

Ag Labor Trends

★ H-2A or Bust?



Be Prepared!



Understand who you are dealing with

I want to grow my own food, but I can't find any bacon seeds.



H-2A – The Basics

- What, Where, When, and How Many
- File form ETA 790 (job order) with Office of Foreign Labor Certification (OFLC) through the online FLAG system 45 – 60 days prior to date of need.
- Once notified of approval by State Workforce Agency (SWA), file form ETA 9142 with OFLC through FLAG
- Once certified by DOL, file Form I-129 with U.S. Citizenship & Immigration Service (USCIS)
- Once visas are approved by USCIS, recruit workers and arrange for them to get to Consulate of your choice to obtain visas



What

- Job Description

- What tasks are going to be performed
- Workers may only do tasks identified in the job order
- Any domestic worker doing any tasks in the job order must be given the same benefits as H-2A workers such as pay.
- Workers must be paid the Adverse Effect Wage Rate (AEWR)



Where

- All Locations that H-2A employees will be working
- DOL prefers physical addresses but will accept cross streets or GPS coordinates if addresses are not available
- Workers cannot work at any location not identified on the job order



When

- The application must contain a start and end date
- Necessary for issuance of the visa
- The recently proposed rule change allows for a 14 day 'grace period' for the start date (can bring in workers up to 14 days after your stated start date)
- Currently All workers requested must be brought in on your start date
 - Note: Proposed rule allows for staggered entry through 120 days



How many

- How many H-2A workers do you need to supplement your domestic workforce?

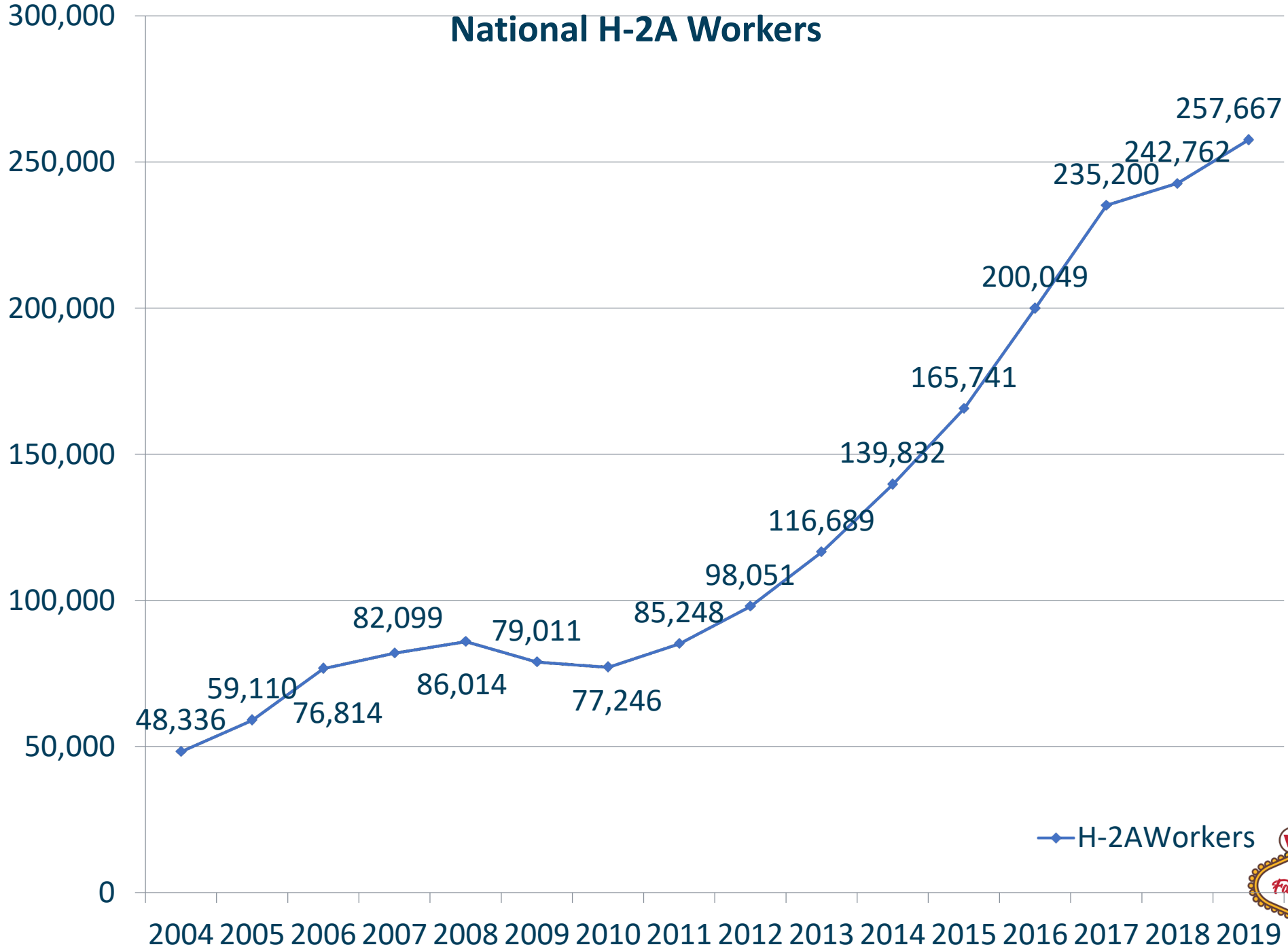


Agricultural Labor Issue

- Why worry?
 - ✓ National Ag Worker Survey – 51% “Employment Authorized”
 - ✓ But H-2A guest worker program usage has seen dramatic growth
 - ✓ Very difficult to get domestic workers
 - 217 recruitment reports
 - 15,764 job openings
 - 70 referrals from employment service
 - 5 accepted the job



