

H-2A Workers: Who, What and Outreach

Presentation for Northwest Regional Primary Care
Association

12/9/15

Megan Horn Essaheb and Alexis Guild, Farmworker Justice

Farmworker Justice

Farmworker Justice is a nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice

www.farmworkerjustice.org



Agenda

- o Overview of H-2A program
- o General health access challenges
- o ACA and H-2A workers
- o Strategies for health insurance enrollment
- o Questions and Resources

Poll Question #1

Have you ever served H-2A or H-2B
guestworkers?

- Yes
- No

What is the H-2A program?



Earl Dotter

- o A temporary agricultural guestworker program that:
- o Allows U.S. employers to bring in foreign workers for temporary or seasonal positions for up to 10 months.
 - o Employers must prove that there are no U.S. workers available for the job
 - o Employers must show that bringing in foreign workers won't harm the wages and working conditions of U.S. workers
- o The program is growing: In FY2015, 140,000 worker positions were certified by DOL up from 48,000 worker positions certified in FY 2005
- o From FY 2014 to FY 2015, several states saw significantly large increases in program usage, including an increase of 42% in California, 39% in Georgia, 32% in Florida, 30% in Washington and 22% in North Carolina.

H-2A Agricultural Guestworker Program Protections

- o DOL certification process
- o US recruitment protections and 50% rule
- o Housing
- o Transportation
- o 3/4 Guarantee
- o Adverse Effect Wage Rate
- o Workers' Compensation



Earl Dotter

Special Rules for H-2A Shepherders

- o 3 Year visas: shepherders are on call 24/7
- o Live in isolation & are vulnerable to trafficking & other abuse
- o New rules: wages have increased from \$750/mo. to \$1,206.30/mo.
- o Lower housing standards than other H-2A workers



Joe Mahoney / Rocky Mountain PBS I-News

The H-2B Temporary Nonagricultural Worker Program

- o Allows employers to bring in workers for temporary or seasonal work
- o Industries: seafood & fisheries, hotels, landscaping, forestry & carnivals use the program
- o 66,000 cap per fiscal year
- o Regulations: there has been a lot of changes in the regulations over the past few years due to battles in the court and congress
- o Under the current rules, many of the protections are similar to the H-2A program. Big exception: no free housing.

Who are H-2A workers?

- o Most H-2A workers are young men between 18 and 35 years old. The vast majority are from Mexico.
- o H-2A workers from Central America & Haiti may be on the rise
- o Jamaican H-2A workers have been going to the Northeast to pick apples for many years

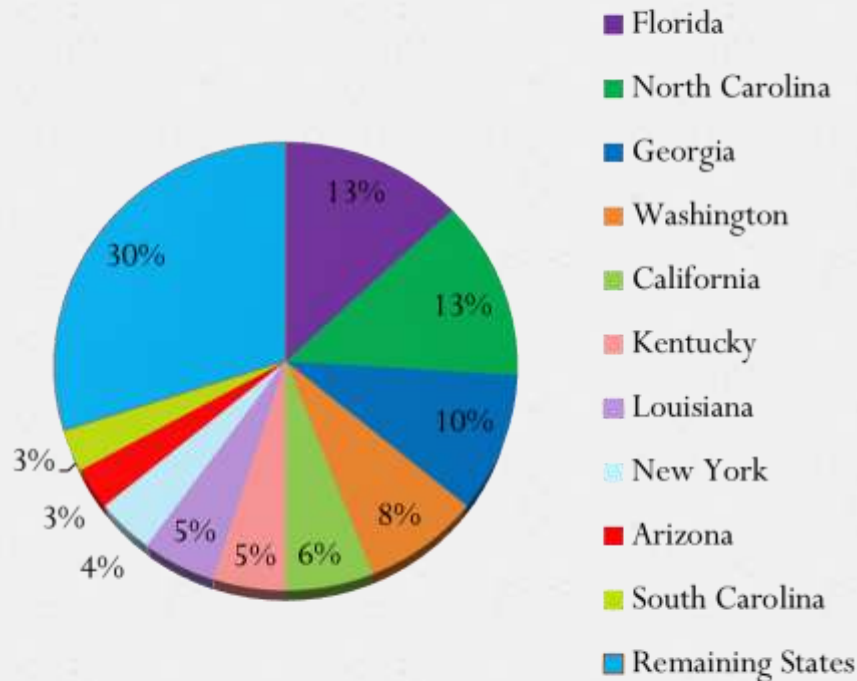
Poll Question #2

Have you seen an increase in H-2A or H-2B workers in your region?

