

**AGRICULTURAL LABOR RELATIONS BOARD****OFFICE OF THE EXECUTIVE SECRETARY**

1325 J Street, Suite 1900  
SACRAMENTO, CA 95814-2944  
(916) 894-6840  
FAX (916) 653-8750  
Internet: [www.alrb.ca.gov](http://www.alrb.ca.gov)



**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD  
PUBLIC MEETING MINUTES**

**TUESDAY, APRIL 13, 2021  
10:00 A.M.**

There was no physical meeting location. Attendance was by remote meeting only (meeting number **840 2147 4217**), via the attendee's choice of either Zoom videoconference or teleconference.

**Board Members:**

Chair Victoria Hassid  
Members Barry Broad, Cinthia Flores, Isadore Hall, and Ralph Lightstone

**ALRB Staff:**

General Counsel Julia Montgomery  
Executive Secretary Santiago Avila-Gomez  
Division of Administrative Services Chief  
Brian Dougherty  
Chief Board Counsel Todd Ratshin  
Board Counsels Itir Yakar, Laura Heyck, and Scott Inciardi  
Regional Directors Franchesca Herrera and Chris Schneider  
Associate Governmental Program Analyst for General Counsel  
Audrey Hsia

**Presenters:**

Executive Assistant to the Board Chair Ed Hass  
Cornelio Gomez and Roman Diaz, California  
Employment Development Department  
Richard Longo and Ruben Lugo, U.S. Department of Labor  
Jeanne Malitz, President, Malitzlaw, Inc.  
Cynthia Rice, Director of Litigation, California Rural  
Legal Assistance, Inc.

**Interpreter:**

Rosario Lucas

**Court Reporter:**

Troy Ray

**Other ALRB Staff:**

Kenia Acevedo, Jessica Arciniega, Merced Barrera, Flavio Bautista, Laura Camero, Araceli Centeno, Veronica Cervantes, Monica De La Hoya, Yesenia De Luna, Amisha DeYoung-Dominguez, Angelique Duran, Grace Esparza, Erika Flores, Jenna Lane, Maricela Luna, Lori Miller, Rosario Miranda, Monica Mondino, Christina Nielsen, Patricia Ochoa, Margarita Padilla, Jeylee Quiroz, Daniela Ramirez, Xavier Sanchez, Karen Santana, Jen Takehana, Gabriela Vega, Berenice Venegas, Santiago Ventura, Ghada Yasin

*Members of the public may review a transcript of this meeting, including full public testimony and comment, at <https://www.alrb.ca.gov/meetings/notices-minutes/> as soon as it becomes available. These meeting minutes include Appendices, which provide additional information about topics that were addressed during this ALRB Public Board Meeting. Each Appendix is referenced at the appropriate place within these Minutes.*

### **OPEN SESSION**

1. Call to Order, by Board Chair Victoria Hassid, 10:03 a.m.
  - Rollcall of Board Members; all Board Members were present.
2. Approval of Minutes  
Public Board Meeting Minutes, Feb. 9, 2021:
  - Motion to approve by Board Member Hall.
  - Seconded by Board Member Broad.
  - February 9, 2021 Public Meeting minutes approved by the Board 5-0.Regional Directors Meeting Minutes, Feb. 9, 2021:
  - Motion to approve by Board Member Flores.
  - Seconded by Board Member Lightstone.
  - February 9, 2021 Regional Directors Meeting minutes approved by the Board 5-0.
3. Chair's Report (Victoria Hassid)
  - Board Chair Hassid, Board Member Flores, and General Counsel Montgomery spent Cesar Chavez Day (March 31) at a UFW vaccine distribution event at 40 Acres Ranch in Delano.
  - Governor Newsom designated April 10 as Dolores Huerta day (her birthday). Huerta was active in civil rights work, was a founder of the United Farm Workers, and was a key figure in the creation of the ALRA and the ALRB.
  - ALRB has been utilizing vaccine and food distribution events as an opportunity for outreach to farmworkers. ALRB Outreach Coordinator Daniela Ramirez welcomes invitations to other outreach events. Her contact information is on the ALRB newsroom page.
  - Board Chair Hassid will be speaking next Wednesday at the California Winegrape Growers advocacy day.
  - The Board is focused on monitoring the impact of Covid-19 on farmworkers, raising awareness of important issues, and working to support or address the impact of the pandemic on farmworkers.
  - The Labor Commissioner's Office (LCO) shared that since Feb. 1, 2020 they received:
    - 943 wage claims in agriculture.
    - 77 field enforcement cases.
    - 81 retaliation cases.

So far in 2021, LCO has had 181 wage claims, 11 field enforcement cases, and 20 retaliation cases.

- Cal/OSHA statistics since February 1, 2020 – specific to agriculture only, not including food processing:
    - 227 complaints received, investigated 162 by letters, and opened 32 onsite inspections.
    - 103 accidents/illnesses reported to Cal/OSHA, and opened 29 onsite inspections.
    - 35 fatalities reported to Cal/OSHA, and opened 23 inspections.
    - 154 referrals, and opened 154 onsite inspections.
    - 320 onsite agricultural inspections.
  - The Board has not yet received any decisions or appeals stemming from charges related to COVID-19.
  - Most of the hearings scheduled since the pandemic have settled. However, the ALRB held its first virtual hearing earlier this year.
4. Executive Officer's Report on Elections, Unfair Labor Practice Complaints, and Hearings (Santiago Avila-Gomez)
    - See Appendix A.
  5. Litigation Report (Todd Ratshin)
    - See Appendix B.
  6. General Counsel's Report (Julia Montgomery)
    - Regional offices are busy on outreach to farmworkers about their rights, including how farmworkers can protect themselves against Covid-19 at the workplace. Outreach efforts include:
      - Collaborating with other organizations, including non-profits.
      - Three full-time staff dedicated to ALRB outreach.
      - Pamphlets and presentations.
      - Presentations on Facebook Live.
      - Training and webinars.
      - Radio broadcasts in English and Spanish.
      - Outreach to farmworkers at vaccine events and food distributions.
      - Outreach event today at CA Office of Emergency Services' events about emergency preparedness and use of Personal Protective Equipment (PPE).
      - Events in Fresno, Selma, Lemoore, Earlimart, Monterey County, Tulare County, Delano, Santa Rosa, and other locations.
      - Distributed approximately 5,000 brochures with information about workers' rights and COVID-19 during past couple of months.
      - Currently revising materials to be more accessible to farmworkers with low literacy levels.

- Nine Covid-related charges are under investigation (pending) – eight in the Salinas office, one in Visalia. Charges include:
    - Retaliation for workers' complaints about COVID-related concerns.
    - Lack of protective equipment against Covid-19.
    - Lack of Covid-19 testing.
    - Sharing private medical information about workers with COVID-19.
  - Five settlements since last Board meeting – received backpay, and standard remedies of reading, noticing, and posting to workers at peak season. Some also agreed to have ALRB train supervisors. Respondents agreed to pay economic losses as follows:
    - C&G Farms - walkout by nine farmworkers - \$16,401.
    - Gourmet Specialties and Ojai Farms – settled pre-complaint (no economic losses) – agreement to not retaliate and to respect workers' rights, reading and noticing, supervisor training.
    - Santa Rosa Berry Farms – pre-hearing settlement - \$8,876.
    - Mann Packing and Dominguez Farms – pay cut in retaliation for walkout – pre-hearing settlement \$26,531.
    - Anthony Vineyards – over \$11,000 in back and front pay, supervisor training.
  - Current open positions for attorneys in General Counsel program – at headquarters and at regional offices – posted on ALRB web site.
7. Division of Administrative Services Report (Brian Dougherty)
    - See Appendix C.
  8. Regulations (Todd Ratshin)
    - Sub-committee on regulations (presented by Board Member Broad): see Appendix D.
    - Board Chair Hassid commented on importance of protecting worker identity from disclosure during an investigation, and the time limit for GC investigation (with extension of time for cause), to prevent parties from stalling to run-out the clock.
    - Board Chair Hassid asked about GC review of Regional Director dismissal of charges. Board Member Broad replied that this review process would better align ALRA regulations with NLRA regulations.
    - Board Member Hall made a motion to approve the Regulations subcommittee recommendation to draft regulations as outlined in the Regulations Subcommittee report. Seconded by Board Member Flores. Motion Approved by the Board 5-0.
  9. Legislation (Todd Ratshin)
    - See Appendix E
  10. Personnel (Victoria Hassid)
    - Nothing to report.
  11. Public Comment
    - None.

Break at 10:49, return at 11:00.

12. Informational Panel: *Overview of H-2A Worker Visa Program and Contemporary Issues*

Some of the presenters made the same or similar points. Duplicative items are not included in these minutes.

- a. Presentation by California Employment Development Department (EDD)  
*Cornelio Gomez*, Group Manager, Foreign Labor and Farmworker Services Group (oversees EDD H-2A program)  
*Roman Diaz*, H-2A Program Manager

See Appendix F.

Cornelio Gomez (EDD):

- The H-2A program brings temporary non-immigrant foreign workers to the U.S., to perform temporary, seasonal farm work for which no U.S. (domestic) farmworkers are available.
- The general program requirements include:
  - The employer must demonstrate, and EDD must verify, that there are an insufficient number of available U.S. (domestic) farmworkers who are able, willing, and qualified to perform the temporary, seasonal farm work for which non-immigrant foreign farmworkers are being requested.
  - H-2A workers must not replace, and must not adversely impact the wages of, permanently employed domestic farmworkers.
  - H-2A farmworkers are contracted for only two to ten months of temporary employment per year, and must return to their native nation at the conclusion of the contract.
- There has been a dramatic increase in the number of H-2A farmworkers in California.
  - From 2,577 in 2010, to 10,074 in 2015, to 25,453 in 2020.
  - The heaviest demand for H-2A farmworkers is, in descending order, in Monterey, Santa Barbara, Imperial, Ventura, and San Luis Obispo counties.
  - Recently also seeing increased demand for H-2A farmworkers in Fresno and Sonoma Counties.
- On average, 25 employer applications for H-2A farmworkers are delayed each month, while employers look for sufficient housing for the number of temporary workers requested.
- Because of the current Covid-19 pandemic, workers must be housed at least six feet apart. Traditional farmworker bunk rooms do not meet this new requirement.

Roman Diaz (EDD):

- Mr. Diaz supervises six analysts at the Farmworker Services and Farm Labor Certification group, at EDD headquarters in Sacramento.
- Coordinating with the U.S. Department of Labor, this team administers and manages the H-2A program within California.
- Mr. Diaz described the process flow and timeline for H-2A employer applications:
  - 60 to 75 days before the anticipated start date of the requested H-2A farmworkers, the employer submits a completed federal job-order form.
  - This form includes all terms and conditions of the temporary, seasonal employment.
  - Employers must meet local, state, and federal standards, before the H-2A application can be approved.
  - The H-2A application must not contain any provisions that would preclude U.S. farmworkers from applying for any of the positions.
  - The wages stated on the H-2A application must meet all applicable federal, labor union contract, and local prevailing wage requirements.
  - The H-2A application must also meet all H-2A requirements to provide adequate housing, safe transportation between farmworker housing and the work site, and meals, all at no cost to the farmworkers.
  - The requested use of H-2A farmworkers must not adversely affect the wages and working conditions of domestic farmworkers.
  - If EDD approves the H2A application, it is submitted to the U.S. Department of Labor (DOL) processing center in Chicago for approval, not later than 45 days before the start date of the H-2A farm labor contract.
  - Not later than 45 days before the anticipated start date of the requested H-2A farmworkers, EDD begins trying to fill the H-2A request using domestic instead of foreign workers.
  - This effort to recruit domestic farmworkers, in place of H-2A workers, continues until halfway through the H-2A contract period (for example, for three months of a six-month H-2A contract).
  - Not later than 32 days before the start date of the H-2A farm labor contract, DOL certifies the number of foreign farmworkers approved under the H-2A contract.
  - The DOL certified number of foreign workers is the employer's requested number of workers, minus the number of qualified domestic farmworkers (if any) that EDD successfully recruited for the employer.
  - Not later than 32 days before the anticipated start date of the requested H-2A farmworkers, the employer-provided farmworker housing must be inspected and approved by an inspector from either EDD or the California Department of Housing and Community Development (HCD).

