



# Border Security, Economic Opportunity, and Immigration Modernization Act

What The New Legislation Will Mean For Agriculture

# Presenters



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# Stakeholders Reach a Deal!



**United Farm Workers**  
¡Si Se Puede! ®



## Blue Card

For Experienced Farm Workers

# Blue Card

## WHO IS ELIGIBLE?

Current undocumented farm workers who have worked in U.S. agriculture for:

- At least **100 DAYS** or **575 HOURS** during the **TWO-YEAR PERIOD** 2011 and 2012

# Definition of Agriculture

## HOW IS AGRICULTURE DEFINED?

- **FLSA Definition:** Includes cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm
- **MSPA Definition:** Includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state

# Green Card

## WHO IS ELIGIBLE?

Blue Card workers who have worked in agriculture for:

- **FIVE YEARS** for at least **100 DAYS** per year during the **SEVEN-YEAR** period beginning on the date of enactment

**OR**

- **THREE YEARS** for at least **150 DAYS** per year during the **FIVE-YEAR** period beginning on the date of enactment

**AND**

- Have paid all taxes
- Have not been convicted of any felony or 3 or more misdemeanors
- Must pay \$400 fine



# Agricultural Worker Program

Ensuring a Future Flow of Farm Workers



# Basic Elements

- Two work options:
  1. **Portable**, at will employment-based visa
  2. **Contract**-based visa
- Three year visa terms
  - Renewable once
  - After six years, visa holder would have to return home for three months before reapplying
- Program administered by USDA
- Employers must register with USDA as Designated Agricultural Employer (DAE)
- H-2A program would sunset one year after the new visa program is enacted

# Leaving the U.S.

- Worker would lose status and must depart the country if unemployed for more than 60 days
- Contract worker who breaches contract must depart the country before accepting another U.S. job

# Cap

- Visa cap of 112,333 per year for first five years
- Cap is compounding
  - Year One: 112,333 visas
  - Year Two: 224,666 visas
  - Year Three: 337,000 visas
- Cap cannot exceed 337,000 in the five year period
- Cap will be divided evenly by quarter in Year One and based on quarterly historical need thereafter
- Safety Valve if need exceeds established cap
- After five years, the Secretary of Agriculture will determine the cap on an annual basis (based on established criterion)

# Wages

- Wage rates established for six occupational categories (2016)
- Base wage will increase annually by 1.5% - 2.5% as established by the Employment Cost Index
- H-2A wages: AEWR will be frozen for three years after enactment (or one year after new program is operational)

Occupational Category	Hourly Wage Rate
Farm Workers and Laborers	\$9.64
Graders and Sorters	\$9.84
Dairy and Livestock	\$11.37
Agricultural Equipment Operators	\$11.87
Other	Secretary of Agriculture determines wages for First Line Supervisors and Animal Breeders

# Housing

- All DAE's must provide housing or housing allowance to visa workers during the term of employment
- Housing allowance will be based off of HUD fair market rental rates
- At-Will Employees: Employer will always be able to pay housing allowance instead of providing housing
- Contract Workers: Employer will only be able to provide housing allowance if the Governor certifies that there is available housing in the geographical area

# Transportation

- Employers will provide contract and at-will workers inbound transportation from their home country to their initial place of employment
- Contract workers will receive outbound transportation if they work for the same employer three-quarters of the three-year visa term (e.g., 27 months)
- Transportation to worksite is only required for contract workers from employer provided housing to worksite.

# Three-Quarter Guarantee

- Contract employer is required to guarantee work for three-fourths of the contract period
- Exception for natural disasters such as:
  - Freeze
  - Flood
  - Other weather related destruction of crops

# Domestic Referrals

- Employer can give preference to a former H-2A worker over domestic worker if:
  - The former H-2A worker worked for the employer three out of the past four years
- Employer will be required to pay the H-2A worker the frozen AEWWR
  - Will be indexed for inflation



# Recruitment

- DAE will be required to post notice with the state workforce agency 60 days before date of need
  - Job description required to include basic information about the job
  - Position must be advertised for 45 days
- Employer must hire eligible and qualified U.S. workers before filling any shortage of workers through the visa program
  - Up to 15 days before date of need

# Attestation

- DAE's must attest that they will follow all rules of the program

# Commuter Program

- Employer is not required to provide housing or housing allowance to worker when the job site is within 50 miles of the border

# Dispute Resolution

- Workers are covered under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
- If any party requests it, mediation of complaint is required before lawsuit may proceed
- If worker elects to file an administrative claim, which is resolved either through settlement or adjudication, they will not be able to maintain civil action under MSPA for the same violation

# Special Procedures

- Current special procedures for shepherders, goat herders, custom harvesters and beekeepers are applicable under the new program

# Equal Treatment

- Employers must provide U.S. workers equal wages, working conditions and benefits as guest workers in an occupational category
  - Benefits do not include housing or housing allowance
  - Workers qualify for an occupational category and applicable wage if they spend 75% of work time performing tasks defined in the occupational category specified in the employer's petition on semi-annual basis

# Mandatory E-Verify

- Will be phased in for agricultural employers within 4 years
- DHS required to provide a report of issues facing implementation of E-Verify in agriculture

# Healthcare Reform

- Blue Card workers are expressly excluded from federal benefits, including Medicare/Medicaid, subsidies, and tax credits for purchasing insurance through a Healthcare Exchange under the Affordable Care Act
- Ag Visa holders *may* be excluded also, but the language is less clear, than as for Blue Card workers
- All Ag workers (Blue Card and Ag Visa) are counted for purposes of calculating FTE count
- Blue Card workers (and likely Ag Visa holders) would not trigger an employer penalty payment since they are not eligible for subsidies under the ACA



# Questions?

## Thank you!

Look out for immigration reform updates in  
The Western Growers *Spotlight* newsletter

[www.wga.com](http://www.wga.com)