- Yes
- No

Where are H-2A workers?

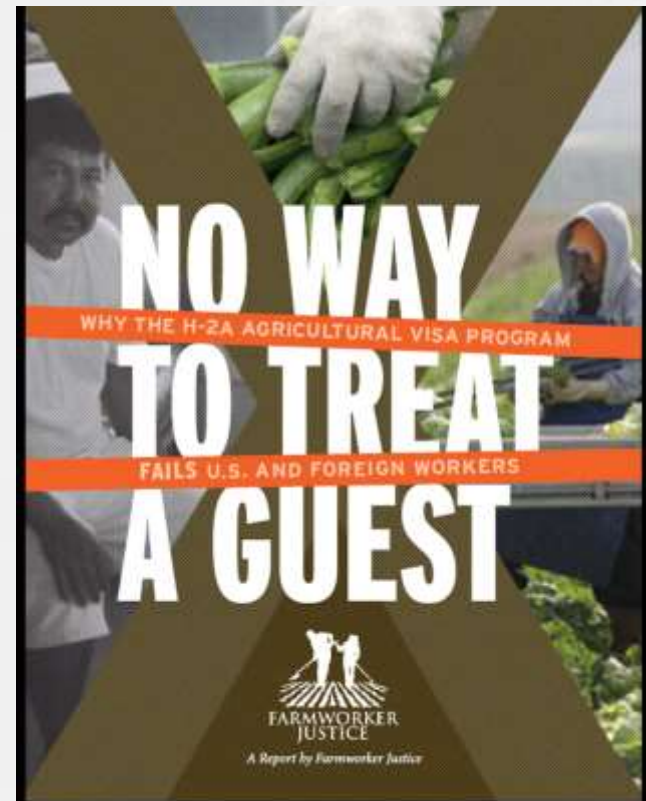
H-2A Certifications FY 2015



Florida	17,942
North Carolina	17,696
Georgia	14,393
Washington	11,844
California	8,591
Louisiana	7,787
Kentucky	6,722
New York	5,039
Arizona	3,763
South Carolina	3,594

Abuse in the H-2A Program

- o Workers indebted
- o Non-immigrant status
- o Isolation and family separation
- o Incentives to discriminate against US workers
- o Inadequate enforcement





Photos by Dan Rather Reports (Kathern, above) and Georgia Legal Services Program (Mary Jo, below)

“The farmers can take advantage of the [H-2A workers] where they can’t take advantage of the Americans... because we know the laws when [they] don’t... I think it was more or less, they didn’t want the Americans out there.”

— Kathern

U.S. Farmworker

New Trends

- o A rise in H-2A labor contractors:
 - o Workers move around and are harder for outreach workers to locate
 - o Labor contractors are more likely to violate wages and workplace laws
 - o Many workers are housed in hotels and other off-site housing

H-2A Workers' Labor Rights

- o Federally funded legal aid programs can serve H-2A workers & H-2B forestry workers
- o H-2 workers are protected by the Fair Labor Standards Act & state contract & employment laws
- o The Department of Labor, Wage & Hour Division can enforce the H-2 protections
- o H-2A workers are not covered by AWPA (the Migrant and Seasonal Agricultural Worker Protection Act)

H-2 Workers & Labor Trafficking

o Signs:

- o confiscation of passport, visa or other documents;
- o threats or intimidation by an employer, supervisor or recruiter;
- o the worker is in debt;
- o was recruited through false promises concerning the nature and conditions of his/her work;
- o fear of employer or authorities.