Public Comments about EDD Presentation:

- Board Chair Hassid asked how employers demonstrate lack of domestic farmworkers in their state. Roman Diaz (EDD) responded:
  - The employer certifies in writing that their recruitment effort did not find enough domestic workers.
  - Before, and during the first half of, the H-2A contract period, EDD also tries to recruit domestic workers, to supplement or to replace the temporary H-2A workers.
- Board Member Broad asked if, in addition to variations in demand for H-2A farmworkers by county, does demand for H-2A workers also vary by crop type? Roman Diaz (EDD) responded:
  - The highest demand for H-2A farmworkers by geographical area is on the central coast and the southern coast.
  - The highest demand for H-2A farmworkers by crop type is for strawberries, lettuce, tomatoes, and grape vineyards.
- Board Member Lightstone asked whether ALRB processes – such as a notice of access, a pending election, a charge against the employer, or a complaint issued against the employer – affect an employer’s H-2A recruitment.
  - Roman Diaz (EDD) responded that under H-2A regulations, an employer cannot recruit foreign workers during a currently ongoing union dispute against that employer.
- Board Member Flores asked: Why has there been a ten-fold increase in H-2A demand over the past ten years?
  - Roman Diaz (EDD) stated that there are several reasons why H-2A demand has been increasing:
    - Many farmworkers have retired or will soon retire; employers need to hire replacements.
    - Children of farmworkers go to college and don’t want to be farmworkers like their parents were.
    - Lack of domestic workers requires hiring foreign workers.
    - Crackdowns on border crossings have made it tougher for agricultural employers to hire migrant farmworkers, as they did in the past, to fill the gaps in the availability of domestic farmworkers.
    - H-2A is the only legal process for hiring foreign farmworkers.
  - Cornelio Gomez (EDD) added other reasons why demand for H-2A farmworkers is increasing:
    - 40% of farmworkers are seasonally employed. Being employed only six to nine months out of each year makes farm work less attractive than year-round employment in other businesses, such as fast food, landscaping, and construction. Those jobs are safer, more stable, involve less travel, and offer higher pay than farm work.

- 55,000 farmworkers are not in the U.S. legally. Hiring these workers risks disqualifying an employer from participating in the H-2A program when they need to.
  - The 45,000 domestic farmworkers who are in the U.S. legally, have mostly been with the same employer for 20 or 30 years. They aren't going to leave this steady, dependable employment to apply for a two-month seasonal position.
- Board Member Flores asked how often H-2A applications from employers are denied.
  - Roman Diaz (EDD) responded:
    - Only about five percent of H-2A farmworker applications in California are denied.
    - Sometimes an employer's application for H-2A workers is partially approved: the number of foreign workers requested, minus the number of U.S. workers that EDD successfully recruited to fill some of the positions.
    - If no domestic farmworkers were found to fill the job order, the total requested number of H-2A workers is approved
    - Usually, an employer is instructed to correct the application, or to justify a restrictive requirement, rather than the application being denied outright.
  - Mr. Diaz also stated that the main reasons why H-2A applications are denied are:
    - Job requirements are too restrictive.
    - Provisions of the job order violate federal, state, or local laws.
    - Failure to correct a deficient H-2A application.
- b. Presentation by U.S. Department of Labor (DOL) – Wage and Hour Division, Western Region  
*Richard Longo*, Deputy Regional Administrator  
*Ruben Lugo*, Regional Agriculture/H-2A Coordinator

See Appendix G.



Richard Longo (DOL):

Mr. Longo discussed DOL's role in the H-2A process.

- DOL oversees 40 rules, regulations, and statutes – H-2A is one of the 40.
- DOL education and enforcement programs are state-wide, for employers, employees, and advocates.
- Strawberry growers have used more H-2A workers than other agricultural sectors, so they know how to complete the process correctly.
- Employer interests, such as profits and efficiency, do not always align with the H-2A regulations and labor laws that employers are required to follow.
- DOL education and outreach events help to make the agricultural community better informed.
- H-2A regulations require safe, insured, employer-provided transportation, with trained and licensed drivers. Employers are reimbursed \$55 per employee per day for this transportation.
- Many Sonoma County farmworkers travel a long distance daily from Fresno County, due to lack of farmworker housing in Sonoma County. This raises concerns about the safety of the long-distance transportation.
- Some farmworker housing is overcrowded, or is of substandard construction, or is not a permanent structure.
- Some farmworkers are being moved to farms outside of the geographical area covered by the H-2A contract.
- Some employers are not contacting available domestic farmworkers, and are not offering to rehire workers from the prior season. Instead, these employers are skipping directly to H-2A labor requests.

Ruben Lugo (DOL):

Mr. Lugo provided greater detail on the role of the U.S. DOL Wage & Hour Division in regulating the H-2A program.

- Besides EDD and DOL, state and federal agencies involved in the H-2A process include:
  - U.S. Customs and Immigration Service (issue visas)
  - U.S. Consulate (where the foreign worker applies for the position and obtains the visa).
  - Border Patrol (allows or denies the worker entry into the U.S.).
  - U.S. Department of Justice (investigates fraud and discrimination in hiring of foreign workers).

- In California, the minimum H-2A agricultural Adverse Effect Wage Rate (AEWR) is \$16.05/hour. If employers have a union contract, or are in a region with a prevailing wage, they must pay the higher of the possible wages.
- Transportation and housing requirements under the H-2A program include:
  - The employer pays bus fare from the worker's foreign city, to the employment site, and back to their home city at the end of the H-2A contract.
  - The employer pays any hotel and food subsistence costs for traveling from their home city to the work site, and back at the end of the H-2A contract.
  - Employers must provide free, clean, and safe employee housing to H-2A workers, and also to domestic farmworkers whose homes are too far away to be practical for daily commuting between home and work site.
  - Housing must include standard kitchen appliances; otherwise, the employer must provide three meals per day. The employer is reimbursed \$13.17 per day per employee for meals.
  - An H-2A worker can decline employee housing and live with a local relative. They can also drive their own car and decline the free employer-provided transportation.
  - Employers must provide Workers Compensation to H-2A workers.
  - An employer cannot move H-2A workers to other crops, other locations, or other employers.
  - Associations can hire for all employers who are members of the same association, within a specified geographical area.
  - An association can transfer a worker only between employers within the same association.
  - Farm Labor Contractors can hire H-2A workers under the same regulations as for associations. They also must be licensed and bonded, to protect worker rights and worker wages.
- DOL is vigilant against employees being extorted by criminal enterprises, for the right to come to U.S. from another country.
- Employers are required to maintain good records that meet all applicable H-2A regulations, including justifications if they hire an H-2A farmworker in preference to a qualified domestic farmworker.
- Employers face high fines and makewhole payments for not hiring qualified domestic farmworkers who applied or were referred by EDD.
- If an H-2A worker is released before the completion of the contract term, that worker must be paid at least 3/4 of the total wages that would have been owed to them, had the contract run through the end of its term.
- Employers who have used H-2A workers for longer periods, are at a higher level of compliance. Employers who have participated in the H-2A program for three years or less have the most violations,
- All agricultural labor laws, including the ALRA, also apply to H-2A workers.
- H-2A workers are afraid to assert their rights. To overcome this fear, DOL is educating H-2A employees about their rights.

Public Comments about DOL Presentation:

- Board Member Broad asked about healthcare for H-2A workers. Ruben Lugo (DOL) responded
  - H-2A workers generally receive the same healthcare benefits as other employees of the same employer.
  - Some H-2A workers decline the healthcare, so as not to pay a payroll deduction for this benefit.
  - Workers Comp covers work-related injury, accident, or disease.
  - There needs to be better communication about healthcare, between employers, H-2A workers, hospitals, and local clinics. Poor healthcare communication has led to illness, injury, and even death among farmworkers.
  
- Board Member Flores asked: What responsibility does an employer have to inform workers about employer responsibilities and employee rights? Ruben Lugo (DOL) responded:
  - Rights and responsibilities are communicated by use of H-2A posters at work sites, and by outreach pamphlets that EDD and DOL give to H-2A workers.
  - The job contract itself also enumerates employee rights and employer responsibilities.
  - The U.S. Consulate shows a video to H-2A workers before they come to the U.S., about employee rights and employer responsibilities. This video is generic, not specific to California.
  - There isn't, but should be, a uniform and consistent approach to providing crucial information to H-2A workers, including laws they need to know about and need to comply with, their rights, their employer's responsibilities, and even how to grocery shop, bank, and send money home.
  
- Board Chair Hassid asked if the \$16.05 AEWR is just in California. or for all of the U.S.? Ruben Lugo (DOL) responded:
  - Each state has its own AEWR.
  - Arizona is about \$2 an hour less than in California.
  - California is the third or fourth highest; Oregon and Washington are also very high.
  - The AEWR in southeastern states is very low, about \$9 or \$10 per hour.
  
- Board Chair Hassid asked: Do H-2A farm labor contractors have to register with the state, as farm labor contractors are required to do, for hiring domestic farmworkers?
  - Ruben Lugo (DOL) responded that such employers must be licensed farm labor contractors.
  - Roman Diaz (EDD) added that EDD is using an online database to verify that farm labor contractor licenses are active and current.

- General Counsel Montgomery asked how Covid-19 rules, such as social distancing, have affected H-2A farmworkers and their housing. Ruben Lugo (DOL) responded:
  - H-2A enforcement efforts now include Covid-19 requirements, including six-foot social distancing in worker housing, at work, and in transit between the two.
  - California Governor's Executive Order N-51-20 requires that if a worker tests positive for Covid-19, and if the employer has 500 or more employees working in the United States, then the worker is entitled to 80 hours of paid time off.
  - Workers are also entitled to paid time off if their child is in remote learning from home while schools are closed due to Covid-19.
  - This paid time off is in addition to any other existing rights the worker already has for paid leave days.
  - DOL has been using Facebook and Zoom for outreach about Covid-19 issues, to farmworkers and to their employers.
  - DOL has been incorporating new Cal-OSHA regulations about Covid-19 into their H-2A enforcement efforts.
  - DOL has been taking measures to protect its own workforce against Covid-19 while they are performing investigations.

c. Presentation by Malitzlaw, Inc.  
*Jeanne Malitz, President*

See Appendix H

Ms. Malitz provided an overview of the history of the use of the H-2A program by California employers:

- The first to use this program in California was a sheepherder, in 2000.
- A tomato farm at Camp Pendleton in San Diego started using H-2A workers after 9/11/2001, because undocumented farmworkers were no longer cleared to work on a military base.
- To ensure compliance and to avoid per-worker fines times 600 workers, the Camp Pendleton tomato farm turned to Malitzlaw for guidance through the H-2A process.
- In 2006, a California employer couldn't transfer their undocumented farmworkers to their farm in Yuma, Arizona, because those workers couldn't meet Arizona's new mandatory e-Verify standards. Malitzlaw helped these employers to join the H-2A program.
- Also in 2006, wine-grape growers in Sonoma County started using the H-2A program, as did some farms in the northern Sierra region.

Ms. Malitz also discussed why use of the H-2A program is increasing:

- Aging out and tighter borders have reduced traditional sources of farm labor.
- Productivity increases when the same trained, experienced team of H-2A workers is hired every year, versus a different set of undocumented migrant farmworkers every year.

- More states and the federal government are implementing mandatory e-Verify standards. Undocumented farmworkers don't meet e-Verify standards.
- H-2A use increased nationally by 28% in the first quarter of 2020, compared to Q1 2019, mostly in Florida and Arizona. H-2A use for the entire year of 2020 increased by 8% nationally over 2019.
- President Biden's new immigration reform bill, the U.S. Congress's new Farm Workforce Modernization Act, and the impact of Covid-19 on the agricultural workforce, are all expected to increase the demand for H-2A workers in 2021 and beyond.
- Nationwide, looking at the entire year of 2020 (not just Q1), employers sought 286,900 H-2A workers, of which 275,4230 were certified.
- California had the fourth-highest demand for H-2A workers in 2020, of the 50 states.

Ms. Malitz discussed compliance with H-2A regulations:

- The same H-2A requirements apply equally to all three types of farmworker employers: growers, farm labor contractors, and grower associations. But compliance is more difficult for individual growers, who have fewer staff assigned to work on H-2A compliance.
- H-2A compliance is expensive, but it is even more expensive to pay fines after unintentionally violating H-2A rules and regulations.
- Much of the expense is in building adequate farmworker housing. Social distancing requirements mean that employers must provide twice as many housing units as pre-pandemic. One recently completed farmworker housing facility cost \$40 million.
- The most successful employers have an H-2A team, including Human Resources, payroll, operations management, senior management, and internal or external legal staff.
- Some growers have only one person assigned to office work, including H-2A compliance. Many of these smaller employers also still use hand-written financial records, making H-2A compliance more difficult than when records are computerized.
- Rules against discrimination and preferential treatment, about payroll and retention, and about recruitment, hiring, housing, meals, transportation, and worksite safety, all apply equally to H-2A employers.
- It takes an entire growing season to train an employer about the intricacies of H-2A compliance, and several seasons before there are no inadvertent violations.
- Malitzlaw works with EDD, DOL, the Mexican Consulate, and other governmental agencies, and has them meet with employers and farmworkers to make sure that everyone understands what their rights and responsibilities are.

