



Farm Workforce Modernization Act

MYTH VS. FACT

Here are the **FACTS** about what the Farm Workforce Modernization Act does:

- Simplifies H-2A by reducing duplicative paperwork—now only one filing needed instead of three.
- Bureaucracy is reduced even further for farmers with staggered labor needs. Farmers can file one petition for the entire season, allowing for staggered entry of H-2A workers.
- Modernizes recruitment by allowing employers to post job openings on an online job registry. No classified ads required.
- Reduces labor costs by freezing wages for 1 year and capping wage growth thereafter. The adverse effect wage rate is replaced in later years.
- Makes available 60,000 year-round H-2A visas over the first 3 years, growing annually by 12.5%. Dairy is guaranteed at least half of these visas, and any unused visas are available for other agriculture industries.
- Stabilizes the existing workforce by giving legitimate farmworkers a chance to get a 5-year Certified Agriculture Worker (CAW) visa to work in U.S. agriculture. As long as the worker continues to meet minimum days in agriculture annually, the worker can continue to work in the U.S. with unlimited 5-year renewals. CAWs can cross the border as they need without restriction.
- CAWs can earn the opportunity to apply for a green card by paying a penalty and continuing to work in agriculture for at least 8 years. If a CAW can prove 10 years of prior work in agriculture, they can apply for a green card at 4 years.

MYTH: This bill will codify wage surveys into law and result in multiple wage classes. Under this bill, wages will be much higher than the current Adverse Effect Wage Rate (AEWR).

FACT: This bill provides for granularity in wages similar to the Trump Administration's H-2A regulation. However, unlike the Trump regulation, this bill applies a one-year freeze of wages across all categories at the current rate. After the one-year freeze, all categories are then limited in wage growth to 3.25% with the ability to go down -1.5%. (Exception: If the resulting wage is less than 110% of the Federal or state minimum wage, then the wage could go up by up to an additional percent to 4.25%.) After year 10, the AEWR requirement ends, and the Secretaries of Agriculture and Labor must develop a new wage standard with input from stakeholders. Further, if Congress fails to act without reforming AEWR, some estimates have shown wages could go up at least 7% in 2020.

MYTH: Adjusted workers are treated immediately as U.S. workers, thus requiring employers to hire them. This displaces previous H-2A workers.

FACT: Certified Agriculture Workers (CAWs) have a requirement to work in agriculture that no domestic worker has. Because of that requirement and proven experience in agriculture work, CAWs do receive preference over foreign agriculture workers. There is no expansion of the current workforce; CAW workers are already here and working in agriculture. The bill eliminates the legal chaos farmers and workers face today.

MYTH: This bill does not allow agricultural associations to file as agents on behalf of their members.

FACT: This bill does not affect the ability of associations to file as agents. The bill allows associations to file as agents, or as a joint or sole employer of workers.

MYTH: This bill provides no relief for dairies or year-round agriculture.

FACT: This bill creates year-round access to the H-2A program for dairy and other agricultural sectors that desperately need workers but have previously been unable to utilize the program. Without this bill, year-round agriculture has no access to a legal immigrant workforce.

MYTH: This bill would create new funding for the Legal Services Corporation.

FACT: There is no new funding in this bill for the Legal Services Corporation.

MYTH: This bill requires farmworker housing to meet Occupational Safety and Health Administration (OSHA) standards.

FACT: Farmworker housing is already required to meet OSHA standards. The bill makes no changes to that requirement. The bill provides \$11 billion in additional funds for grower-provided and other farmworker housing.

MYTH: This bill establishes a new complaint/investigation process that allows anyone to file a complaint.

FACT: There is no new process established in this bill. It simply codifies existing regulations.

MYTH: The bill requires more reporting on employer recruitment efforts.

FACT: There are no additional reporting requirements in this bill, and requirements for recruitment efforts have been simplified and modernized.

MYTH: This bill creates a new private right of action for H-2A workers (under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)).

FACT: Under current law, any operation that hires one domestic worker is covered by MSPA. This bill would require H-2A workers to go through mandatory mediation before litigating.

MYTH: This bill gives workers up to two years to file a legal claim against an employer, even after the worker has returned to their home country.

FACT: Under current statute, H-2A workers already get this. There is nothing new in this bill.

MYTH: This bill gives the Department of Labor (DOL) the ability to sue on behalf of an employee.

FACT: Under the Fair Labor Standards Act (FLSA), DOL already has this ability. Nothing new in this bill.

MYTH: To overcome a denial of labor certification, this legislation places the burden of proof on employers to show that domestic workers were turned away for lawful reasons.

FACT: Nothing new in this bill. This provision already exists under current law.

MYTH: This bill permits very limited appeals and does not grant de novo appeals of denials or NODs.

FACT: This bill allows employers to quickly fix application deficiencies, as with current law. The bill, however, improves this process by creating a new emergency procedure for farmers, so issues are fixed faster and workers are not delayed.

MYTH: This bill establishes a new requirement for employers to provide housing for domestic workers outside of a 50-mile distance.

FACT: The bill does not change any current housing requirements. As with current law, the requirement to provide housing applies only to U.S. workers who live outside of the normal commuting distance for the area.