

H.R. __
THE “AGRICULTURAL GUESTWORKER ACT”
(THE “AG ACT”)
Bob Goodlatte

Federal Agencies to Run H-2C Program	Departments of Agriculture (USDA), Homeland Security (DHS) and State (DOS)
Admittance to the U.S.	A grower must petition for an H-2C worker before the worker can be admitted to the U.S. An H-2C worker may switch to another grower as soon as the other grower files its own petition for the worker (or hires the worker “at-will”, as described below). In addition, if an association of growers petitions for an H-2C worker, the worker may be transferred among the association members.
At-Will Employment	Under the “at-will” component of the H-2C program, growers can employ H-2C workers without first having to petition for them. To do so, growers must be designated as registered agricultural employers by USDA and must agree to abide by the terms and obligations of the H-2C program as if they had filed petitions. H-2C workers can only seek at-will employment if they have already been admitted to the U.S. through an H-2C petition and have completed the agreed-upon period of employment with their initial employer or have been terminated by their original employer. Registered agricultural employers and H-2C workers may voluntarily terminate at-will employment at any time. The H-2C worker must then find additional at-will or petition-based employment within 30 days or leave the U.S. In order to ensure that at-will H-2C workers do not seek unlawful nonagricultural employment, the at-will component will only become available once all U.S. employers are required to use E-Verify and the system is able to indicate whether a worker is eligible to be employed in all occupations or only to perform agricultural labor.
Length of Stay	The maximum period of stay for H-2C workers in temporary or seasonal jobs is 18 months, after which they must remain outside the U.S. for a period equal to at least 1/12 of the duration of their stays on H-2C visas. H-2C workers in jobs that are themselves permanent can initially work for up to 36 months before having to leave the U.S. If a worker’s absences from the U.S. during the period of admission accumulate to 45 days, they will be considered to have met their obligation to remain outside the U.S. following their stay. Shepherders are exempted from the requirement to leave the U.S. periodically (as they are under the H-2A program), as are commuter workers who return to their home country each day.

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Enforcement of Program Conditions	Attestation-based. USDA will be responsible for ensuring grower compliance.
Non-Seasonal Employers	Dairies, food processors and other agricultural employers may use the H-2C program to fill jobs that are not temporary or seasonal.
Recruitment of U.S. Workers	An employer must place a local job order with the state workforce agency serving the local area where H-2C workers will be employed, which shall post the job order on its website for a minimum of 30 days (and the Department of Labor shall include links to the official websites of all state workforce agencies on its website).
Wages	Employers must pay H-2C workers wages of not less than the State or local minimum wage, or 115% of the Federal minimum wage, whichever is greatest.
Escrow Account	To ensure that H-2C workers abide by the length of stay limitations, employers shall withhold 10% of their wages and transfer the withheld funds into a trust fund. The workers can pick up the escrowed amounts at a U.S. embassy or consulate in their home countries – should they fail to do so, the forfeited funds will assist in the enforcement of the immigration laws. Shepherders are exempted from provision, as are commuter workers who return to their home country each day.
Social Security and Unemployment Insurance	Employers of H-2C workers in jobs that are not temporary or seasonal shall pay to the Federal government an amount equivalent to the Federal Social Security and Unemployment Insurance taxes on the wages paid to H-2C workers that the employer would have been obligated to pay had the H-2C workers been eligible for these programs. The funds shall be provided to USDA, DHS and DOS to reimburse them for expenses incurred in administering the H-2C program.
Transportation Expenses	Employers are not required to reimburse H-2C workers’ transportation expenses.
Housing	Employers are not required to provide housing to H-2C workers.
Arbitration and Mediation	In order to discourage abusive litigation, growers and H-2C workers can agree to binding arbitration and mediation of any grievances. In addition, civil actions for damages cannot be brought against employers unless at least 90 days prior to the filing of lawsuits, requests have been made to the Federal Mediation and Conciliation Service to assist in reaching a resolution of the dispute and mediation has been attempted.

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Legal Services Corporation	H-2C workers are not eligible for legal assistance under the Legal Services Corporation Act.
Family Members	H-2C workers cannot bring accompanying spouses and minor children unless they are themselves H-2C workers.
Unlawful Immigrant Participation	Agricultural employers may use the H-2C program to employ farmworkers unlawfully present as of the date of introduction, so long as the workers leave the U.S. for a period within six months of becoming H-2C workers. Until the implementation of the H-2C program, such aliens may legally continue to work in agriculture.
Numerical Limitation	The total number of aliens who may newly receive H-2C status each year is limited to 500,000, except that: • under an automatic escalator, if the yearly allotment is exhausted, the allotment for that and subsequent years shall be increased by up to 10%. If that higher allotment is itself exhausted in a subsequent year, the allotment for that and following years shall be increased by up to 10%, and • under an automatic de-escalator, if the yearly allotment is not exhausted, the allotment for subsequent years shall be decreased by up to 5% (or a percentage representing the unutilized portion of the original allotment). If that lower allotment is itself not exhausted in a subsequent year, the allotment for following years shall be further decreased by up to 5% (or a percentage representing the unutilized portion of the original allotment) – except that the allotment for any year can never fall below 500,000. To the extent that agricultural employers use the H-2C program to hire: • farmworkers unlawfully present as of the date of introduction, or • workers they had previously employed under the H-2A or H-2B programs, such workers will not be counted against the numerical cap.
Federal Public Benefits	As non-qualified aliens, H-2C workers are ineligible for most Federal public benefits. In addition, they will be ineligible for Obamacare subsidies and refundable tax credits (the Earned Income Tax Credit and the Child Tax Credit).
Green Cards	The 10,000 immigrant visas available each year for unskilled workers will be reallocated to farmworkers.