National H-2A Workers



Department of Labor: H-2A Program

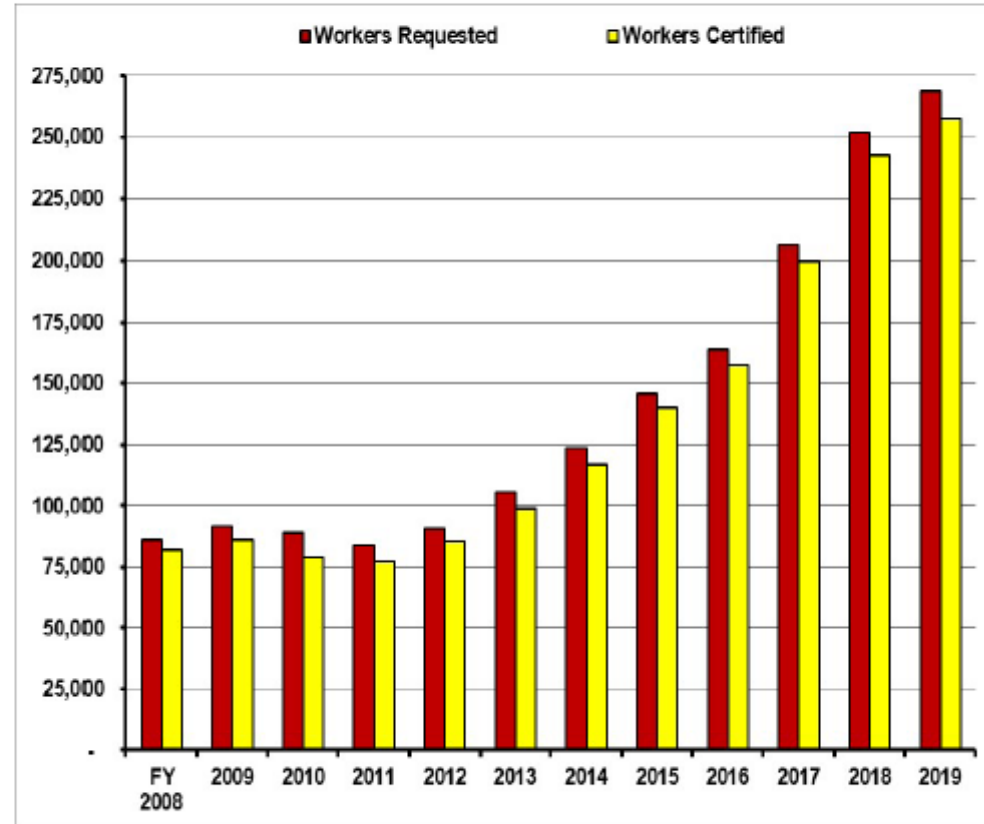
Workload Trends, FY 2008 – 2019

FY 2019 Workload

- 12,626 labor certifications
- 257,667 workers certified
- 96% certification rate
- 64% of certifications for individual farms-ranches
- 41% of workers certified for farm labor contractors

Top States of Employment

	<u>FY 2008</u>	<u>FY 2019</u>
Florida	5,800	33,598
Georgia	6,500	29,480
Washington	2,500	26,226
California	2,900	23,321
North Carolina	9,100	21,605