H-2 Workers & Labor Trafficking


- o Contact: local legal aid or the trafficking hotline
 - o Federally-funded legal aid programs can serve H-2A workers, H-2B forestry workers & applicants for T & U visas, regardless of their status
- o Some workers may be eligible for special T or U visas
 - o T visas – for victims of trafficking
 - o U visas – for victims of certain crimes
- o To request help or report suspected human trafficking, call the [National Human Trafficking Resource Center hotline](#) at 1-888-373-7888. Or text HELP to: BeFree (233733)

Outreach to H-2A Workers

o iCERT - <https://icert.doleta.gov/>

PUBLIC JOB REGISTRY Advanced Search

Click on a Specific State to Job Orders Posted in the Last 30 Days



VT
NH
MA
RI
CT
NJ
MD
DE
DC

Or - Select a state/territory from the menu: State:

Search for Job Order on iCERT

UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

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ETA Home > iCERT Portal > Public Job Registry

Public Job Registry

Advanced Search

Quick Search

ETA Case Number:

Case Type:

Status:

State or Territory of Intended Employment:

Job Location within: of ZIP Code:

Job Title:

Employer Name:

Job Order Posting Date Range: From: To:


Industry:

ETA Case Number	Job Posting Date	Case Type	Status	Employer Name	State	Work Start Date	Work End Date	Job Title	Job Order	Cert
H-300-15034-788	08/06/2015	H-2A	ACTIVE	Severt's Tree Farm...	VA	08/17/2015	12/20/2015	Farmworker		
H-300-15035-334	07/31/2015	H-2A	ACTIVE	WOODBINE FARMS ...	VA	08/09/2015	11/03/2015	Farmworker laborer s...		
H-300-15037-495	07/31/2015	H-2A	INACTIVE	Springwood farm	VA	08/10/2015	10/31/2015	Farmworker and lab...		
H-300-15038-424	07/30/2015	H-2A	ACTIVE	HL C&F Fruit Co...	VA	08/08/2015	12/10/2015	Orchard Worker		
H-300-15039-324	07/28/2015	H-2A	INACTIVE	NICHOLS FARM LC	VA	08/08/2015	11/03/2015	Farmworker and Lab...		
H-300-15040-779	07/26/2015	H-2A	INACTIVE	FRED L. GLAZIE, L.C.	VA	08/08/2015	10/30/2015	Farmworker and Lab...		
H-300-15039-837	07/27/2015	H-2A	ACTIVE	RUSSELL ORCHARDS	VA	08/08/2015	11/04/2015	Farmworker and Lab...		
H-300-15188-450	07/23/2015	H-2A	INACTIVE	FRUIT HILL ORCHA...	VA	08/01/2015	10/31/2015	Farmworker and Lab...		
H-300-15198-345	07/22/2015	H-2A	INACTIVE	Wheatwood Farm Inc	VA	08/01/2015	10/24/2015	Farmworker and Lab...		
H-300-15194-458	07/22/2015	H-2A	INACTIVE	Timber Ridge Fruit...	VA	08/02/2015	10/30/2015	Farmworker and Lab...		

84 Row(s)

Disability Access: If you have a disability and are unable to access some of the information contained on the Job Registry portion of this website because of its format or other features, please email H-300@icert.dhs.gov or call 1-812-608-6000. Your request will be referred to the appropriate Department of Labor office responsible for providing assistance to you in this regard. In order to help us serve you better, please provide us with a description of your disability and your contact information so we can reach you in the event questions arise while identifying or addressing a solution to your request.

Sample Job Order


U.S. Department Labor
Employment and Training Administration

Agricultural and Food Processing Clearance Order ETA Form 700
 Orden de Empleo para Obreros/Trabajadores

(Print or type in each field block - To include additional information, go to block # 24 - Please follow Step-by-Step Instructions)
 (Favor de usar letra de molde en la solicitud - Para incluir información adicional vea el punto # 24 - Favor de seguir las instrucciones paso-a-paso)

