

# The H-2A Program in the US and California

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Key words: farm labor, immigrant workers, farm wages

## Abstract

The H-2A program allows US farmers who anticipate too few US workers to be certified by the US Department of Labor (DOL) to recruit and employ guest workers, usually for up to 10 months. Between 1942 and 1964, California farmers employed more Bracero guest workers than in any other state, but they were slow to embrace the H-2 program created in 1952, which was modified and renamed H-2A in 1986. Beginning in 2005, farm labor contractors in border areas provided H-2A workers to harvest winter vegetables, and H-2A employment has since expanded to berries and vegetables in coastal counties. We analyzed US and California H-2A job certification data to determine how the program is used currently and a proposed wage freeze would affect farm labor costs.

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## **Introduction**

Since 1952, the H-2(A) program has allowed US farmers who anticipate a shortage of US farm workers to fill seasonal farm jobs with foreign guest workers. Employers seeking to hire H-2A workers must be certified by DOL's Office of Foreign Labor Certification to recruit and employ guest workers, which requires employers to satisfy three major criteria, viz, try (and fail) to recruit US workers, offer free and approved housing to H-2A workers and out-of-area US workers, and pay an Adverse Effect Wage Rate (AEWR) that varies by state. The AEWR for California was \$14.77 an hour in 2020, 14 percent more than the state's \$13 minimum wage. H-2A guest workers are tied to their US employers by contracts and are in the US an average of six months.

The H-2 program was created in the 1952 Immigration and Nationality Act and remained relatively small until 1986, when the Immigration Reform and Control Act (IRCA) modified and separated it into H-2A for farm and H-2B for nonfarm seasonal guest workers. During the 1950s, the separate Bracero program was much larger, peaking at 450,000 US admissions a year when fewer than 10,000 farm jobs a year were filled by H-2 workers. After the Bracero program ended in 1964, DOL made it difficult for farm employers to switch seamlessly from Braceros to H-2 workers, so H-2 certifications stayed low during the 1970s, confined primarily to harvesting sugar cane in Florida and apples in northeastern states (Martin, 2009).

IRCA legalized unauthorized farm workers and imposed federal sanctions or fines on employers who knowingly hired unauthorized workers. The result was expected to be an exit of now legal workers to nonfarm jobs and an upsurge in H-2A guest workers as farmers sought to avoid fines (Martin and Luce, 1988). However, unauthorized migration increased in the 1990s, as workers learned to provide false work-authorization credentials when hired. IRCA did not require employers to determine the validity of worker documents, and the Immigration and Naturalization Service did not

enforce the new employer sanctions law vigorously (Commission on Agricultural Workers, 1993).

The H-2A program remained small in the 1990s because unauthorized workers with false documents were readily available. The Florida sugarcane harvest that employed 10,000 H-2A workers was mechanized in the mid-1990s, and the locus of H-2A employment shifted from Florida sugar cane to NC tobacco and vegetable farms and apple farms in the northeastern states (Martin, 2009).

Since 2000, the H-2A program has quadrupled in size and California has become one of the top five states with H-2A workers. We analyzed the 13,549 applications submitted to DOL's OFLC in FY20, including 713 submitted by employers based in California. Some employers submitted several applications, and we analyzed the job offers submitted by 8,935 US and 223 California farm employers to find that California H-2A job offers promised \$14,400 for an average 26 weeks of US work, more than the \$12,500 US average for 24 weeks of US work. Our analysis is the first examination of US and California H-2A job offers, and provides a guide to how the H-2A program is likely to evolve under several proposed changes.

