



FARMWORKER JUSTICE

Senate Bill Would Expand H-2A Temporary Foreign Agricultural Program to Year-Round Jobs and Weaken Worker Protections

On June 18, 2019, Sen. Rand Paul (R-KY) introduced the “Paperwork Reduction for Farmers and H-2A Modernization Act,” S. 1887. A companion bill, H.R. 3319, was introduced in the House by Rep. Kelly (R-MS) the same day. While the legislation is framed as a bill that would “streamline” the H-2A application process through procedures such as electronic filing, it also includes provisions that would fundamentally change the H-2A agricultural guestworker program. The bill would expand the H-2A program to include year-round jobs and lessen important labor protections, including recruitment requirements for U.S. workers.

H-2A Program Would Be Extended to Year-Round Jobs

The legislation would contravene the basic purpose of the H-2A program by enlarging its scope to allow the use of year-round labor in the equine, landscaping, forestry, conservation, horticulture, aquaculture, and livestock sectors (including dairy and poultry farms). The H-2A program is premised on the idea that it may be difficult to find U.S. workers for temporary or seasonal farm jobs because they provide low annual income. That same logic does not apply to year-round employment. Employers trying to fill year-round jobs should do so by offering attractive wages and working conditions. Under this expansion, year-round agricultural employers could instead turn to the H-2A program and obtain a captive workforce with minimal ability to bargain for better wages and working conditions. U.S. workers not willing to accept the H-2A job terms could be turned away as “unavailable.”

Reduced Recruitment of U.S. Workers and Increased Risk of Abuses for All Workers

The bill would also reduce employer requirements to engage in recruitment of U.S. workers. For example, the legislation would allow employers who are seeking to hire H-2A workers for different time periods throughout the year to submit only one petition for the entire fiscal year. While foreign citizens may accept whatever schedule an employer imposes, many U.S. workers want to know the timing of the different crop harvests and apply for those that make sense for them. Under the current program, if employers have a peak need for extra workers, they can apply for additional labor certifications as needed, after they have completed the required recruitment of U.S. workers. The legislation would also circumvent labor market tests by giving employers an unlimited ability to promptly replace workers who do not continue work without any inquiry into the circumstances of such workers’ departures from their employment, such as workplace abuses.

Expanded Access and Limited Liability for Employers

The bill seeks to expand access to the H-2A program with limited liability by allowing multiple employers to submit a joint petition for H-2A workers. Under current law, an

association may submit a master application on behalf of multiple employer members, but must do so as a joint employer and with limitations on the timing of the jobs and their geographic spread. Without the joint employer responsibility and with no indications of other limitations as to geographic scope or other needs, the bill's proposed language would weaken the existing association rules aimed at protecting workers. This could encourage growers to join together to secure H-2A workers without the structure and protections in place to ensure responsibility for compliance with program requirements and remedies for violations. This bill would exacerbate the flaws in the H-2A program that give rise to rampant abuses ranging from discriminatory rejections of qualified U.S. workers to systemic wage violations, unsafe working conditions and deplorable housing conditions.

Additionally, the bill includes a "safe harbor" provision that eliminates an employer's liability in filing paperwork with errors or omissions if the employer "reasonably believed that the application was accurate" and used a third party to file the paperwork. Current law puts responsibility on employers for the information included in their application. Eliminating liability from the employer for submitting an erroneous or incomplete application for H-2A workers could lead to an increase in inaccurate or misleading submissions.

No Solution Offered as to Current Undocumented Workforce

Importantly, expanding the H-2A program and creating more ready access to H-2A workers without adequate protections for U.S. workers only worsens the situation for both the existing workforce and future H-2A workers. This legislation does nothing to address the roughly one million current experienced farmworkers who are undocumented and face the threat of detection and deportation. It makes little sense to expand the H-2A program without addressing and stabilizing the workers already here, most of whom have been living here for over 15 years and many of whom have families, including U.S. citizen children, and deep ties to their communities. These experienced, valuable workers are already doing much of this work day in and day out and could be pushed out of their jobs into even more vulnerable positions.

Need for Action that is Fair and Responsible

Farmworker Justice calls on Congress to prevent this bill from passing and to instead support legislation granting immigration status and a path to citizenship for undocumented workers and their family members. The "Agricultural Worker Program Act" (S. 175 and H.R. 641) offers a path to immigration status and citizenship for current experienced agricultural workers who are undocumented and includes a future work requirement in response to employers' concerns about maintaining a workforce. Our nation's food system needs this practical solution that respects the contributions and humanity of our nation's farmworkers.