RECEIVED
 SEP 2 2015
 Control No. 1285-8134
 Submission Date: October 21, 2015

1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Agente y/o Agente (Número, Calle, Ciudad, Estado y Código Postal))	Nos. 4 through 8 for STATE USE ONLY Números 4 a 8 para USO ESTADAL																
<p>The Nuthouse Inc. 1680 Horse Pasture Rd Roseboro, NC 28382</p> <p>a) Federal Employer Identification Number (FEIN) / Número Federal de Identificación del Empleador: [REDACTED]</p> <p>b) Telephone Number / Número de Teléfono: (910) 564-2421</p> <p>c) Fax Number / Número de Fax: (910) 564-5458</p> <p>d) E-mail Address / Dirección de Correo Electrónico: rbp@ntrstar.net</p>	<p>4. SOC (O*NET) CODES / Ocupational Code / Código Industrial: 45-2092</p> <p>5. Job Order No. / Num. de Orden de Empleo: 10415624</p> <p>6. SOC (O*NET) CODES / Occupational Title / Título Ocupacional: Farmworkers & Laborers</p> <p>7. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se emitió la orden (incluya el número de teléfono): P.O. Box 27625 Raleigh, NC 27611</p> <p>8. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (incluya el número de teléfono de su línea directa): W.L. Grant</p> <p>9. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo: 9-2-15</p> <p>10. Job Order Expiration Date / Fecha de Vencimiento a Expiración de la Orden de Empleo: Exempt</p> <p>11. Anticipated Period of Employment / Periodo anticipado o previsto de Empleo: From / Desde: 11/01/2015 To / Hasta: 08/27/2016</p> <p>12. Number of Workers Required / Número de Trabajadores Solicitados: 2</p> <p>13. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: 35</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td>Sunday / Domingo</td><td style="text-align: center;">0</td> <td>Thursday / Jueves</td><td style="text-align: center;">8</td> </tr> <tr> <td>Monday / Lunes</td><td style="text-align: center;">8</td> <td>Friday / Viernes</td><td style="text-align: center;">8</td> </tr> <tr> <td>Tuesday / Martes</td><td style="text-align: center;">8</td> <td>Saturday / Sábado</td><td style="text-align: center;">8</td> </tr> <tr> <td>Wednesday / Miércoles</td><td style="text-align: center;">8</td> <td></td><td></td> </tr> </table> <p>14. Anticipated range of hours for different seasonal activities / Rango previsto de horas por alas diferentes actividades de la temporada: 7 a.m. to 3 p.m.</p>	Sunday / Domingo	0	Thursday / Jueves	8	Monday / Lunes	8	Friday / Viernes	8	Tuesday / Martes	8	Saturday / Sábado	8	Wednesday / Miércoles	8		
Sunday / Domingo	0	Thursday / Jueves	8														
Monday / Lunes	8	Friday / Viernes	8														
Tuesday / Martes	8	Saturday / Sábado	8														
Wednesday / Miércoles	8																
<p>2. Address and Directions to Work Site / Dirección y Direcciones al lugar de trabajo: 1680 Horse Pasture Rd, Roseboro, Sampson County, NC 28382</p> <p>See attached map with driving directions.</p> <p>Fixed-site employer. Employer owns and/or controls the worksite.</p>																	
<p>3. Address and Directions to Housing / Dirección y Direcciones al lugar de vivienda: 1680 Horse Pasture Rd, Roseboro, Sampson County, NC 28382</p> <p>See attached map with driving directions.</p> <p>a) Description of Housing / Descripción de la vivienda: DWHM (Cap > 2)</p>																	
<p>13. Collect Data Accepted Form / Aceptar Usados por Orden de:</p>																	

General Health Access Challenges

- o Workers have limited access to clinics. More isolated than general farmworker population.
- o Workers may be reluctant to go to a doctor or access medical care due to fear of employer retaliation (especially for work-related injuries)
- o Follow-up treatment may be difficult, especially once they leave the U.S.