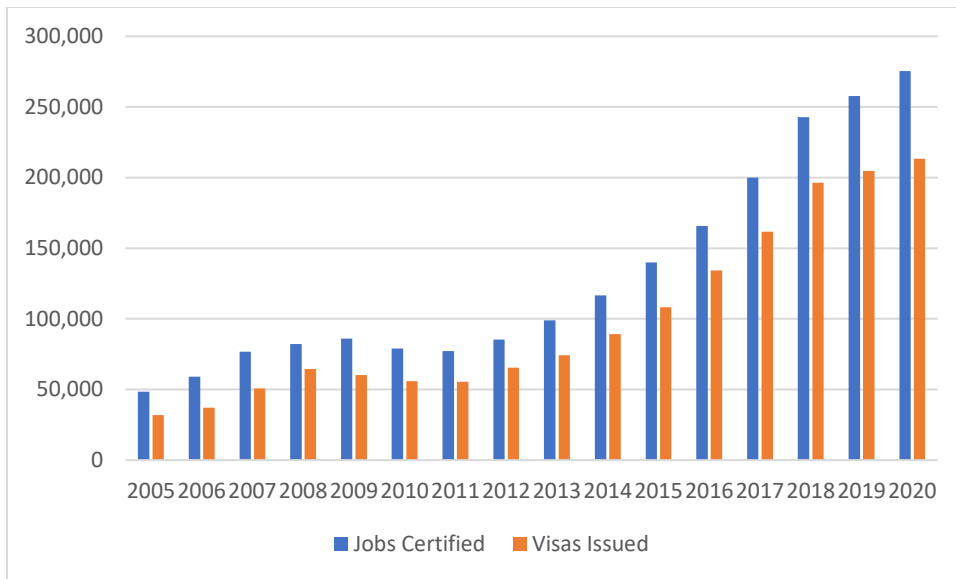
## **US Trends**

Employers began to request more H-2A workers after the 2008-09 recession slowed the entry of unauthorized workers and the Immigration and Customs Enforcement (ICE) agency stepped up audits of the I-9 forms signed by newly hired workers and their employers (DOL OFLC). ICE audits made employers aware of unauthorized employees, and some formed associations to recruit and transport H-2A workers to their farms so that they would have legal employees.

The number of US farm jobs certified to be filled by H-2A workers more than tripled, from 75,000 in FY10 to over 275,000 in FY20 (DOL OFLC). Not all of the jobs certified to

be filled by H-2A workers are in fact filled by such workers, and some H-2A visa holders are able to fill two or more certified jobs, as when an employer association moves a worker from one farm to another. Figure 1 shows that the number of H-2A visas issued is typically between 70 and 80 percent of the number of jobs certified, about 213,300 in FY20.

**Figure 1. US H-2A Jobs Certified and Visas Issues, FY05-20**



There are 1.5 million year-round equivalent jobs in US agriculture, including 1.1 million in crop and 400,000 in animal agriculture. California has almost a third or 425,000 of US average agricultural employment, including 390,000 or 90 percent of its average agricultural employment in crops (DOL QCEW). The 205,000 H-2A workers in the US, and the 20,000 H-2A workers in California, are in the US an average six months, so that two H-2A workers are equivalent to one full-time worker. H-2A workers are thus almost 10 percent of average employment in US crop agriculture and three percent of average employment in California crop agriculture (DOL OFLC and QCEW).

Table 1 shows that six states each had more than 10,000 H-2A jobs certified in FY20 and these six states collectively accounted for 55 percent of US H-2A certifications. Florida

had 14 percent of H-2A jobs certified, Georgia and Washington had 10 percent each, California had nine percent, North Carolina had eight percent, and Louisiana had four percent. Since H-2A contracts offered an average of six months of US work, two contracts create one full-time equivalent (FTE) job.

H-2A workers play a much larger role in crop agriculture in southeastern states such as Florida and Georgia than in California and Washington because more jobs are certified for H-2A workers in these states and employers of H-2A workers do not pay unemployment insurance (UI) taxes on the wages of H-2A workers in southeastern states, so H-2A workers are excluded from Quarterly Census of Employment and Wages (QCEW) employment data in these states. All employers are exempt from paying federal UI taxes on the wages of H-2A workers, and half of the states exempt H-2A workers from state UI taxes as well. California and Washington do not exempt H-2A wages, so the QCEW data approximate a census of farm employment and wages in these states but not in the southeastern states.

