

FARMWORKER JUSTICE BULLETIN



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Legislative Update

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Rep. Davis' bill, HR 4028, would slash farmworker wages

Farmworkers are among the lowest paid workers in the country, yet Representative Lincoln Davis (D-Tenn.) recently introduced a bill, HR 4028, that would slash farmworker wages in the H-2A agricultural guestworker program. The proposal is one-sided and harsh.

Special Wage Provisions Are Necessary in the H-2A Guestworker Program.

The H-2A program is a section of immigration law permitting employers to hire foreign workers to perform temporary agricultural work when there is a shortage of domestic workers. Workers coming to perform agricultural work under the H-2A program hold a nonimmigrant status. History has shown that H-2A workers tend to be very vulnerable to workplace abuses because their restricted status in the U.S. causes them to fear being fired and deported, which enables their employers to gain very high productivity rates at relatively low cost.

Under the H-2A program, although there are a number of provisions intended to protect U.S. and foreign workers, such protections often fail to protect workers from abuse. One such protection is the requirement that employers must pay the highest of three minimum wages:

- the federal or state minimum wage (e.g., the federal rate is \$5.15 per hour);
- the local “prevailing wage,” as determined by the Department of Labor using state agency wage surveys for each crop in the local area.¹
- the H-2A “adverse effect wage rate or “AEWR.” The Department of Labor issues AEWR’s for each state based on USDA surveys of the previous year’s regional average hourly wage rates for field and livestock workers combined.²

The AEWR was established just before the end of the *Bracero* program and was applied to the H-2 and later H-2A program. The purpose of the AEWR was to overcome the depression (“adverse effect”) in prevailing wage rates caused by the presence of foreign workers – whether guestworkers or undocumented workers -- from poorer countries who will generally accept lower pay to obtain jobs held by U.S. workers. In 1987, the Reagan Administration changed the methodology, resulting in an average decrease of 20% in the H-2A wage rates.

¹The prevailing wage is expressed in the prevailing method of payment (for example, a piece rate or an hourly wage rate). The prevailing wage rate methodology is the local *median* wage for that particular job (half the workers make less and half the workers make more), except where there is a single wage rate that is paid to 40% or more of workers in that crop and in that local geographic area.

² The AEWR is determined by the Department of Agriculture’s annual wage surveys of employers’ reported wage rates to non-supervisory farm and ranch workers. Most regions include more than one state. Each year, the Department of Labor (DOL) issues the USDA survey rates as the H-2A program adverse effect wage rate for each state. The AEWR each year (e.g. 2005) are based on the average wages paid during the prior year (e.g. 2004).

Representative Davis' Bill Would Harm Already Vulnerable Farmworkers.

Representative Davis' bill, H.R. 4028, would effectively terminate the wage protections in the H-2A program and would instead require only that employers pay the minimum wage.

Guestworkers lack the ability to negotiate wages: as workers dependent on their employers to obtain a visa, H-2A workers are in no position to demand wage increases or fairly negotiate wages. Further, U.S. workers are unable to negotiate higher wages as employers using the guestworker program would be able to reject as unqualified US workers who request wages above the guestworker wage rate. For these reasons and many others, rather than being too high, the AEWRs are too low. And for these reasons, without even these minimal wage protections, wages for all farmworkers would fall from their current level to the minimum wage level and farmworkers would slip even further below the poverty level than they already are.

AgJOBS Provides the Solution to Employer Complaints about the H-2A Program.

To the extent that employers are unhappy with the wage rates in the H-2A guestworker program, the Agricultural Job Opportunities, Benefits, and Security Act of 2005, also known as "AgJOBS," H.R. 884, contains a fair compromise regarding the AEWRs. AgJOBS would freeze the AEWRs for 3 years at the levels in effect in 2002. AgJOBS would require that studies and recommendations regarding the wage level be issued by the U.S. General Accounting Office and by a special commission. If Congress were to fail to enact an adverse effect wage rate formula within 3 years, the AEWRs would be adjusted at the end of 3 years, and at the beginning of each year thereafter, based on the previous year's change in the consumer price index, with a maximum increase of 4% per year.

This compromise on the AEWR's is one part of the complex AgJOBS bill, which resulted from lengthy negotiations among farmworker organizations, labor unions, agricultural employers and a bipartisan group of legislators. The AgJOBS bill would address the immigration crisis in agriculture by providing employers with a stable, legal labor force; giving some workers the chance to earn permanent legal immigration status, and helping the government improve national security. AgJOBS would modify the H-2A program to make it more accessible to employers while preserving important worker protections. **AgJOBS offers a balanced, realistic, and humane solution to the broken immigration system in the agricultural context.**

In contrast to AgJOBS, Rep. Davis' bill **does not** address the immigration crisis in agriculture: it does not help farmers obtain a stable labor supply; does not provide workers with an opportunity to earn legal status; and does not address other grower concerns about the H-2A program, such as grower complaints about the burdensome application process. **Rep. Davis' bill is a one-sided, one-dimensional approach to the labor crisis in agriculture that benefits employers at the cost of vulnerable farmworkers.**

*The Farmworker Justice Fund, Inc. is a national advocacy and education organization for migrant and seasonal farmworkers. For more information, please visit www.fwjjustice.org. For explanation of our view that the H-2A program adverse effect wage rates should be increased, see www.fwjjustice.org/aewrlett.htm. For information on AgJOBS, visit our *Legislative News* page. You may also contact Adrienne DerVartanian at 202-783-2628.*