Ms. Malitz discussed the impact of Covid-19 on H-2A employers:

- Some growers who have lost farmworkers to the pandemic, now hire on-site healthcare professionals. The cost of providing Covid-19 healthcare workers is a necessary business expense to protect the lives and health of the workers upon whom the employers depend.
- H-2A workers are tested for Covid-19 in their home nation two weeks before their hiring start date, and again 72 hours before boarding a plane to the U.S. Farmworkers are ineligible for workers compensation, if they test positive upon arrival.
- Employers must also cooperate with the current effort to vaccinate all California farmworkers, whether domestic or H-2A.
- Because H-2A rules require workers to live in employer-provided housing, some workers who test Covid-19 positive are being released back to employee housing, putting others in the same housing at risk. Clinics are being set-up so that Covid-positive workers won't have to return to worker housing.
- Kern County currently has the best coordinated network of resources to help farmworkers and employers in dealing with Covid-19 related issues.

Public Comments about Malitz Law Presentation:

- Board Chair Hassid: please hold comments until later, to leave time for presentation by Cynthia Rice. It is now 12:41.

- d. Presentation by California Rural Legal Assistance, Inc. (CRLA)  
*Cynthia Rice*, Director of Litigation

See Appendix I

Ms. Rice described the role of CRLA, and its regional offices all over the state of CA. CRLA efforts include addressing issues in the H-2A program, and investigating violations of H-2A and Covid-19 requirements.

- While Malitzlaw works with agricultural employers, CRLA represents the farmworkers.
- One employer laid off 80 U.S. domestic workers, and then hired H-2A workers at lower salaries, in violation of H-2A laws.
- The most common H-2A violations include housing and transportation rules, and not treating workers with respect.
- Both farm labor contractors and direct employers intentionally or unintentionally violate H-2A program requirements. There is insufficient governmental oversight of the H-2A program. Nearly every investigation finds one or more violations by employers.
- Workers are often too frightened of job loss, deportation, or other retaliation, to pursue their rights.
- Job postings are not reaching available (unemployed) domestic workers, or employers don't try to recruit U.S. workers at all, so H-2A becomes the only option for many agricultural employers.

- Many H-2A farmworkers have fled nations with high rates of Covid-19 deaths, nations at war, and nations that have been in economic decline for years or decades. So, H-2A workers don't stand up for their rights, in trade for being able to stay in the U.S.
- Many employers try to skip the requirement to recruit domestic farmworkers, and go directly to recruiting the more attractive foreign H-2A workers.
- The outcome of the current *Cedar Point* case (currently before the U.S. Supreme Court) could negatively impact access to farms, not only by labor unions, but also by EDD, DOL, and CRLA.
- Employers assign worker housing; farmworkers have no voice in housing assignments. Up to 25 workers are often housed together in a single-family home. In one example, housing was certified for 18 to 22 workers, but 35 were living there.
- Multiple workers have also been housed in single-occupancy motel rooms, such as Motel 6, Motel 8, Days Inn, etc.
- Some agricultural employers restrict who workers can have visiting at their living quarters. Without such employer-imposed restrictions, motels theoretically should be more accessible to outreach by organizations such as CRLA, than worker housing on farm property.
- Increasing use of H-2A workers in California could undo many hard-won farmworker rights.
- H-2A workers face isolation, fear of retaliation, and vulnerability, and often lack knowledge of employer responsibilities and employee rights.
- If an employee tries to assert their rights, they can be blacklisted by a network of 100 agricultural employers and become unemployable.
- Some employers use boilerplate H-2A farmworker contracts, which – while complying with federal law – sometimes violate tougher California employment laws.
- Many H-2A farmworkers are told about NLRA (which excludes farmworkers from labor rights), but not about ALRA (which is specific to California farmworker rights).
- CRLA has found that workers are being transferred to housing that hasn't been inspected and approved by DOL, instead of at the posted housing locations, in violation of H-2A rules.
- There is a need for more cooperation between EDD, DOL, CRLA, and ALRB.
- Some employers don't pay reimbursements, and employers don't tell workers to keep receipts and to ask for reimbursement.
- Some employers demand kickbacks and cleaning deposits for the housing and transportation that is supposed to be free.
- Workers are not paid for time spent packing up at day end, waiting for transportation, and waiting for their field supervisor to arrive.
- There are also meal and rest period violations and record-keeping violations.
- Employer-provided food for H-2A farmworkers is often either spoiled or does not meet nutritional requirements. Portion sizes are often insufficient for the amount of energy expended during 10 to 12 hours of working in the fields.

- Some employers require that H-2A workers must speak English or Spanish, which discriminates against indigenous workers.
- Women are often not hired because they must be housed separately, and because statistically, women often stand up for their rights more vocally.
- Ms. Rice (CRLA) suggested that ALRB should be allowed to issue farmworker visas to former H-2A workers who were illegally blacklisted for engaging in protected concerted activity.

Five-minute break at 1:11, return at 1:16

Public Comments about CRLA Presentation:

- Board Member Broad asked if employers will be required to make sure that H-2A workers are vaccinated against Covid-19 this year? Who is responsible for transporting these workers to the vaccination site?

Jeanne Malitz (Malitzlaw) responded:

- In at least one case, CalFIRE came to a farm and performed the worker vaccinations.
- Local private health clinics and county health departments have also vaccinated farmworkers.
- Some employers transport farmworkers to vaccination sites.
- No employer is known to have *mandated* worker vaccinations. Workers can opt out of vaccinations – for example, for religious reasons, or out of fear.

Cynthia Rice (CRLA) added that EDD, DOL, and other government agencies have not issued specific guidelines for vaccinating farmworkers.

- General Counsel Montgomery commented that ALRB has issued some worker visas in the past. The GC would like to explore offline the suggestion made by Cynthia Rice (CRLA) about issuing visas, in cases where a qualifying violation has been committed against H-2A farmworkers.
- Board Chair Hassid asked: How do potential H-2A employers recruit workers from within the U.S.? Jeanne Malitz (Malitzlaw) responded:
  - EDD posts job orders to a web site (seasonaljobs.dol.gov).
  - Employers define their own job requirements, such as whether agricultural experience needs to be crop-specific.
  - Employers look at whether they can rehire farmworkers or contracted farm labor used in previous seasons.
  - U.S. workers can apply online or by phone. Applicants are not required to physically show up in an office.



- Board Chair Hassid asked: As an example, can an employer decline hiring last year's strawberry harvesters, if they need to harvest raspberries this year?

Jeanne Malitz (Malitzlaw) responded:

- Employees must meet *reasonable* job requirements. An employer can hire H-2A workers if no U.S. workers meet these reasonable requirements. But requiring experience with a *specific* fruit or vegetable might not be *reasonable*.
- The job requirements for H-2A workers must be the same as for U.S. workers.

Cynthia Rice (CRLA) added some examples and statistics:

- A grower of two distinctly different crop types required domestic farmworkers to be experienced harvesting both crop types, but did not require experience with both crop types when recruiting H-2A workers. That is a violation of H-2A rules.
  - In another example, workers were required to commute 75 miles round-trip between farm and housing. This commute was not a *reasonable* job requirement. The lack of domestic applicants was therefore not a justification for using H-2A workers.
  - A farm labor contractor (FLC) did not attempt to recruit workers from the previous year, before recruiting H-2A workers.
  - ALRB might need to become involved in H-2A violations if they also violate ALRA regulations.
  - The number of H-2A workers requested per employer is decreasing, but the number of employers requesting H-2A workers is increasing. 100 employers in California requested H-2A workers in 2020; 120 employers have requested H-2A workers in the first quarter of 2021.
  - There are currently active orders for 19,000 H-2A workers in non-peak season in California.
- Board Chair Hassid: Do recent bonds for funding California farmworker housing include H-2A housing?

Jeanne Malitz (Malitzlaw) responded:

- Farm employers pay for H-2A housing; it is not funded by state bonds.
- However, the Farm Workforce Modernization Act, now before the U.S. Congress, will provide federal funding for H-2A farmworker housing.

Cynthia Rice (CRLA) added:

- Last year's farmworker housing bill specifically excludes H-2A workers, because taking single-family homes off the market to house H-2A workers during peak season, has put pressure on the affordable housing market.
- Board Chair Hassid asked: How is the state regulating and overseeing the issue of restrictions on visitors in H-2A farmworker housing?

Cynthia Rice (CRLA) responded:

- Under California state law, employers cannot restrict labor organizations or Covid healthcare workers from access to farmworkers, even though H-2A regulations might appear to support such access restrictions.
- Some employers create "house rules" that are not in the labor contract, and that restrict H-2A workers from leaving housing, except to and from work, groceries, and laundry. Employers use Covid-19 concerns as justification for these restrictions.
- CRLA's experience is that employers upholding access rules is the exception, not the rule.

Jeanne Malitz (Malitzlaw) added:

- Job Orders in English and/or in Spanish are given to workers before they come to the U.S.; these orders include provisions for right to access and right to assemble.
- Employers review every page of the job order with the H-2A workers, before they are brought to the U.S.
- Some restrictions on visitors to farmworker housing is legitimate, to prevent criminal activity within the housing facility.
- Malitzlaw educates employers against including unreasonable restrictions in H-2A job orders. When employers violate legitimate access requirements, these violations are usually reported to EDD and remedied.
- Board Member Lightstone asked: How many H-2A employers are new LLC employers, in business for a short time and replaced by new LLCs?

Jeanne Malitz (Malitzlaw) responded:

- No specific cases of an LLC hiring H-2A workers, and then turning them over to a new LLC.
- However, sometimes multiple small entities all belong to the same larger employer, in an attempt to bypass compliance with H-2A regulations.
- Some farm labor contractors try to employ seasonal H-2A workers year-round, instead of 6 to 9 months.
- DOL in Chicago scrutinizes these factors carefully, and their denial rate on H-2A applications has increased over the past year.

Cynthia Rice (CRLA) added:

- To avoid compliance with H-2A requirements, while still benefitting from the H-2A program, a strawberry grower on the Central Coast spun-off a new company, “owned” by one of their crew foremen.
- Board Chair Hassid asked: What are we doing about employers transferring H-2A workers to different housing, in mid-contract?

Ruben Lugo (DOL) responded:

- A common example of this violation is that between several employers, more H-2A workers are listed as living in the same motel, than the number of rooms in the motel.
- Local inspectors often find that the employees are living in another motel, or in unsafe housing, or 10-12 hours from the worksite, or working in an area that is not under an H-2A contract.

Jeanne Malitz (Malitzlaw) added:

- There are times when housing changes are needed, such as a fire. But EDD and DOL must be notified of this change; employers must follow the defined process.

Cynthia Rice (CRLA) added:

- In one case, H-2A worker housing wasn't completed before the start date of the H-2A contract. H-2A workers were shifted to unapproved, uninspected housing without any notification.
- CRLA worked with EDD on one case where multiple employers listed a total of 120 workers at the same time, in a motel with a capacity for 50 guests.
- CRLA lacks the enforcement power that the EDD, DOL, and ALRB government agencies working together would have.

Cornelio Gomez (EDD) added:

- There is a follow-up housing inspection halfway through the H-2A contract period (such as 4 months into an 8-month contract).
- DOL has a list of housing locations and capacities. A follow-up housing inspection, halfway through the H-2A contract period, often catches when more employees are booked into a facility than the capacity of that facility, or when workers have been moved into housing that has not been inspected and approved.

13. Announcements

- Awaiting Cedar Point decision in U.S. Supreme Court. The Board anticipates that the decision will be issued sometime before July 1.
- The next Public Board Meeting and Regional Directors Meeting will be Tuesday, June 8.

14. Adjourn Meeting

- Meeting adjourned at 1:46 p.m.

**APPENDIX A:  
EXECUTIVE SECRETARY'S REPORT**

**AGRICULTURAL LABOR RELATIONS BOARD**  
OFFICE OF THE EXECUTIVE SECRETARY  
1325 J STREET, SUITE 1900-B  
SACRAMENTO, CA 95814-2944  
(916) 894-6840  
FAX (916) 653-8750  
Internet: [www.alrb.ca.gov](http://www.alrb.ca.gov)



**ALRB PUBLIC MEETING  
EXECUTIVE OFFICER'S REPORT  
ELECTIONS, UNFAIR LABOR PRACTICE COMPLAINTS, AND HEARINGS**

**DATE:** April 9, 2021  
**TO:** Agricultural Labor Relations Board  
**FROM:** Santiago Avila-Gomez, Executive Secretary

---

Since the Board's last public meeting on February 9, 2021, the following has occurred.

**ELECTION ACTIVITY**

No notices of intent to take access (NA), notices of intent to organize (NO), or petitions for certification or decertification have been filed.