**Table 1. H-2A Jobs and FTEs Certified by State, FY20**

State	H-2A jobs	H-2A FTE Jobs	Ave Annual Crop Employ (NAICS 111 + 1151)	H-2A FTEs/QCEW
FL	39,064	19,532	56,687	34%
GA	27,614	13,807	13,523	102%
WA	26,832	13,416	89,544	15%
CA	25,453	12,727	387,319	3%
NC	22,052	11,026	13,588	81%
LA	11,332	5,666	4,873	116%
US total	275,430	137,715	888,268	16%

Source: OFLC Disclosure Data and 2019 QCEW Annual Employment Data

Average annual crop employment in column three is employment covered by unemployment insurance. States such as CA and WA require all agricultural employment to be covered by UI, while southeastern states do not, which is why full-time equivalent H-2A employment can exceed average UI-covered employment in GA and LA.

Table 2 shows that the average number of jobs per certified US application was 20 in FY20, the average duration of job offers or contracts was 168 days or 24 weeks, and the average hours offered per week was 39.3. H-2A contracts in FY20 offered 943 hours at an average wage of \$13.29 an hour or \$12,711, for a total H-2A wage bill of \$3.5 billion.

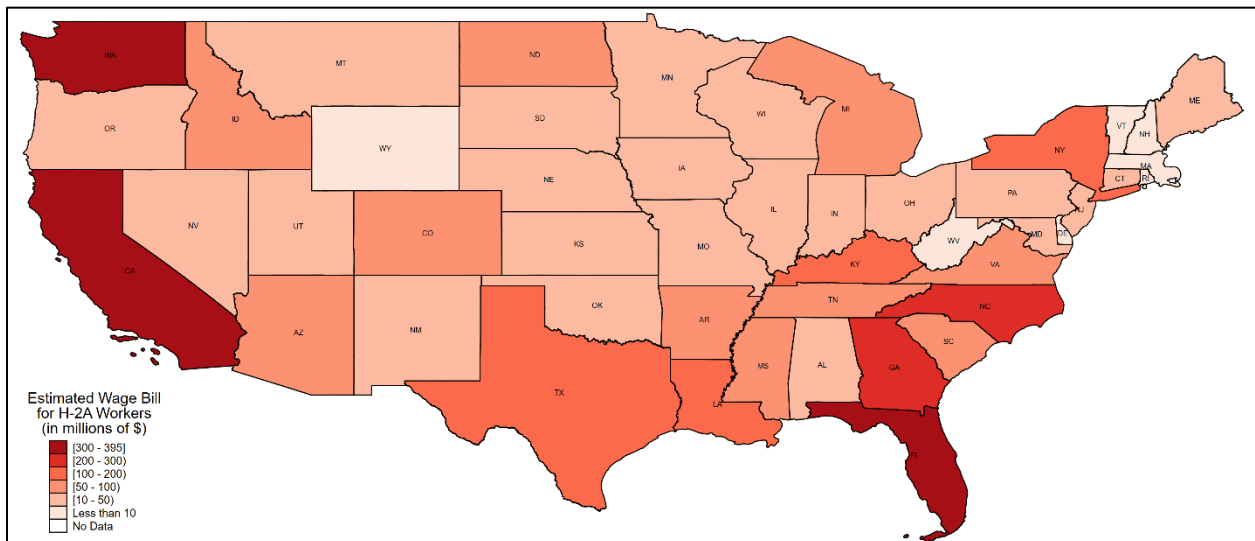
**Table 2. H-2A Average Job Offers: US, CA, and FL (FY20)**

	US	CA	FL
Total Jobs Certified	275,430	25,453	39,064
Average Number Jobs per Certified Application	20	36	67
Average Length of Employment: Days	168	183	164
Average Length of Employment: Weeks	24	26	23
Average Anticipated Hours per Week	39	38	37
Average Earnings (\$): US AEW \$13.29, CA \$14.77, FL \$11.71	\$12,711	\$14,738	\$10,119

Source: OFLC Disclosure Data.

