



FARMWORKER JUSTICE BULLETIN

AgJOBS Legislation

May 2009

Summary of AgJOBS: The Agricultural Job Opportunities, Benefits and Security Act

What is AgJOBS?

AgJOBS, the Agricultural Job Opportunities, Benefits and Security Act, is a proposed immigration law that would provide agricultural employers with a stable, legal labor force while protecting farmworkers from exploitative working conditions. The AgJOBS compromise was reached in 2000 after years of Congressional and labor-management conflict resulting in tough negotiations between the United Farm Workers (UFW), major agricultural employers, and key federal legislators. AgJOBS enjoys broad bipartisan support. On May 14, 2009, Senator Feinstein (D-California) and Representatives Berman (D-California) and Putnam (R-Florida) introduced AgJOBS in the Senate (S. 1038) and House of Representatives (H.R. 2414). We appreciate their leadership and commitment to moving AgJOBS forward.

During previous Congresses, AgJOBS has enjoyed several victories—most notably, the Senate included AgJOBS in its bipartisan comprehensive immigration bills in both 2006 and 2007. The reintroduction of AgJOBS represents continued progress towards comprehensive immigration reform while ensuring that Congress meets the unique needs of agriculture.

If enacted, AgJOBS would (1) create an “earned adjustment” program, allowing many undocumented farmworkers and agricultural guestworkers to obtain temporary immigration status based on past work experience with the possibility of becoming permanent residents through continued agricultural work, and (2) revise the existing agricultural guestworker program, known as the “H-2A temporary foreign agricultural worker program.”

Who would qualify for the earned legalization program and what is the process?

This compromise only applies to workers in agriculture, primarily employees of farms and ranches. Undocumented farmworkers and recent H-2A guestworkers wishing to become immigrants would have to complete a two-step process.

Step One: Apply for “Blue Card” Temporary Resident Status. Under this law, a farmworker could apply for a “blue card” (temporary residency) through a government-approved organization, a licensed attorney or a recognized immigration practitioner. The application period would begin seven months after the law is enacted and would last 18 months. Eligible workers are those who satisfy the following requirements:

- worked in U.S. agriculture for at least 150 days or 863 hours during the 24-month period ending December 31, 2008;
- are not excluded by certain immigration laws;
- have not been convicted of any felony or a misdemeanor that involves bodily injury, threat of serious bodily injury or harm to property in excess of \$500;
- pay an application fee and a \$100 fine upon obtaining a blue card.

Step Two: Earn Legal Permanent Resident Status: Prospective Work Requirement. After obtaining “blue card” status, participants must do the following to earn a “green card”:

- perform agricultural work for at least
 - 100 work days per year for each of 5 years during the 5-year period beginning on the date of enactment of the Act; OR
 - 100 work days for one year and 150 work days per year for 3 years during the 4-year period beginning on the date of enactment of the Act; OR

- 150 work days per year for each of 3 years during the 3-year period beginning on the date of enactment of the Act;
- pay a \$400 fine and application fee; and
- by the date of adjustment to lawful permanent status, establish payment of income taxes for work performed to meet the future work requirement.

Workers who don't meet these requirements, who are found to have filed a fraudulent application, or who don't apply for permanent status by the seventh year would lose their “blue card” status and would be required to leave the country. Conviction of a felony, three misdemeanors, or a single crime that involves bodily injury, threat of serious bodily injury, or injury to property in excess of \$500 also would end the “blue card” temporary status.

Immediate Family of Farmworkers. When a worker obtains “blue card” temporary resident status, his/her spouse and minor children residing in the U.S. may be granted “derivative” legal status. Derivative family members can remain in the U.S. and are not removable. The derivative spouse may apply for a work permit and the derivative spouse and minor children may also travel outside of and return to the U.S. Once the worker fulfills the requirements to receive permanent resident status, his/her spouse and minor children also will be granted immigration status as long as they meet other requirements under immigration law and have not been convicted of any felonies or a misdemeanor that involves bodily injury, threat of serious bodily injury or harm to property in excess of \$500. (Minor children who become adults during the process are covered, too.)

How would AgJOBS reform the H-2A Temporary Foreign Agricultural Worker Program?

The compromise would modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guestworkers to fill agricultural jobs that last no longer than ten months. Most basic H-2A requirements that protect U.S. workers from adverse effects and foreign workers from exploitation would continue, including the “¾ minimum work guarantee,” workers’ compensation coverage, and transportation cost reimbursement.

The bills would modify some current H-2A requirements in important ways:

- H-2A employers transporting H-2A farmworkers directly or through a farm labor contractor must comply with transportation safety standards that are similar to the protections that U.S. workers have under the Migrant and Seasonal Agricultural Worker Protection Act of 1983(AWPA).
- H-2A employers must provide free housing to non-local U.S. and foreign workers but, under AgJOBS, could choose to provide a monetary housing allowance if the state’s Governor has certified that there is sufficient farmworker housing available in that area.
- Employers would still offer the highest of the “Adverse Effect Wage Rate” (AEWR), the prevailing wage or the federal or state minimum wage. AgJOBS would reduce the AEWR to the 2008 levels and freeze them for 3 years. During this 3-year period, the Congressional General Accountability Office (“GAO”) and a special commission would issue studies and recommendations as to the appropriate wage rate formula. If Congress fails to enact a new formula within 3 years after enactment, the AEWRs will be adjusted by the previous years’ inflation in the consumer price index, and annually thereafter, up to 4% per year.
- H-2A workers would have the right to file a federal lawsuit to enforce their wages, housing benefits, transportation cost reimbursements, minimum-work guarantee, motor vehicle safety protections, and the other terms of the written H-2A job offer.
- Employers of goat herders, dairy workers, and sheepherders would be eligible to participate in the H-2A program even when they seek year-round workers. These workers would be able to work up to three consecutive years, at which time they would be eligible to apply to adjust status to lawful permanent residency. Other H-2A workers would continue to hold temporary work permits with no opportunity to become permanent residents through the H-2A program.