**COMPLAINTS**

One amended complaint was filed, one complaint was withdrawn, and four complaints were settled.

1. *Cinagro Farms, Inc.*, Case No. 2017-CE-008-SAL (Vegetables; Ventura County, California) – AMENDED COMPLAINT  
-----
1. *Duda Farm Fresh Foods*, Case No. 2019-CE-011 (Celery; Ventura County, California) – WITHDRAWN COMPLAINT  
-----
1. C&G Farms, Case No. 2019-CE-033-SAL. The parties entered into an informal bilateral settlement agreement (filed March 8, 2021).
2. Dominguez Farms, Case No. 2017-CE-033-SAL et al. The parties entered into an informal bilateral settlement agreement (March 22, 2021).
3. Anthony Vineyards, Case No. 2020-CE-004-VIS. The parties entered into an informal bilateral settlement agreement (March 29, 2021).

4. Santa Rosa Berry Farms, Case No. 2019-CE-050-SAL. The parties entered into an informal bilateral settlement agreement (filed April 8, 2021).

### **HEARINGS**

One virtual hearing was held via Webex.

1. *Cinagro Farms, Inc.*, Case No. 2017-CE-008-SAL (Vegetables; Ventura County, California)

### **ALJ DECISIONS**

No Administrative Law Judge decisions issued.

### **BOARD DECISIONS**

No Board decisions issued.

### **BOARD ADMINISTRATIVE ORDERS**

1. *United Farmworkers of America* (2021) ALRB Admin. Order No. 2021-03 (Order to Show Cause Why The General Counsel's Request For Subpoena Enforcement Should Not Be Granted).
2. *Gerawan Farming, Inc.* (2021) ALRB Admin. Order No. 2021-04 (44 ALRB No. 1; Order Directing Parties to Meet and Confer on Proposed Amendments to Notice to Agricultural Employees).
3. *Gerawan Farming, Inc.* (2021) ALRB Admin. Order No. 2021-05 (44 ALRB No. 1; Order Approving Joint Proposed Amended Notice).
4. *United Farmworkers of America* (2021) ALRB Admin. Order No. 2021-06 (Order Granting the General Counsel's Request for Subpoena Enforcement).

### **CASES PENDING BOARD DECISION OR ACTION**

No cases are pending before the Board.

**APPENDIX B:  
LITIGATION REPORT**



**AGRICULTURAL LABOR RELATIONS BOARD**  
OFFICE OF THE EXECUTIVE SECRETARY  
1325 J STREET, SUITE 1900  
SACRAMENTO, CA 95814-2944  
(916) 894-6840  
FAX (916) 653-8750  
Internet: [www.alrb.ca.gov](http://www.alrb.ca.gov)



## **ALRB PUBLIC MEETING LITIGATION REPORT**

DATE: April 13, 2021  
TO: Agricultural Labor Relations Board  
FROM: Todd M. Ratshin, Chief Board Counsel

---

This report discusses updates and developments that have occurred in litigation matters involving the Board since its February 9, 2021 meeting.

### **Petitions for Writ of Review of Unfair Labor Practice Decisions**

#### California Appellate Courts

► ***Smith Packing, Inc. v. ALRB, Second District Court of Appeal, [Case No. B308102](#)***

**Summary:** Petition for writ of review of the Board's decision in 46 ALRB No. 3, in which the Board found the employer unlawfully terminated a group of employees for engaging in concerted protected activity.

**Status:** The Board filed its respondent's brief on February 18. On March 8, petitioner filed an application for a two-week extension of time to file its reply brief, which the court granted on March 9. Petitioner filed its reply brief on March 29. This case now is fully briefed and pending issuance of an order dismissing the petition or issuing a writ of review.

► ***California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms v. ALRB, Sixth District Court of Appeal, [Case No. H048797](#)***

**Summary:** Petition for writ of review of the Board's decision in 46 ALRB No. 5, in which the Board found the employer unlawfully suspended a group of employees for engaging in protected concerted activity.

**Status:** The Board filed the certified record on March 8. Petitioner's opening brief is due April 12. The Board's respondent's brief is due May 17.

## **Other Board Litigation**

### **United States Supreme Court**

#### **► *Cedar Point Nursery and Fowler Packing Co., Inc. v. Hassid, et al.*, U.S. Supreme Court, [Case No. 20-107](#)**

**Summary:** The growers seek review of the Ninth Circuit’s opinion rejecting their argument the Board’s access regulation (Cal. Code Regs., tit. 8, § 20900) violates the Fifth Amendment’s Takings Clause. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2019) 923 F.3d 524; see also *Cedar Point Nursery v. Shiroma* (9th Cir. 2020) 956 F.3d 1152 [order denying petition for rehearing en banc].)

**Status:** After the Board filed its opposition brief on February 5, amicus briefs in support of the Board were filed by: National Employment Law Program, et al. (Feb. 10); Property Law Professors (Feb. 11); UFCW Western States Council and Teamsters Joint Council 7 (Feb. 11); Legal Historians (Feb. 12); U.S. Senators Whitehouse, Merkley, Blumenthal, Booker, and Padilla (Feb. 12); Constitutional Accountability Center (Feb. 12); International Lawyers Assisting Workers Network, et al. (Feb. 12); Virginia, Colorado, Connecticut, Delaware, D.C., Hawaii, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington (Feb. 12); AFL-CIO (Feb. 12); SEIU (Feb. 12); Local Governments (Feb. 12); UFW (Feb. 12); and California Rural Legal Assistance, Inc., et al. (Feb. 12). Also, on February 12 the United States filed a letter with the Court reversing its prior position in favor of petitioners and asserting the Board’s regulation does not constitute a per se taking. Petitioners’ reply brief was filed March 8. The Court heard oral arguments on March 22, and the case now is pending issuance of an opinion.

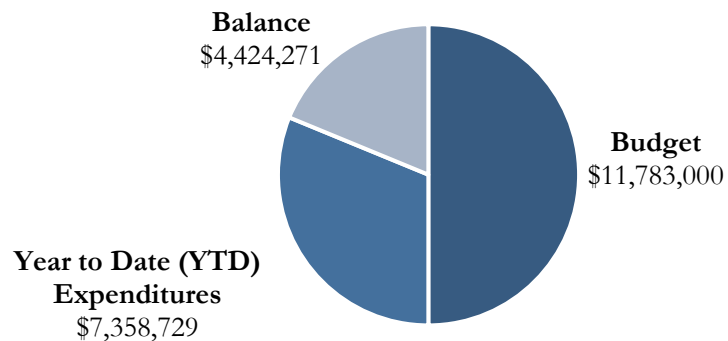
**APPENDIX C:**  
**DIVISION OF ADMINISTRATIVE SERVICES REPORT**

**Agricultural Labor Relations Board (ALRB)**  
**Fiscal Year 2020-2021 Expenditure Report**  
**July 2020 - February 2021**

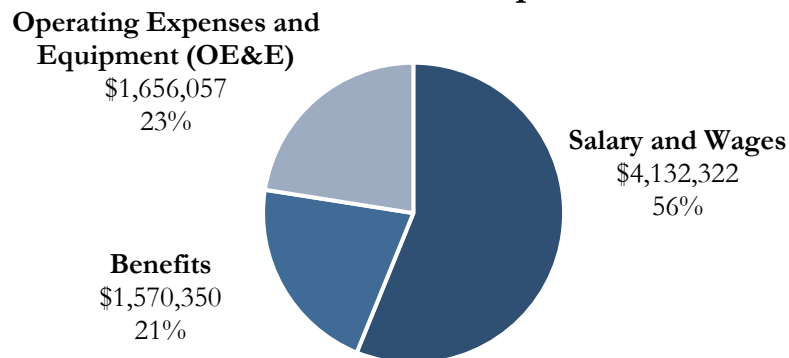
**ALRB Budget and Expenditures**

Description		Budget	Year to Date (YTD) Expenditures	Balance
<b>Personnel Services (PS)</b>	Salary and Wages	\$5,543,000	\$4,132,322	\$1,410,678
	Benefits	\$2,284,000	\$1,570,350	\$713,650
	Total Personal Services	\$7,827,000	\$5,702,672	\$2,124,328
<b>Operating Expenses and Equipment (OE&amp;E)</b>		\$3,956,000	\$1,656,057	\$2,299,943
<b>Totals</b>		<b>\$11,783,000</b>	<b>\$7,358,729</b>	<b>\$4,424,271</b>

**Total Budgets to Expenditures**



**Expenditure Totals and Percentages**



**APPENDIX D:  
REGULATIONS SUB-COMMITTEE REPORT**

**AGRICULTURAL LABOR RELATIONS BOARD**

1325 J STREET, 19<sup>th</sup> FLOOR  
SACRAMENTO, CA 95814  
(916) 894-6810  
FAX (916) 653-8750  
Internet: [www.alrb.ca.gov](http://www.alrb.ca.gov)



To: Members, Agricultural Labor Relations Board  
From: Barry Broad and Ralph Lightstone  
Re: Regulations Subcommittee Report  
Date: April 7, 2021

As directed by the Board, the Regulations Subcommittee has solicited input from both the public and ALRB staff regarding proposed changes to our regulations.

After reviewing the suggestions, we recommend the Board authorize the subcommittee to proceed with the process of developing a regulatory package that the Board can consider for formal promulgation at a future public meeting.

Specifically, we would suggest developing regulatory proposals in the following areas.

Technical Changes

1. Correct typographical errors.
2. Modify regulations to achieve gender-neutral wording.

Filing of Pleadings and Service of Process Generally

1. Eliminate outdated methods of filing and service (telegrams, mailgrams, etc.)
2. Require parties to provide email addresses on pleading captions.
3. Eliminate requirements that parties file multiple hard copies of pleadings that are filed.
4. Require parties represented by attorneys to file electronically.
5. Allow unrepresented parties the option to file electronically.
6. Permit electronic signatures on filings.

### Filing of Charges

1. Allow a charging party the option to request that the General Counsel protect their identity from disclosure during an investigation.

### Dismissal of a charge

1. Allow the General Counsel to review the dismissal of a charge by the Regional Director.

### Investigation of a charge by General Counsel

1. Allow the General Counsel to issue an investigative subpoena for testimony of a witness under oath.
2. Allow the General Counsel to issue a limited number of interrogatories during an investigation.
3. Allow the General Counsel to file a Request for Particulars regarding a respondent's answer to a charge.
4. Require parties subject to a subpoena duces tecum or request for documents to maintain a privilege log.

### Issuance of a Complaint

1. Establish a time limit for the General Counsel to issue a complaint after an unfair labor practice charge has been filed, subject to a motion for an extension of time for just cause. Once the time limit has passed, the charge would be deemed dismissed.

### Post-Complaint Procedures and ALJ Hearings

1. Require mandatory settlement conferences in unfair labor practice proceedings.

2. Require a party seeking an extension of time to file pleadings or motions to provide a declaration stating the position of the other party or if the other party was unavailable to communicate its position.
3. Require mandatory case management conferences in all cases to be heard before an ALJ.
4. After a hearing has commenced, extend the authority of an ALJ to grant a continuance from two days to a maximum of ten business days.

#### Interlocutory Appeals to the Board

1. Establish the standard to be applied by the Board to determine whether to grant special permission to appeal an interlocutory ruling of an Administrative Law Judge or of the Executive Secretary.

#### Enforcement of a subpoena in Superior Court

1. Where the Board has approved a General Counsel request to apply to superior court to enforce a subpoena, either the General Counsel or the Board itself may file with the Superior Court.

#### Representation Proceedings

1. Allow electronic signature of a representation petition filed with an ALRB regional office.
2. Clarify that a security guard shall be deemed a person who may accept service of a representation petition on behalf of an employer.
3. Specify the circumstances or conduct which would justify the blocking of an election or require the impounding of ballots.
4. Specify that agricultural employers shall maintain accurate records of employee names, home addresses, cellular and landline telephone numbers, and email addresses and that such information shall be made available to the General Counsel for investigatory purposes and shall be included in the



“Excelsior” list that is made available to a labor union seeking to represent agricultural employees.

#### Cannabis Industry Specific Regulations

1. Develop regulations that implement and make enforceable Labor Peace Agreements between an agricultural employer and labor union, entered into pursuant to applicable provisions of the Business and Professions Code.
2. Where state or federal law regulating the cannabis industry mandates video surveillance of a workplace, establish a procedure which guarantees employees access to a location free of such surveillance for the purpose of meeting with union representatives.