Figure 2 shows that almost half of H-2A wages are paid in the top five H-2A states, Florida, \$395 million, Washington, \$386 million, California, \$375 million, North Carolina, \$275 million, and Georgia, \$228 million.

**Figure 2. H-2A Wage Bill by State (FY20)**



Source: OFLC Disclosure Data.

The value of H-2A job offers, and thus H-2A wage bills by state, are approximate for several reasons. First, only 70 to 80 percent of certified job orders result in H-2A visas being issued. Second, workers could earn less than 100 percent of the contract value if employers satisfy only the three-fourths guarantee, meaning that they pay for three-fourths of the days and hours of work specified in the job offer. On the other hand, workers could earn more than 100 percent of the contract's value if they work more hours than promised, they work under piece rate wage systems and earn more than the AEW, or they earn overtime wages and bonuses. There are no data on H-2A worker earnings, but analysis of payroll data from some employers suggest that our estimates are a lower bound, since most H-2A contracts offer less than 40 hours of work a week and many H-2A workers are employed more than 50 hours a week.

The number of jobs per certified application in California averaged 36 in 2020, the average duration of California H-2A contracts was 183 days or 26 weeks, and the average hours offered per week was 38, so that an H-2A worker who was paid state's AEW of \$14.77 an hour would have earned \$14,738. Florida had the most jobs certified to be filled with H-2A workers with average of 67 per application, an average contract length of 164 days (or 23 weeks), and an average of 37 hours per week, so that the average contract was worth \$10,119 at the Florida AEW of \$11.71.

Table 3 shows that California had three of the ten largest H-2A employers, and all were farm labor contractors, including two that operated in both California and Arizona. California's three largest H-2A employers accounted for a third of all H-2A jobs in the state in FY20 and offered contracts whose value ranged from \$8,700 to \$16,300, putting California FLC contracts near the low and high ends of the spectrum among the top H-2A employers.

**Table 3. Contract Value for Top 10 US H-2A Employers, FY20**

Employer	Employer state	Jobs certified to employer in state	Total jobs certified by employers in state	Employer's share of total jobs certified to employers in state	Average number of weeks per contract	Average hours of work per week per job in contract	Estimated average value of contract per job
The North Carolina Grower	NC	10,639	19,739	54%	28	40	\$14,020
Fresh Harvest, Inc.	CA	4,445	27,707	16%	21	35	\$10,922
Fresh Harvest, Inc.	AZ	881	6,168	14%	22	35	\$10,140
Wafila	WA	4,358	26,186	17%	24	37	\$14,409
Foothill Packing, Inc.	CA	2,280	27,707	8%	28	40	\$16,252
Foothill Packing, Inc.	AZ	919	6,168	15%	23	42	\$12,320
Farm Op Kuzzens H2A, L	FL	2,998	60,124	5%	18	36	\$7,851
Rancho Nuevo Harvesting	CA	2,864	27,707	10%	17	35	\$8,651
Peri & Sons Farms, Inc.	NV	2,608	3,164	82%	20	44	\$12,593
Overlook Harvesting Com	FL	2,418	60,124	4%	14	37	\$7,192
Temp Labor, LLC	FL	2,252	60,124	4%	33	35	\$13,456
Zirkle Fruit Company	WA	2,206	26,186	8%	24	35	\$13,225

Source: OFLC Disclosure Data

Note: Employer names varied in the database, so that the same employer could be listed as "Wafila," "WAFILA," and "wafila," and employers could operate in multiple states, as with "Peri & Sons Farms Inc." and "Peri & Sons Farms of California, LLC." We combined data for employers whose names changed, and used only the in-state jobs of employers who were certified to employ H-2A workers in multiple states.