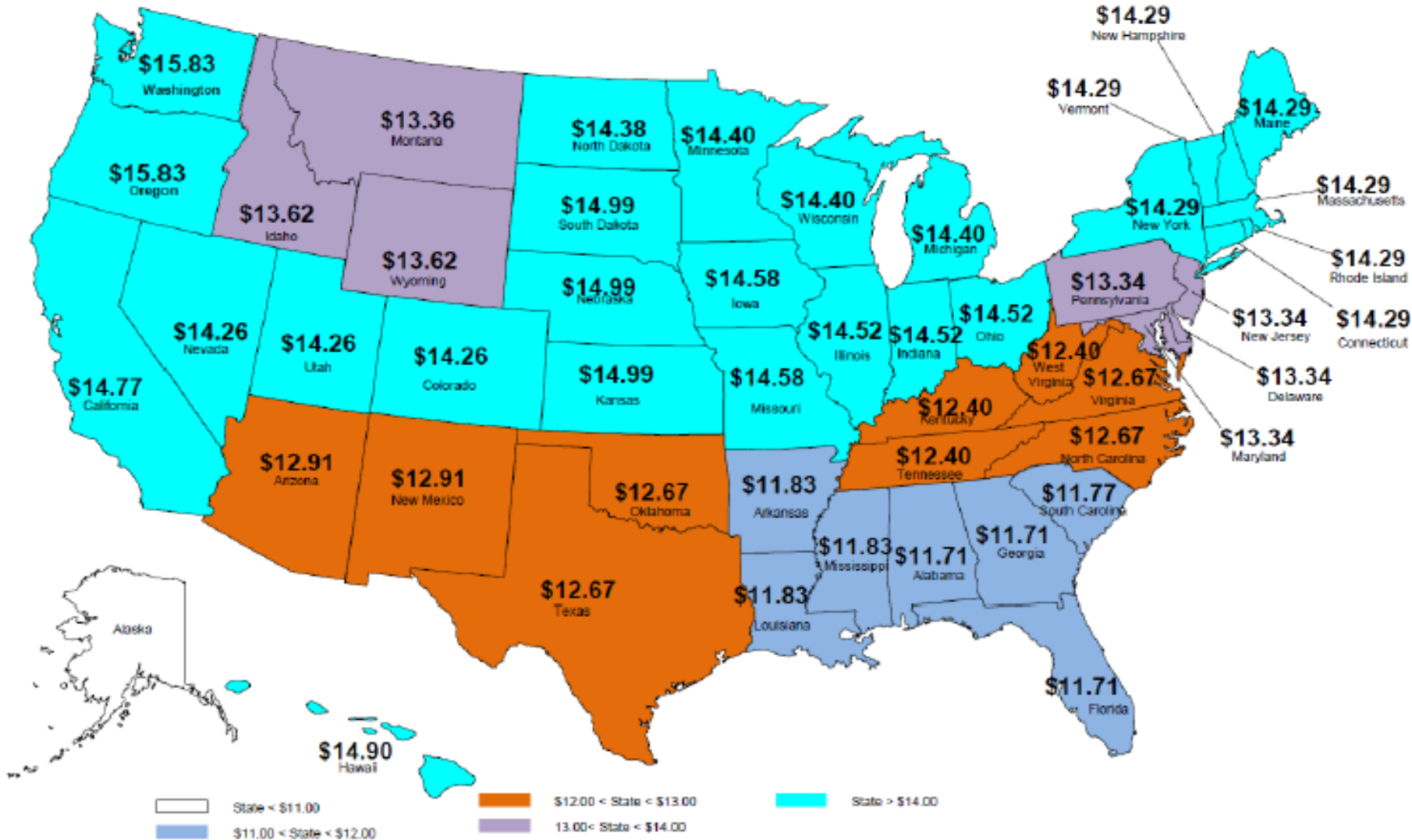
Important Enforcement Issues

- Pay
- Disclosure
- Housing
- Domestic hiring (non-discrimination)



Department of Labor: H-2A Program

Expected 2020 AEWs, by U.S. State



Where do we go from here?



Regulatory Action

- Proposed rule attempt to modernize and streamline the program
 - 489 page rulemaking document
 - Some good
 - ↑ Allows staggered entry for all
 - ↑ Allows 14 day 'grace period' for start date
 - ↑ Eliminated useless newspaper ads for ag work
 - ↑ Allows post certification amendments to the job order
 - Some not so much
 - ↓ Increases FLC surety bonds exponentially
 - ↓ Does not correct 'Definition of Ag' issue
 - ↓ Says contracted wage rate will change if it goes up – but not if it goes down
 - ↓ Does not change the AEWCR calculations



Congressional Action

- Farm Workforce Modernization Act (HR 5038)
- Introduced by Cong. Zoe Lofgren (D-CA)
- Passed the House 260-165 (with 25 Republicans)
- Goals – Attempt at bipartisanship
 - Path to Legal Status for current workforce
 - Reform/Streamlining of H-2A Program
 - E-Verify



Streamlining & Modernization

- Some helpful changes:
 - ✓ Single platform to file with State Workforce Agency, DOL, and DHS
 - ✓ Adverse Effect Wage Rate (AEWR) – maximum increase per year of 3.25% and maximum decrease of 1.5% up to year 2029
 - ✓ Wage rate at time of contract will not change with new AEWR
 - ✓ Allows a limited number of year round workers but with caps
 - ✓ Allows some staggered entry
 - ✓ Still no cap on seasonal workers



Streamlining & Modernization

- Some issues that require a fix
 - Farm Labor Contractor access to staggered entry
 - What happens to wages after 2029
 - Caps on year round visas
 - Wage disaggregation
 - Added MSPA coverage
 - *Definition of Agricultural Labor and Services*
 - *Does not allow FLCs to haul product from the field to processing/packing house*
 - *Does not allow cooperatives to participate*
 - *Does not allow packing houses not physically located on the farm to participate*

What's Next

- Must have movement in the Senate
 - Some have indicated they will not take up the House bill but may consider developing a separate bill
 - Challenges:
 - Election year politics
 - Republicans have traditionally opposed legalization efforts
 - The “A” word will be trotted out
- ❖ Please call your Senator