#### Supplemental Mandatory Mediation and Conciliation (MMC)

1. Establish regulations governing the supplemental MMC process.

**APPENDIX E:  
LEGISLATIVE REPORT**

**AGRICULTURAL LABOR RELATIONS BOARD**  
OFFICE OF THE EXECUTIVE SECRETARY  
1325 J STREET, SUITE 1900  
SACRAMENTO, CA 95814-2944  
(916) 894-6840  
FAX (916) 653-8750  
Internet: [www.alrb.ca.gov](http://www.alrb.ca.gov)



## **ALRB PUBLIC MEETING LEGISLATIVE REPORT**

DATE: April 13, 2021  
TO: Agricultural Labor Relations Board  
FROM: Todd M. Ratshin, Chief Board Counsel

---

This report provides updates on legislative activity affecting the Agricultural Labor Relations Act or the Agricultural Labor Relations Board.

### **Assembly Bill No. 616 (Asm. Mark Stone - D)**

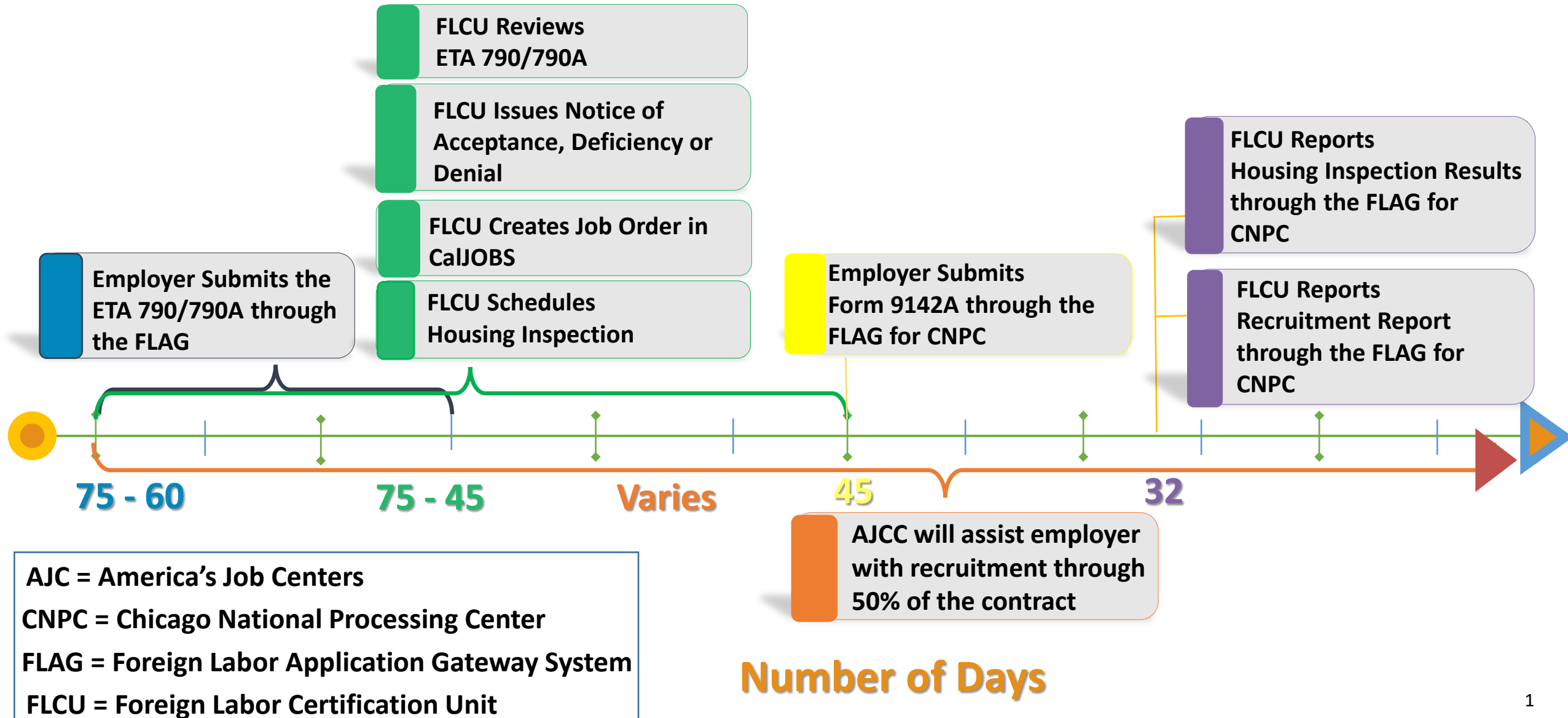
This bill was introduced on February 12, 2021, and is sponsored by the United Farm Workers of America. On February 25 it was referred to the Assembly Committee on Labor and Employment, and it is set for hearing on April 22, at 10:30 a.m. Further information about the hearing is available at: <https://albr.assembly.ca.gov/hearings>.

This bill would allow agricultural employees to select a labor organization as their exclusive bargaining representative through a "representation ballot card election" as an alternative to conducting a secret ballot election as provided under current law. These procedures would be codified in proposed new Labor Code section 1156.35. This bill also would add new Labor Code section 1162 requiring an employer to post an appeal bond as a condition of seeking judicial review of any order providing monetary relief to agricultural employees or a labor organization.

The full text of the bill and further information on it are available at:  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB616](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB616).

**APPENDIX F:**  
**EMPLOYMENT DEVELOPMENT DEPARTMENT PRESENTATION**

# H-2A Application Process Flow Chart



**APPENDIX G:**  
**U.S. DEPARTMENT OF LABOR PRESENTATION**

## **Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)**

**This fact sheet provides general information concerning the application of the H-2A requirements to the agricultural industry for H-2A applications submitted on or after March 15, 2010.**

### **Introduction**

The Immigration and Nationality Act (INA) authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. The Department of Labor's regulations governing the H-2A Program also apply to the employment of U.S. workers by an employer of H-2A workers in any work included in the ETA-approved job order or in any agricultural work performed by the H-2A workers during the period of the job order. Such U.S. workers are engaged in corresponding employment.

### **Overview of Employer Contractual Obligations**

**Recruitment of U.S. Workers:** In order for the Department of Labor to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers, employers must demonstrate the need for a specific number of H-2A workers. In addition to contacting certain former U.S. employees and coordinating recruitment activities through the appropriate State Workforce Agency, employers are required to engage in positive recruitment of U.S. workers. H-2A employers must provide employment to any qualified, eligible U.S. worker who applies for the job opportunity until 50 percent of the period of the work contract has elapsed. Employers must offer U.S. workers terms and working conditions which are not less favorable than those offered to H-2A workers.

**Termination of Workers:** Employers are prohibited from hiring H-2A workers if the employer laid off U.S. workers within 60 days of the date of need, unless the laid-off U.S. workers were offered and rejected the agricultural job opportunities for which the H-2A workers were sought. A layoff of U.S. workers in corresponding employment is permissible only if all H-2A workers are laid off first. Employers may only reject eligible U.S. workers for lawful, job-related reasons.

In order to negate a continuing liability for wages and benefits for a worker who is terminated or voluntarily abandons the position, employers are required to notify the Department of Labor (DOL), and in the case of an H-2A worker the Department of Homeland Security, no later than two working days after the termination or abandonment.

**Rates of Pay:** The employer must pay all covered workers at least the highest of the following applicable wage rates in effect at the time work is performed: the adverse effect wage rate (AEWR), the

applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage.

Wages may be calculated on the basis of hourly or “piece” rates of pay. The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment and on a pay period basis must average no less than the highest required hourly wage rate.

**Written Disclosure:** No later than the time at which an H-2A worker applies for a visa and no later than on the first (1<sup>st</sup>) day of work for workers in corresponding employment, the employer must provide each worker a copy of the work contract – in a language understood by the worker – which describes the terms and conditions of employment. In the absence of a separate written work contract, the employer must provide each worker with a copy of the job order that was submitted to and approved by DOL. The work contract must include:

- the beginning and ending dates of the contract period as well as the location(s) of work;
- any and all significant conditions of employment, including payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays);
- the hours per day and the days per week each worker will be expected to work;
- the crop(s) to be worked and/or each job to be performed;
- the applicable rate(s) for each crop/job;
- that any required tools, supplies, and equipment will be provided at no charge;
- that workers’ compensation insurance will be provided at no charge; and
- any deductions not otherwise required by law. All deductions must be reasonable. Any deduction not specified is not permissible.

**Guarantees to All Workers:** H-2A employers must guarantee to offer each covered worker employment for a total number of hours equal to at least 75% of the workdays in the contract period – called the “three-fourths guarantee.” For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).

If during the total work contract period the employer does not offer sufficient workdays to the H-2A or corresponding workers to reach the total amount required to meet the three-fourths guarantee, the employer must pay such workers the amount they would have earned had they actually worked for the guaranteed number of workdays. Wages for the guaranteed 75% period will be calculated at no less than the rate stated in the work contract.

**Housing:** Employers must provide housing at no cost to H-2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day. If the employer elects to secure rental (public) accommodations for such workers, the employer is required to pay all housing-related charges directly to the housing’s management.

In addition, employers are required to either provide each covered worker with three meals per day, at no more than a DOL-specified cost, or to furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals.

Employer-provided or secured housing must meet all applicable safety standards.



**Transportation:** Employers must provide daily transportation between the workers' living quarters and the employer's worksite at no cost to covered workers living in employer-provided housing. Employer-provided transportation must meet all applicable safety standards, be properly insured, and be operated by licensed drivers.

**Inbound & Outbound Expenses:** If not previously advanced or otherwise provided, the employer must reimburse workers for reasonable costs incurred for inbound transportation and subsistence costs once the worker completes 50% of the work contract period. Note: the FLSA applies independently of H-2A and prohibits covered employees from incurring costs that are primarily for the benefit of the employer if such costs take the employee's wages below the FLSA minimum wage. Upon completion of the work contract, the employer must either provide or pay for the covered worker's return transportation and daily subsistence.

**Records Required:** Employers must keep accurate records of the number of hours of work offered each day by the employer and the hours actually worked each day by the worker.

On or before each payday (which must be at least twice monthly), each worker must be given an hours and earnings statement showing hours offered, hours actually worked, hourly rate and/or piece rate of pay, and if piece rates are used, the units produced daily. The hours and earnings statement must also indicate total earnings for the pay period and all deductions from wages.

**Additional Assurances and Obligations:** Employers must comply with all applicable laws and regulations, including the prohibition against holding or confiscating workers' passports or other immigration documents. In addition, employers must not seek or receive payment of any kind from workers for anything related to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, or the recruitment costs. Employers must also assure that there is no strike or lockout in the course of a labor dispute at the worksite for the H-2A certification which the employer is seeking. In addition, employers cannot discriminate against – or discharge without just cause – any person who has filed a complaint, consulted with an attorney or an employee of a legal assistance program, testified, or in any manner, exercised or asserted on behalf of himself/herself or others any right or protection afforded by sec. 218 of the INA or the H-2A regulations.

## **H-2A Labor Contractors**

An H-2ALC is a person who meets the definition of an "employer" under the H-2A Program and does not otherwise qualify as a fixed-site employer or an agricultural association (or an employee of a fixed-site employer or agricultural association) and who is engaged in any one of the following activities in regards to any worker subject to the H-2A regulations: recruiting, soliciting, hiring, employing, furnishing, housing, or transporting.

While H-2A does not require labor contractors to register as such with the Department, any *person* who is subject to MSPA as a Farm Labor Contractor (FLC) must register with the Department and be issued an FLC Certificate of Registration prior to engaging in any farm labor contracting activity. In their H-2A applications, H-2ALCs required to be registered under MSPA are obligated to provide their respective MSPA FLC Certificate of Registration number and to identify the farm labor contracting activities they are authorized to perform.

In addition to meeting the same assurances and obligations as any other H-2A employer, H-2ALCs must fulfill the following requirements:

- list the name and location of each fixed-site agricultural business to which they expect to provide H-2A workers, the dates of each employment opportunity, and a description of the crops and activities the workers are expected to perform at each area of intended employment;
- submit a copy of each work contract agreement between the H-2ALC and the agricultural business to which they expect to provide workers;
- provide proof that all housing and transportation if provided or secured by the fixed-site employer complies with applicable safety and health standards; and
- obtain and submit the original surety bond with the H-2A Application.

**Surety Bond:** The surety bond must be written to cover liability incurred during the term of the work contract period listed on the H-2A Application and must remain in effect for a period of at least 2 years from the expiration date of the labor certification. H-2ALCs must obtain the surety bond in the following amounts:

- \$5,000 for a labor certification with fewer than 25 employees;
- \$10,000 for a labor certification with 25 to 49 employees;
- \$20,000 for a labor certification with 50 to 74 employees;
- \$50,000 for a labor certification with 75 to 99 employees; and
- \$75,000 for a labor certification with 100 or more employees.

The bond must be payable to the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3502, Washington, DC 20210.