### California Trends

California farmers have been reluctant to use the H-2A program for several reasons (Martin, 1994). First, some employers fear that union supporters might respond to their job offers, opening the door to a union election and bargaining obligation. Second, many farmers object to paying an AEWR that exceeds the state's minimum wage and do not have the free housing that must be offered to H-2A workers. Third, some employers fear that they will become the targets of investigations by labor law enforcement agencies. By applying for H-2A workers, employers make their job offers and wages public, which allows investigators to quickly compare employer promises to actual wages and working conditions.

The largest California H-2A employer, Fresh Harvest, is based in Imperial County, where most workers are legally authorized because of frequent Border Patrol inspections of the buses that transport farm workers from border entry ports to the

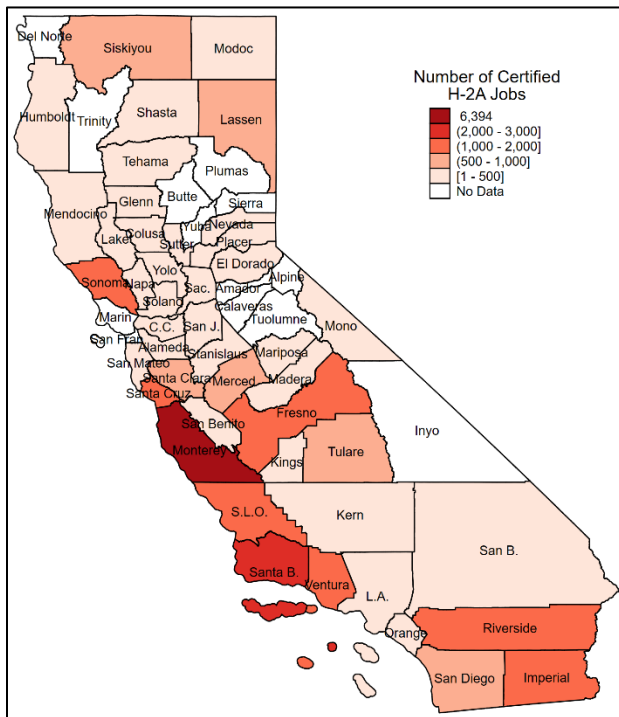


fields. Fresh Harvest provided H-2A workers to Salinas-based vegetable firms with winter vegetable operations in Imperial and Yuma, Arizona before expanding to the Salinas area (Scaroni, 2018).

California had 25,453 jobs certified to be filled with H-2A workers in FY20, including 24,015 or 94 percent that were certified to crop or crop support employers. The distribution of H-2A certifications by county differs from the distribution of farm employment by county. The top five California counties accounted for 55 percent of the H-2A jobs certified in FY20, even though these five counties accounted for only 38 percent of the state’s crop and crop support employment.

Figure 3 shows that Monterey County is the leading H-2A employer, with 6,394 jobs certified, followed by Santa Barbara County with 2,668 H-2A jobs, and San Luis Obispo, Ventura, and Fresno counties, each with more than 1,500 H-2A jobs.

**Figure 2. California H-2A Job Certifications by Worksite County, FY20**



Source: FY20 OFLC Disclosure data.

Most California H-2A jobs were with crop and crop support employers (NAICS 111 and 1151), including 6,155 or 96 percent of the H-2A jobs in Monterey County. Monterey H-2A contracts offered an average 222 days of work, which means that H-2A workers filled 3,748 full-time equivalent (FTE) jobs or seven percent of average crop and crop support employment in Monterey County.

