



FARMWORKER JUSTICE

H-2A Dairy and Shepherd Legislation: Less Protections for Already Precarious Work

On March 14, 2019, Reps. Brindisi (D-NY) and Joyce (R-PA) introduced the “Dairy and Sheep H-2A Visa Enhancement Act,” H.R. 1778. The bill does not have any additional co-sponsors. The bill would cause great harm to workers by expanding the H-2A program to allow employers to petition for year-round dairy workers and shepherders under the H-2A program for renewable three-year periods.

The H-2A program offers an unlimited number of temporary work visas to agricultural employers to bring in workers from abroad to perform temporary or seasonal agricultural work. Agricultural employers must demonstrate they have tried and are unable to find U.S. workers to meet their labor needs and that bringing in guestworkers will not adversely impact the wages and working conditions of U.S. farmworkers.

Under this legislation, employers could similarly hire dairy workers, who are currently not allowed under the program, for renewable three-year periods. If this bill is enacted, the dairy industry workforce could soon become a majority guestworker workforce, further eroding the industry’s labor standards. The bill would allow the dairy and shepherding industries unlimited access to a captive work force for an indefinite amount of time. Due to employer preferences for guestworkers, expanding the H-2A program to include year-round employment would lead to job loss for those who currently depend on these jobs. The H-2A program would not prevent this distortion because it suppresses competition: guestworkers are tied to their specific employer and vulnerable to retaliation, while at the same time employers may reject qualified U.S. workers who ask for better wages and working conditions.

The proposed expansion of the H-2A program to dairy workers and shepherders would undermine one of the fundamental premises of the H-2A program. The H-2A program is limited to temporary or seasonal agricultural work because it is based on the idea that it may be difficult to find US workers for short-term work that yields lower annual incomes than year-round jobs. That same logic does not apply to year-round employment. Agricultural employers with year-round jobs should do what any other employer must do to attract and retain workers: improve wages and working conditions.

Dairy workers and shepherders work extremely long hours for low pay and in dangerous conditions. Dairy workers are injured on the job at twice the rate of the average worker and in circumstances such as death by drowning in a manure pit. The current shepherd “special procedures” that have allowed some employers to bring in H-2A shepherders for up to three years is notorious for abuses of the workers, including high recruitment fees, low wages, lack of food

and water, inadequate and dangerous housing, and even trafficking. Notably, this bill would undermine a lawsuit challenging the ability of the DOL to certify sheepherder employment for the H-2A program. The current sheepherder program is an illustration of everything that can go wrong when the H-2A program is permitted in year-round work.

The H-2A program should also not be expanded to include year-round work because it is a flawed and exploitative program. The H-2A program restricts workers' employment and visa status to one employer. Because H-2A workers are only allowed to work for a single employer who can send them home at will, most H-2A workers will work to the limits of human endurance to keep their employers happy. This coercive factor leads workers to stay in a job even when basic rights are violated. The workers' dependency on their employers is exacerbated by the fact that many workers are charged recruitment fees and are trapped by their need to repay their debt.

Many employers come to prefer the H-2A program to the domestic workforce as H-2A workers must perform to their employer's satisfaction to keep their jobs and visas. There are numerous abuses in the H-2A program, including wage theft, recruitment fees and debt, gender discrimination, deplorable housing and more. Abuses even rise to the level of human trafficking. According to the anti-trafficking organization Polaris's [recent report on human trafficking in temporary work visa programs](#), the visa category with the most reported trafficking cases (over 300) was the H-2A agricultural worker visa program. These reports of trafficking and other abuses are particularly concerning given that the H-2A program is experiencing unprecedented growth: it has tripled in size during the last decade.

Finally, expanding the H-2A program to include year-round jobs does nothing to address the roughly one million current experienced farmworkers who are undocumented and face the threat of deportation and separation from their families. It makes little sense to allow employers to hire captive H-2A workers to displace current undocumented farmworkers (most of whom have lived here for 15 years or more) as well as the many currently authorized workers who could soon lose status under DACA and TPS. Instead, the solution must be real and meaningful immigration reform that provides a path to citizenship. The Agricultural Worker Program Act of 2019 (H.R. 641), which was introduced by Sen. Feinstein and Rep. Lofgren, would provide a path to lawful permanent residency for experienced agricultural workers to meet the needs of workers, agricultural employers, and our food system.