## **Where to Obtain Additional Information**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4US-WAGE (1-866-487-9243).**

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
**[Contact Us](#)**

**APPENDIX H:  
MALITZLAW, INC. PRESENTATION**

# The H-2A Program From The Employers' Perspective

*Jeanne M. Malitz*

*Principal, Malitzlaw, Inc.*

## **Current and recent developments:**

**Sen. Bob Menendez, D-N.J., and Rep. Linda Sánchez, D-Calif., today introduced President Biden's immigration proposal (February 2021)**

- **Eliminates 3 and 10-year bars**
- **Eliminates age-outs (21 years and older)**
- **Eliminates employment-based per country limitations**
- **Eliminate Public Charge Rule**

- **Farm Workforce Modernization Act passed the House in 2021 and is now in the Senate**
- Current H-2A Program continues to grow: DOL withdraws H-2A Modernization Rule for further review (January 20, 2021)
- Impact of COVID-19 on current agricultural workforce

## OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Program –  
Selected Statistics, Fiscal Year (FY) 2021 Q1

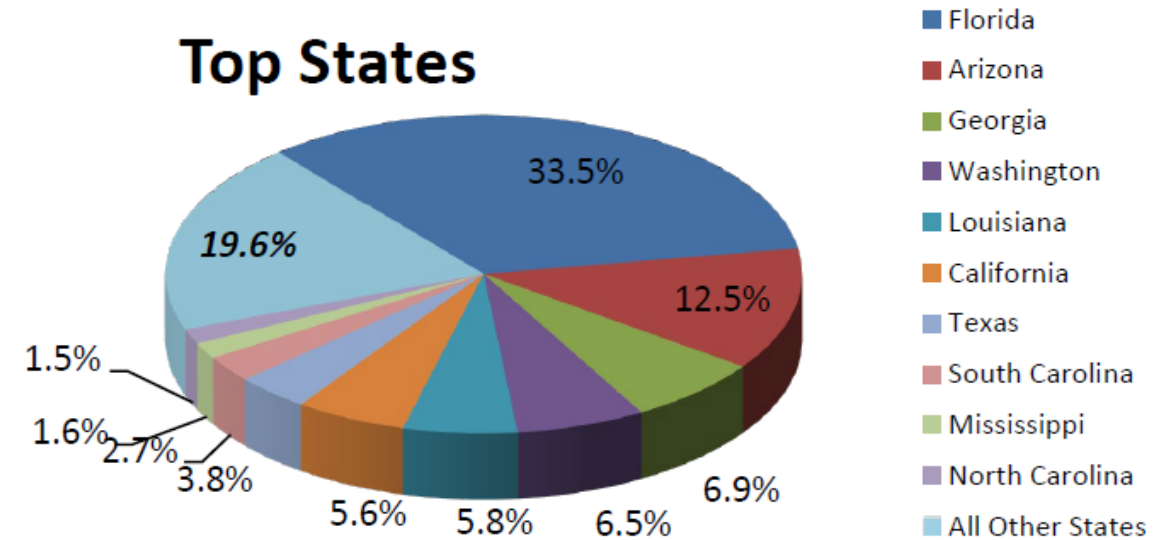
### Applications Received<sup>1</sup>

FYTD	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2020
4,556	4,556	--	--	--	28.5%

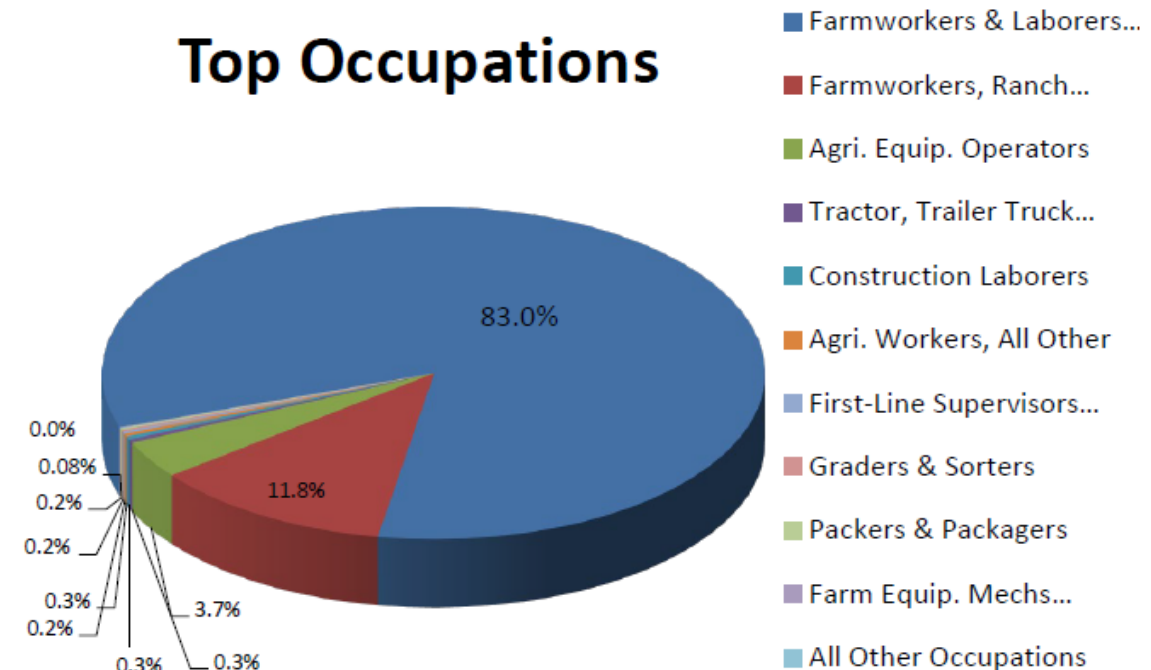
### Applications Processed

Determination	FYTD	Q1	Q2	Q3	Q4
Total Processed	2,720	2,720	--	--	--
- Certified	2,570	2,570	--	--	--
- Denied	71	71	--	--	--
- Withdrawn	79	79	--	--	--
Positions Requested	51,181	51,181	--	--	--
Positions Certified	48,929	48,929	--	--	--
Processed Timely <sup>2</sup>	97.6%	97.6%	--	--	--

### Top States



### Top Occupations



## OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Program –  
Selected Statistics, Fiscal Year (FY) 2021 Q1

Review of Positions Certified FY 2021 Q1 (% of total certified FY 2021 Q1)			
Top 10 States of Employment	Florida	16,435	33.6%
	Arizona	6,101	12.5%
	Georgia	3,366	6.9%
	Washington	3,205	6.6%
	Louisiana	2,831	5.8%
	California	2,765	5.7%
	Texas	1,843	3.8%
	South Carolina	1,315	2.7%
	Mississippi	801	1.6%
	North Carolina	744	1.5%

Top 10 Employers <sup>3</sup> (based on unique FEINs)	Fresh Harvest, Inc.	1,702	3.5%
	Foothill Packing, Inc.	1,473	3.0%
	Temp.Labor, LLC	1,376	2.8%
	Overlook Harvesting Company, LLC	842	1.7%
	Tanimura & Antle Fresh Foods, Inc.	800	1.6%
	Ag Labor, LLC	661	1.4%
	The Growers Company, Inc.	641	1.3%
	Citrus Harvesting, Inc.	620	1.3%
	Everglades Harvesting, Inc.	600	1.2%
	Statewide Harvesting & Hauling, LLC	586	1.2%



## OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Program –  
Selected Statistics, Fiscal Year (FY) 2020 EOY

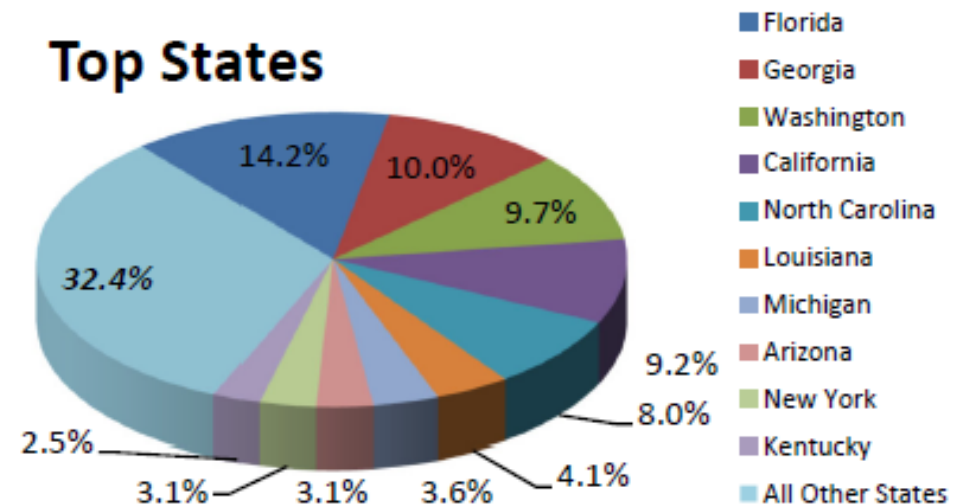
### Applications Received<sup>1</sup>

FY	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2019
14,131	3,545	6,129	2,681	1,776	8.0%

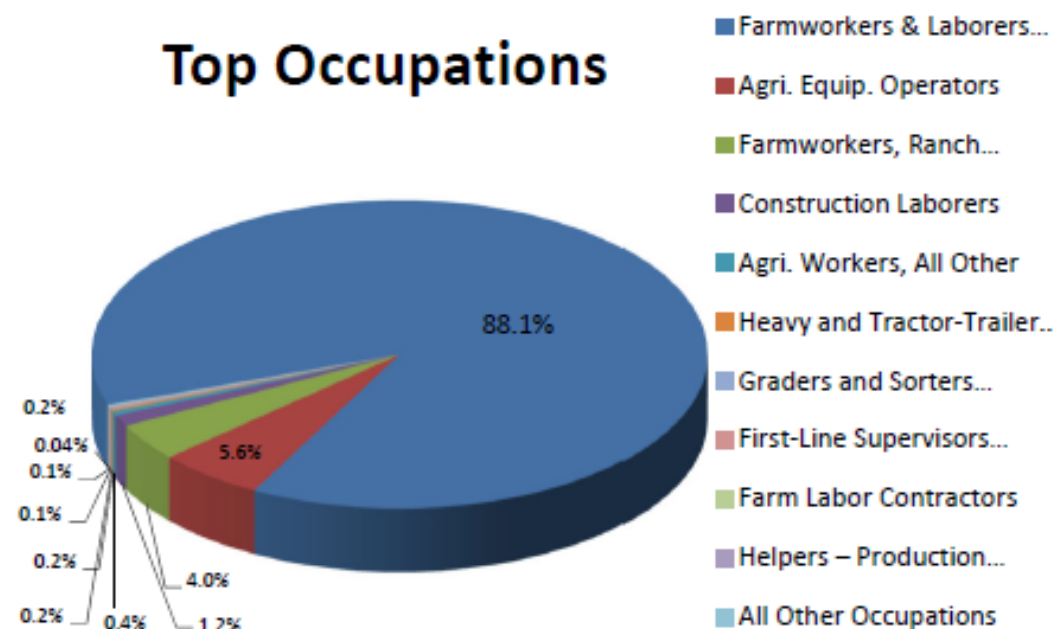
### Applications Processed

Determination	FY	Q1	Q2	Q3	Q4
Total Processed	14,063	2,111	6,820	3,095	2,037
- Certified	13,552	1,991	6,654	2,964	1,943
- Denied	247	62	73	67	45
- Withdrawn	264	58	93	64	49
Positions Requested	286,900	43,178	100,248	88,136	55,338
Positions Certified	275,430	40,844	97,375	85,044	52,167
Processed Timely <sup>2</sup>	96.8%	97.8%	96.8%	95.9%	96.0%

### Top States



### Top Occupations



## **OFFICE OF FOREIGN LABOR CERTIFICATION**

### H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 EOY

#### **Review of Positions Certified FY 2020 EOY** (% of total certified FY 2020 EOY)

#### **Top 10 States of Employment**

Florida	39,064	14.2%
Georgia	27,614	10.0%
Washington	26,832	9.7%
California	25,453	9.2%
North Carolina	22,052	8.0%
Louisiana	11,332	4.1%
Michigan	9,912	3.6%
Arizona	8,602	3.1%
New York	8,482	3.1%
Kentucky	6,952	2.5%