The 2,513 H-2A crop and crop support jobs certified in Santa Barbara County offered an average 209 days and comprised 1,438 FTEs or six percent of the county's average crop and crop support employment. San Luis Obispo County contracts averaged 239 days, so the 1,774 crop and crop support jobs represented 1,164 FTEs or 25 percent of county crop and crop support employment. Ventura County had 1,667 jobs with an average length of 127 days that created 578 FTEs or two percent of county crop and crop support employment. Fresno county had 1,457 jobs with an average duration of 104 days or 414 FTEs, which was one percent of county crop and crop support employment. Half of California farm employment is in the San Joaquin Valley, where there have been relatively few H-2A job certifications.

### **Proposed H-2A Changes**

DOL's OFLC proposed changes the H-2A program July 26, 2019, including a shift from the current practice of setting one AEWR per state to setting separate AEWRs for each occupation or job title. DOL's OFLC proposed the use of data from USDA's Farm Labor Survey (FLS) to set AEWRs for most farm jobs, and DOL's Occupational Employment Statistics (OES) to set AEWRs for farm-related jobs such as workers who construct buildings on farms and truck drivers who haul commodities from farms.

On September 30, 2020, before DOL issued final regulations to implement these proposed changes, USDA cancelled the FLS. However, a federal judge intervened and ordered USDA to resume the FLS and collect the farm worker earnings data used by

DOL to set AEWRs. Meanwhile, DOL on November 5, 2020 published a final regulation that froze AEWRs for 2021 and 2022 at their 2020 levels and ended reliance on the FLS to adjust these AEWRs in the future. The same judge blocked DOL from implementing this final regulation, which was withdrawn by the Biden Administration on January 20, 2021.

The new AEWRs for 2021 rose an average 4.3 percent across the US and 8.7 percent in California, making the state's AEWR to \$16.05 an hour, 15 percent above California's \$14 minimum wage. Rising AEWRs have not slowed US employer requests for H-2A workers. The number of US farm jobs certified to be filled by H-2A workers during the first quarter of FY21 rose almost 20 percent over FY20 levels, from 41,000 to 49,000 (Rural Migration News Blog. 2021b).

The H-2A program may be modified and the AEWR frozen if the bipartisan Farm Workforce Modernization Act (FWMA or HR 1603), which was approved by the House on a 247-174 vote in March 2021, is enacted. President Biden pledged on his first day in office to support the enactment of the US Citizenship Act of 2021, which would provide an eight-year path to US citizenship for 11 million unauthorized foreigners in the US. The USCA included two special legalization programs, both approved by the House in March 2021, the American Dream and Promise Act (HR 6) for unauthorized children who arrived in the US before age 16 and the FWMA for farm workers.

The FWMA has three titles for legalization, H-2A streamlining, and E-Verify. Title 1 allows unauthorized farm workers to become Certified Agricultural Workers (CAWs) if they performed at least 180 days of farm work over the past two years. CAW status would be extended indefinitely for those who do at least 100 days of farm work a year, and the spouses and minor children of CAW status holders would also receive work and residence visas and would not have to do farm work to maintain their status (Rural Migration News Blog. 2021a). CAW workers who have been in the US at least 10 years could become permanent immigrants if they perform at least 100 days of farm work for

four additional years, while those in the US less than 10 years would have to do eight more years of farm work to become immigrants.

Title 2 would streamline the H-2A program by making the application process and job ads electronic, introduce three-year visas and allow 20,000 H-2A workers a year to be admitted for employment in year-round dairy and other jobs, and add funding to build housing in agricultural areas. Adverse Effect Wage Rates would be set by job title, and AEWRs would be frozen for a year, after which increases would be capped at 3.25 percent a year for the next nine years. A Portable Agricultural Worker (PAW) pilot program would allow up to 10,000 foreign farm workers to be free agents in the farm labor market for three years. PAW visa holders could only work for farm employers, and they would maintain their legal status by not being unemployed more than 60 days. Title 3 requires all farm employers to participate in E-Verify after these legalization and H-2A changes are implemented.