Poll Question #3

1. H-2A workers are not subject to the ACA's individual mandate while in the U.S.
 - o Myth
 - o Fact
2. H-2A workers are eligible for Medicaid
 - o Myth
 - o Fact
1. H-2A workers are eligible to purchase health insurance in the marketplace and may qualify for tax credits, even below 100% FPL
 - o Myth
 - o Fact

H-2A and ACA – Myths vs. Facts

1. H-2A workers are not subject to the ACA's individual mandate while in the U.S.

o **Myth**

2. H-2A workers are eligible for Medicaid

o **Myth**

3. H-2A workers are eligible to purchase health insurance in the Marketplace and may qualify for tax credits, even below 100% FPL

o **Fact**

Note about Workers' Compensation...



Workers' compensation \neq Minimum essential coverage

Workers must have comprehensive health insurance, either from their employer or through the Marketplace, to comply with the individual mandate

Special Considerations

- o Many H-2A workers arrive outside of open enrollment
 - o Eligible for 60 day Special Enrollment Period that starts the day they enter the U.S.
 - o Triggering event = “gaining lawful status.”
- o Workers must disenroll from health insurance before leaving the U.S.
- o Migrant H-2A workers who work for labor contractors
- o Eligibility for exemptions
 - o If worker files taxes as non-resident alien, he/she may qualify for the non-citizen exemption
 - o There is a “substantial presence test” to help determine if a worker is considered a resident or non-resident alien. More information can be found [here](#).



Special Considerations - Taxes



- o Workers from Mexico may be able to claim their dependents in Mexico on the Marketplace application
 - o Dependents must meet IRS definitions
 - o Dependents need ITINs
- o Confusion about responsibility of H-2A workers to file taxes
- o H-2A workers may not necessarily file their taxes by April 15 or even in the U.S.
- o H-2A workers who enroll in health insurance should obtain an SSN before they file their taxes

Challenges to Enrollment

- o Lack of knowledge about ACA
- o Cannot begin the enrollment process until they arrive in the U.S.
 - o Limited number of application assisters and many workers to enroll in a short period of time
 - o By the time they arrive in the area, have fewer than 60 days to enroll
- o Limited enrollment options
- o Inclusion of dependents outside of U.S.
- o Document verification
- o Incorrect eligibility determinations

Challenges Post-Enrollment

- Workers may not be familiar with the U.S. health system or U.S. health insurance
- Lack of mailing address and/or infrequent access to postal services
- Disenrollment

Strategies for H-2A Worker Enrollment

- o Partner navigators/assisters with outreach staff
- o If possible, provide workers with information about their health insurance plan options and discuss their health priorities prior to beginning enrollment
- o Make sure workers have all of the information needed to fill out the application– I-94 card, W-2/pay stub, employer information, information about household size and members in household
- o You may have to work with the call center to ensure that documents are entered correctly
- o Partner with other organizations that work with H-2A workers (legal services, community-based organizations, Mexican Consulate)
- o Get grower buy-in



Questions



Resources

- o Su Familia call line
 - o 866-783-2645
- o North Carolina Justice Center
 - o [Question and Answers: H-2A Workers, Taxes, and the ACA](#)
- o Legal Aid of North Carolina
 - o [Spanish-language materials on ACA](#)

Farmworker Justice Resources

- [H-2A Fact Sheet](#)
- [ACA and H-2A Agricultural Workers: Frequently Asked Questions](#)
- [Guide to the Health Insurance Requirement](#)
([Spanish](#)) ([English](#)) ([Haitian Creole](#))
- [Guide for H-2A Workers](#)
([Spanish](#)) ([English](#)) ([Haitian Creole](#))
- [Webinar – Strategies for H-2A Worker Enrollment in Health Insurance: Lessons from the Field](#)



Want to learn more?

Come to our session at the Western Forum for Migrant and Community Health in Portland, OR!

Who are H-2A Workers and How Can We Connect Them to Health Insurance Under the Affordable Care Act

Presenters: Alexis Guild (FJ), Megan Horn Essaheb (FJ), Ann Watson (North Carolina Farmworker Health Program), and Mackenzie Mann (North Carolina Farmworkers Project)

More information about the Western Forum for Migrant and Community Health can be found [here](#).



Thank you!!

For more information...

o Megan Horn Essaheb

mhorn@farmworkerjustice.org

o Alexis Guild

aguild@farmworkerjustice.org