#### **Top 10 Employers<sup>3</sup> (based on unique FEINs)**

North Carolina Grower's Assoc., Inc.	10,650	3.9%
Fresh Harvest, Inc.	5,326	1.9%
WAFLA	4,358	1.6%
Foothill Packing, Inc.	3,199	1.2%
Farm Op Kuzzens H2A, LLC	2,998	1.1%
Rancho Nuevo Harvesting, Inc.	2,864	1.0%
Overlook Harvesting Company, LLC	2,589	0.9%
Templabor, LLC	2,252	0.8%
Zirkle Fruit Company	2,191	0.8%
R & R Harvesting, Inc.	2,056	0.8%

## OFFICE OF FOREIGN LABOR CERTIFICATION

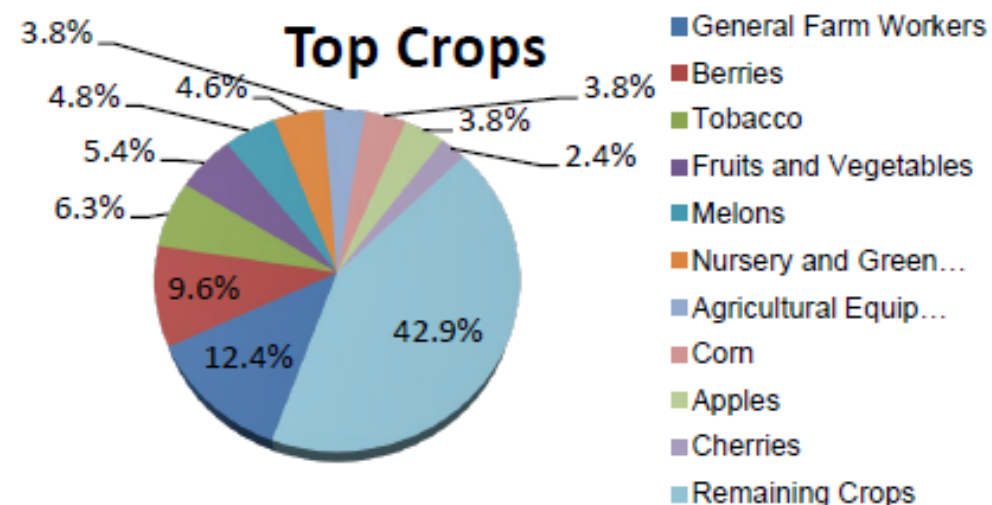
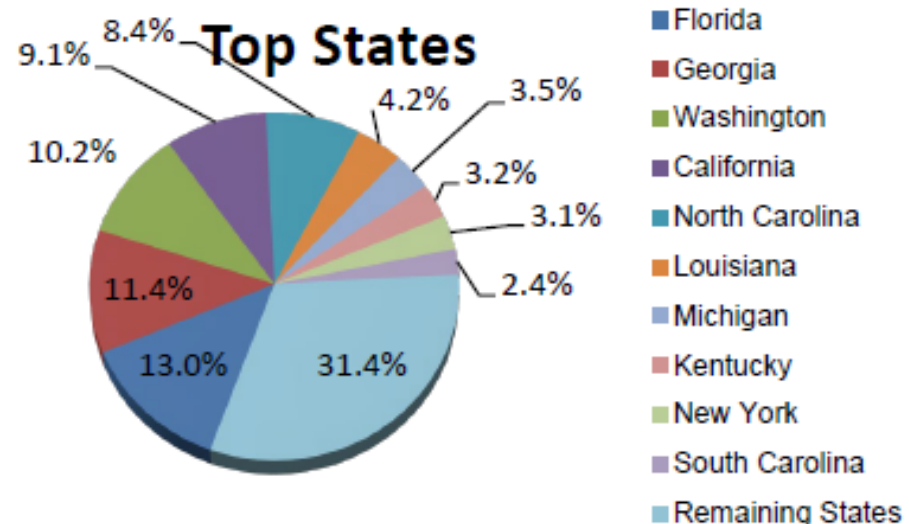
H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019

### Applications Received<sup>1</sup>

FYTD	Q1	Q2	Q3	Q4	% Change FY 2018
13,081	3,175	5,380	2,948	1,578	10.8%

### Applications Processed<sup>3</sup>

Determination	FYTD	Q1	Q2	Q3	Q4
Total Determinations	13,095	1,964	5,800	3,357	1,974
- Certified	12,626	1,880	5,660	3,242	1,844
- Denied	211	34	67	53	57
- Withdrawn	258	50	73	62	73
Positions Requested	268,729	36,477	91,161	85,454	55,637
Positions Certified	257,667	35,449	87,868	82,094	52,256
Processed Timely <sup>3</sup>	86.1%	92.6%	77.5%	85.6%	96.3%



## OFFICE OF FOREIGN LABOR CERTIFICATION

### H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019

Review of Positions Certified FY 2019 EOY (% of total certified FY 2019 EOY)			
<b>Top 10 States</b>	Florida	33,598	13.0%
	Georgia	29,480	11.4%
	Washington	26,226	10.2%
	California	23,321	9.1%
	North Carolina	21,605	8.4%
	Louisiana	10,816	4.2%
	Michigan	9,096	3.5%
	Kentucky	8,315	3.2%
	New York	8,104	3.1%
	South Carolina	6,082	2.4%

<b>Top 10 Employers</b>	North Carolina Growers Association (NCGA)	11,223	4.4%
	Fresh Harvest, Inc.	4,812	1.9%
	WAFLA	4,369	1.7%
	Zirkle Fruit Company	3,400	1.3%
	Farm-Op Kuzzens H2A, LLC	2,658	1.0%
	Ag Labor, LLC	2,409	0.9%
	Foothill Packing, Inc.	2,398	0.9%
	Overlook Harvesting Co.	2,396	0.9%
	R & R Harvesting, Inc.	2,094	0.8%
	Rancho Nuevo Harvesting	2,024	0.8%

# Hourly AEWs by State

Alabama	\$11.81
Arizona	\$13.67
Arkansas	\$11.88
California	\$16.05
Colorado	\$14.82
Connecticut	\$14.99
Delaware	\$14.05
Florida	\$12.08
Georgia	\$11.81
Hawaii	\$15.56
Idaho	\$14.55
Illinois	\$15.31

Indiana	\$15.31
Iowa	\$15.37
Kansas	\$15.89
Kentucky	\$12.96
Louisiana	\$11.88
Maine	\$14.99
Maryland	\$14.05
Massachusetts	\$14.99
Michigan	\$14.72
Minnesota	\$14.72
Mississippi	\$11.88
Missouri	\$15.37

Montana	\$14.55
Nebraska	\$15.89
Nevada	\$14.82
New Hampshire	\$14.99
New Jersey	\$14.05
New Mexico	\$13.67
New York	\$14.99
North Carolina	\$13.15
North Dakota	\$15.89
Ohio	\$15.31
Oklahoma	\$13.03
Oregon	\$16.34

Pennsylvania	\$14.05
Rhode Island	\$14.99
South Carolina	\$11.81
South Dakota	\$15.89
Tennessee	\$12.96
Texas	\$13.03
Utah	\$14.82
Vermont	\$14.99
Virginia	\$13.15
Washington	\$16.34
West Virginia	\$12.96
Wisconsin	\$14.72
Wyoming	\$14.55

# Hourly AEWs by State

Oregon	\$16.34
Washington	\$16.34
California	\$16.05
Kansas	\$15.89
Nebraska	\$15.89
North Dakota	\$15.89
South Dakota	\$15.89
Hawaii	\$15.56
Iowa	\$15.37
Missouri	\$15.37
Illinois	\$15.31
Indiana	\$15.31

Ohio	\$15.31
Connecticut	\$14.99
Maine	\$14.99
Massachusetts	\$14.99
New Hampshire	\$14.99
New York	\$14.99
Rhode Island	\$14.99
Vermont	\$14.99
Colorado	\$14.82
Nevada	\$14.82
Utah	\$14.82
Michigan	\$14.72

Minnesota	\$14.72
Wisconsin	\$14.72
Idaho	\$14.55
Montana	\$14.55
Wyoming	\$14.55
Delaware	\$14.05
Maryland	\$14.05
New Jersey	\$14.05
Pennsylvania	\$14.05
Arizona	\$13.67
New Mexico	\$13.67
North Carolina	\$13.15

Virginia	\$13.15
Oklahoma	\$13.03
Texas	\$13.03
Kentucky	\$12.96
Tennessee	\$12.96
West Virginia	\$12.96
Florida	\$12.08
Arkansas	\$11.88
Louisiana	\$11.88
Mississippi	\$11.88
Alabama	\$11.81
Georgia	\$11.81
South Carolina	\$11.81

# Meal Deduction and Reimbursement Rates: 2021

- **\$13.17 per day where meals are provided**
- **\$55 per day with receipts**
- **Daily meal deduction in employer housing where there are no kitchens**
- **Inbound/Outbound Transportation**

H-2A  
Employer  
Challenges  
and Best  
Practices

How Successful Agricultural  
Employers Navigate the  
H-2A Program Today



# Be: Careful, Clear, and *Kind*

- Understand preferential treatment rules
- Understand non-discrimination rules
- Understand document and payroll and retention rules
- Understand  $\frac{3}{4}$  Guarantee rules
- Understand recruitment and hiring rules
- Understand State and Federal employment laws and Wage and Hour rules
- Understand Corresponding Employment
- Understand Housing Rules: Federal, State, and Local
- UNDERSTAND SAFETY AND HUMAN RESOURCES RULES!!

## COVID-19 Related Issues:

- H-2A, foreign ag workers on other visas (TN and H-2B), and domestic ag workers are deemed “essential” for purposes of border crossing and consulate closures due to COVID-19
- Outbreaks of COVID in ag industry are geographically related (i.e. Border areas hardest hit with limited or no outbreaks in more remote areas: Sonoma, CA)
- State-specific restrictions on housing and transportation: California has the most restrictive rules in the nation: litigation is pending

Questions?

**APPENDIX I:  
CALIFORNIA RURAL LEGAL  
ASSISTANCE, INC. PRESENTATION**

# OFFICE OF FOREIGN LABOR CERTIFICATION

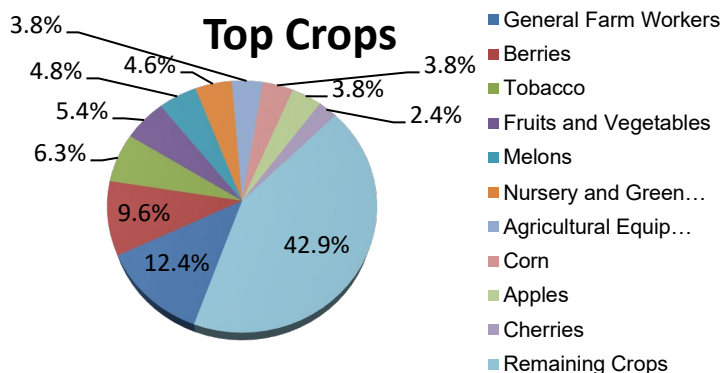
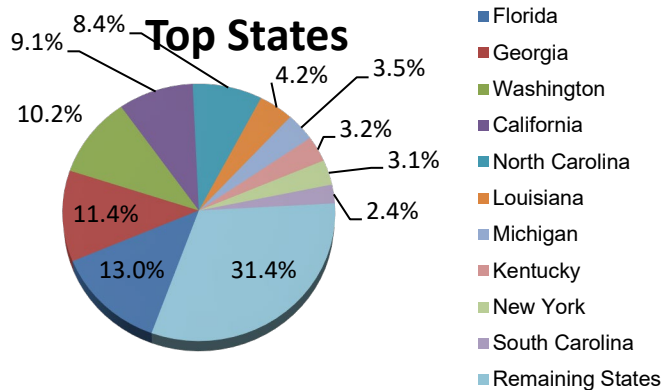
## H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019

### Applications Received<sup>1</sup>

FYTD	Q1	Q2	Q3	Q4	% Change FY 2018
13,081	3,175	5,380	2,948	1,578	10.8%

### Applications Processed<sup>3</sup>

Determination	FYTD	Q1	Q2	Q3	Q4
<b>Total Determinations</b>	13,095	1,964	5,800	3,357	1,974
- Certified	12,626	1,880	5,660	3,242	1,844
- Denied	211	34	67	53	57
- Withdrawn	258	50	73	62	73
<b>Positions Requested</b>	268,729	36,477	91,161	85,454	55,637
<b>Positions Certified</b>	257,667	35,449	87,868	82,094	52,256
<b>Processed Timely<sup>3</sup></b>	86.1%	92.6%	77.5%	85.6%	96.3%



<sup>1</sup>Applications Received" is derived from data not publicly disclosed.

<sup>2</sup>Cumulative numbers may not match the numbers on previous reports due to changes in case processing status.

<sup>3</sup> Percent of complete H-2A applications resolved 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for the OFLC Certifying Officer to issue a final determination 30 days before the start date of need.