The FWMA would turn many of DOL's July 2019 AEWR proposals into law, including setting AEWRs by job title, freezing AEWRs, and limiting annual increases in AEWRs. USDA and DOL would study whether the employment of H-2A workers has depressed the wages of US farm workers, whether the AEWR is necessary to protect the wages of US farm workers, and whether any changes are warranted in the methodologies used to calculate AEWRs.

AEWRs rose by an average four percent a year between 2010 and 2020. Freezing the estimated \$3.5 billion wage bill of H-2A workers in 2020 would save employers of H-2A workers \$140 million a year. Table 4 shows that farms with H-2A workers also employ 50,379 US workers in corresponding employment whose wages may not increase if the AEWR is frozen, which would save H-2A employers an additional \$29 million and make the total savings of an AEWR wage freeze at least \$169 million a year.

**Table 4. US Workers in Corresponding Employment with H-2A Workers**

State	QCEW crop and crop support worker wages (in millions \$)	Percent of total QCEW crop and crop support worker wages	Estimated number of non-H-2A workers directly subject to 2020 AEWR	Estimated wage bill for non-H-2A workers directly subject to 2020 AEWR (in millions \$)
California	13,741	44%	4,885	\$66
Washington	2,789	9%	13,867	\$177
Florida	1,811	6%	2,618	\$36
Oregon	1,302	4%	454	\$9
Texas	1,101	4%	1,382	\$29
Arizona	680	2%	1,030	\$21
Top 6 total	21,424	69%	24,236	\$339
US total	31,099	100%	50,379	\$719

Source: OFLC Disclosure Data

Note: The number of non-H-2A workers who are subject to the AEWR is calculated by taking the difference between the number of workers that applicants requested and the number of jobs certified by DOL for H-2A workers. The average number of weeks and hours worked are based on state-level calculations that are weighted by the number of certified jobs in the state.

The savings from an AEWR wage freeze could be larger if employers request more H-2A workers as a result of stable wages or if the growth in wages of the non-H-2A workers who fill 90 percent of jobs on US crop farms slows. The number of H-2A jobs certified increased by five percent a year when the AEWR was rising by four percent a year, so a wage freeze might encourage faster expansion. Second, if freezing the AEWR slows wage increases for US crop workers, the annual \$31 billion wage bill for non-H-2A US crop workers may increase at a slower pace.

## Conclusions

The H-2A program allows farm employers to fill seasonal jobs with guest workers. Farmers must have their need for H-2A workers certified by DOL's OFLC, which certifies over 97 percent of employer requests. The number of jobs certified to be filled by H-2A workers tripled over the past decade and even faster in California. The expansion of labor-intensive agriculture, coupled with less unauthorized migration and proposals to freeze the AEWR, could speed the growth of the H-2A visa guest worker program and return California to a 1950s-style farm labor market, when California had the most Mexican Braceros of any state (Rural Migration News Blog. 2020a).

There are several differences between 1950s Braceros and 21<sup>st</sup> century H-2A workers. First, employer associations recruited and employed many of the Braceros, while the leading employers of H-2A workers today are farm labor contractors. Second, most Braceros worked cotton, sugar beets and other field crops through the mid-1950s, while most H-2A workers are employed in fruit and vegetable crops today. Third, most Braceros lived in employer-operated camps on farms, while many H-2A workers are housed in urban motels where regular furniture is replaced by bunk beds.

Several factors influence the expansion of H-2A employment in California agriculture. Rising labor costs encourage labor-saving mechanization even as rising consumer demand for fresh berries and other commodities increases the employment of hand workers until machines are perfected. The H-2A program is an efficient mechanism to obtain just-in-time guest workers who are tied to employers by contracts, providing labor insurance to producers of perishable commodities. Meanwhile, increased imports are narrowing windows of profitable production for some fresh fruits and vegetables, increasing incentives for California growers to save on rising labor costs (Rural Migration News Blog. 2020b).

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