek work outside of the agriculture industry. The agriculture industry simply cannot risk having valuable H-2C visas usurped by individuals who will not work to benefit U.S. agriculture. As such, the AG Act requires the Department of Homeland Security to implement technology to support at-will employment no later than twenty-four months after enactment.

8. **Myth:** Chairman Bob Goodlatte is not interested in making further agriculture-related modifications to the SAF Act.

Fact: Chairman Goodlatte is working every day to address the concerns of the agriculture industry. In fact, no other Member of Congress is doing more to solicit and address feedback from the agriculture community. Since February 1, Chairman Goodlatte has made roughly a dozen modifications in response to agriculture industry advice. Organizations and individuals who continue to work with Chairman Goodlatte in good faith to improve the bill know that their concerns are being heard.