### Selected Statistics by Worker Positions Certified

Review of Positions Certified FY 2019 EOY (% of total certified FY 2019 EOY)			
<b>Top 10 States</b>	Florida	33,598	13.0%
	Georgia	29,480	11.4%
	Washington	26,226	10.2%
	California	23,321	9.1%
	North Carolina	21,605	8.4%
	Louisiana	10,816	4.2%
	Michigan	9,096	3.5%
	Kentucky	8,315	3.2%
	New York	8,104	3.1%
	South Carolina	6,082	2.4%
<b>Top 10 Employers</b>	North Carolina Growers Association (NCGA)	11,223	4.4%
	Fresh Harvest, Inc.	4,812	1.9%
	WAFLA	4,369	1.7%
	Zirkle Fruit Company	3,400	1.3%
	Farm-Op Kuzzens H2A, LLC	2,658	1.0%
	Ag Labor, LLC	2,409	0.9%
	Foothill Packing, Inc.	2,398	0.9%
	Overlook Harvesting Co.	2,396	0.9%
	R & R Harvesting, Inc.	2,094	0.8%
	Rancho Nuevo Harvesting	2,024	0.8%
<b>Top 10 Crops/ Occupation</b>	General Farm Workers	31,967	12.4%
	Berries <sup>4</sup>	24,661	9.6%
	Tobacco <sup>5</sup>	16,252	6.3%
	Fruits and Vegetables <sup>6</sup>	13,995	5.4%
	Apples <sup>7</sup>	12,479	4.8%
	Melons <sup>8</sup>	11,876	4.6%
	Nursery and Greenhouse Workers	9,885	3.8%
	Agricultural Equipment Operators <sup>9</sup>	9,869	3.8%
	Corn <sup>10</sup>	9,776	3.8%
	Tomatoes	6,252	2.4%

<sup>4</sup>Berries Category includes Primary Crops of Berries, Blackberries, Blueberries, Cranberries, Raspberries and Strawberries.

<sup>5</sup>Tobacco Category includes Primary Crops of Air-cured, Burley, Cutting, Flue-cured, Setting, Stripping, and Tobacco.

<sup>6</sup>Fruits and Vegetables Category includes Primary Crops of Fruits, Fruits and Vegetables, and Vegetables.

<sup>7</sup>Apples Category includes Primary Crops of Apple Drops, Apples, and Fuji Apples.

<sup>8</sup>Melons Category includes Primary Crops of Cantaloupes, Melons, and Watermelons.

<sup>9</sup>Agricultural Equipment Operators Category includes Primary Crops of Agricultural Equipment Operator, Custom Combine Harvesters, and Logging.

<sup>10</sup>Corn Category includes Primary Crops of Corn, and Sweet Corn.

# OFFICE OF FOREIGN LABOR CERTIFICATION

## H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 Q1-Q3

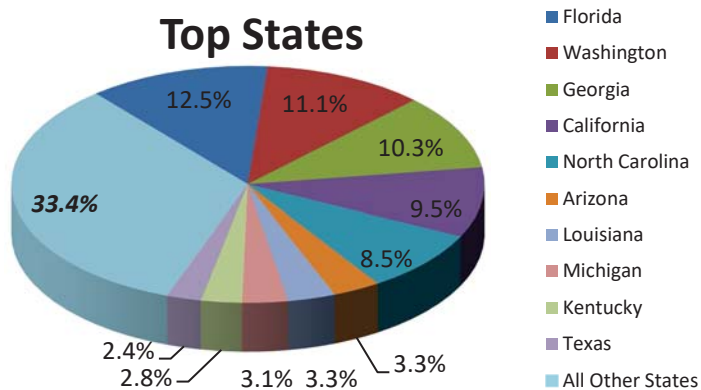
### Applications Received<sup>1</sup>

FYTD	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2019
12,351	3,543	6,128	2,680	--	7.4%

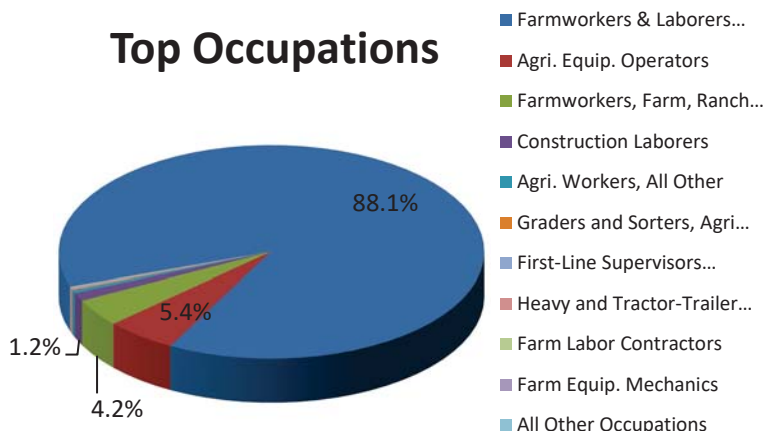
### Applications Processed

Determination	FYTD	Q1	Q2	Q3	Q4
<b>Total Processed</b>	12,019	2,102	6,819	3,098	--
- Certified	11,611	1,990	6,652	2,969	--
- Denied	193	53	75	65	--
- Withdrawn	215	59	92	64	--
<b>Positions Requested</b>	232,362	43,063	99,933	89,366	--
<b>Positions Certified</b>	224,290	40,832	97,341	86,117	--
<b>Processed Timely<sup>2</sup></b>	96.7%	97.8%	96.8%	95.9%	--

### Top States



### Top Occupations



<sup>1</sup>Includes all applications submitted for processing during the reporting period.

<sup>2</sup>Percent of complete applications resolved no later than 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for OFLC to issue a final determination no later than 30 days before the start date of need.

<sup>3</sup>All calculations are aggregated based on the unique FEIN submitted by the employer. Multiple appearances of the same employer name may occur when associated with multiple FEINs.

### Review of Positions Certified FY 2020 YTD (% of total certified FY 2020 YTD)

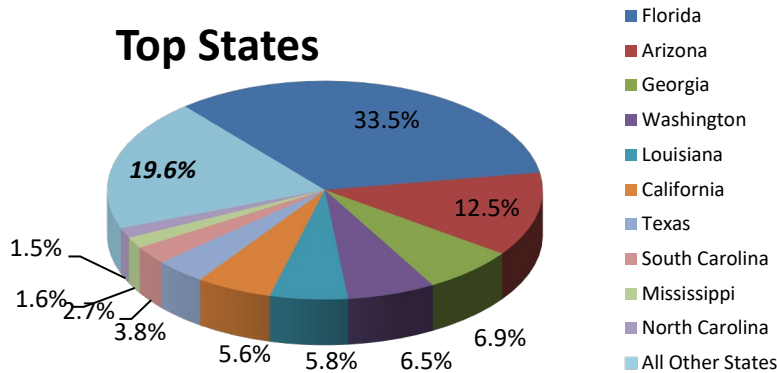
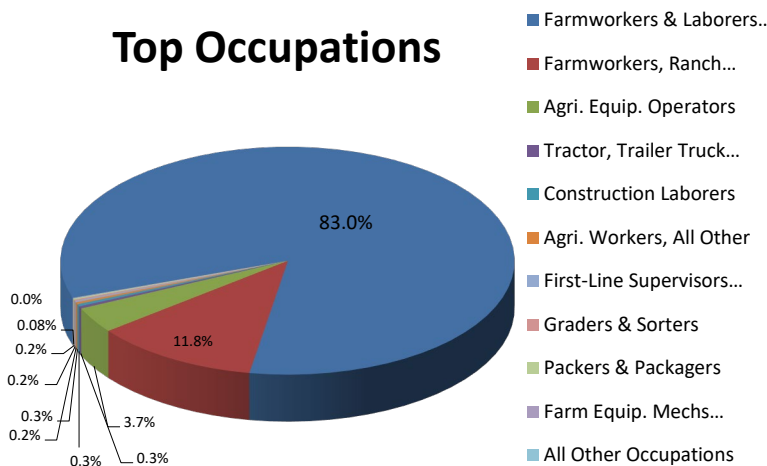
Top 10 States of Employment	Florida	28,005	12.5%
	Washington	24,785	11.1%
	Georgia	23,072	10.3%
	California	21,337	9.5%
	North Carolina	19,050	8.5%
	Arizona	7,327	3.3%
	Louisiana	7,296	3.3%
	Michigan	7,032	3.1%
	Kentucky	6,266	2.8%
	Texas	5,281	2.4%
Top 10 Occupations (based on SOC Codes)	Farmworkers and Laborers, Crop	197,644	88.2%
	Agri. Equip. Operators	12,202	5.4%
	Farmworkers, Farm, Ranch, & Aqua. Animal	9,357	4.2%
	Construction Laborers	2,778	1.2%
	Agri. Workers, All Other	976	0.4%
	Graders and Sorters, Agri. Products	339	0.2%
	First-Line Supervisors of Agricultural Crop and Horticultural Workers	309	0.1%
	Heavy and Tractor-Trailer Truck Drivers	306	0.1%
	Farm Labor Contractors	102	0.05%
	Farm Equip. Mechanics	73	0.03%
Top 10 Employers <sup>3</sup> (based on unique FEINs)	North Carolina Grower's Assoc., Inc.	9,448	4.2%
	Fresh Harvest Incorporated	4,732	2.1%
	WAFLA	4,157	1.9%
	Zirkle Fruit Company	3,006	1.3%
	Foothill Packing, Inc.	2,533	1.1%
	Overlook Harvesting Company, LLC	2,419	1.1%
	TempLabor, LLC	2,252	1.0%
	R&R Harvesting, Inc.	2,131	1.0%
	Rancho Nuevo Harvesting, Inc.	2,105	0.9%
	Elkhorn Packing, Co., LLC	1,856	0.8%

**OFFICE OF FOREIGN LABOR CERTIFICATION****H-2A Temporary Agricultural Program –  
Selected Statistics, Fiscal Year (FY) 2021 Q1****Applications Received<sup>1</sup>**

FYTD	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2020
4,556	4,556	--	--	--	28.5%

**Applications Processed**

Determination	FYTD	Q1	Q2	Q3	Q4
<b>Total Processed</b>	2,720	2,720	--	--	--
- Certified	2,570	2,570	--	--	--
- Denied	71	71	--	--	--
- Withdrawn	79	79	--	--	--
<b>Positions Requested</b>	51,181	51,181	--	--	--
<b>Positions Certified</b>	48,929	48,929	--	--	--
<b>Processed Timely<sup>2</sup></b>	97.6%	97.6%	--	--	--

**Top States****Top Occupations**<sup>1</sup>Includes all applications submitted for processing during the reporting period.<sup>2</sup>Percent of complete applications resolved no later than 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for OFLC to issue a final determination no later than 30 days before the start date of need.<sup>3</sup>All calculations are aggregated based on the unique FEIN submitted by the employer. Multiple appearances of the same employer name may occur when associated with multiple FEINs.**Review of Positions Certified FY 2021 Q1  
(% of total certified FY 2021 Q1)**

<b>Top 10 States of Employment</b>	Florida	16,435	33.6%
	Arizona	6,101	12.5%
	Georgia	3,366	6.9%
	Washington	3,205	6.6%
	Louisiana	2,831	5.8%
	California	2,765	5.7%
	Texas	1,843	3.8%
	South Carolina	1,315	2.7%
	Mississippi	801	1.6%
	North Carolina	744	1.5%
<b>Top 10 Occupations (based on SOC Codes)</b>	Farmers and Laborers, Crop	40,583	82.9%
	Farmworkers, Farm, Ranch, and Aqua	5,747	11.7%
	Agri. Equip. Operators	1,792	3.7%
	Heavy & Tractor-Trailer Truck Drivers	162	0.3%
	Construction Laborers	158	0.3%
	Agri. Workers, All Other	140	0.3%
	First-Line Supervisors of Agri. Crop & Horticultural Workers	100	0.2%
	Graders & Sorters, Agri. Products	87	0.2%
	Packers & Packagers, Hand	80	0.2%
	Farm Equipment Mechs. & Service Techs	40	0.1%
<b>Top 10 Employers<sup>3</sup> (based on unique FEINs)</b>	Fresh Harvest, Inc.	1,702	3.5%
	Foothill Packing, Inc.	1,473	3.0%
	Temp.Labor, LLC	1,376	2.8%
	Overlook Harvesting Company, LLC	842	1.7%
	Tanimura & Antle Fresh Foods, Inc.	800	1.6%
	Ag Labor, LLC	661	1.4%
	The Growers Company, Inc.	641	1.3%
	Citrus Harvesting, Inc.	620	1.3%
	Everglades Harvesting, Inc.	600	1.2%
	Statewide Harvesting & Hauling, LLC	586	1.2%