

THE AGRICULTURAL GUESTWORKER ACT (THE “AG ACT”) OF 2013

Issue	The Agricultural Guestworker Act of 2013
Federal Agencies to Run H-2C Program	Departments of Agriculture, Homeland Security and State.
Admittance to the U.S.	A grower must petition for an H-2C worker before an H-2C worker can be admitted to the U.S. or initially be provided with status under the program. An H-2C worker may switch to another grower as soon as the other grower files its own petition for the worker (or hires the worker “at-will” as described below). In addition, if an association of growers petitions for an H-2C worker, the worker may be transferred among the association members.
At-Will Employment	<p>Under the “at-will” component of the H-2C program, growers can employ H-2C workers without first having to petition for them. To do so, growers must be designated as registered agricultural employers by the Department of Agriculture and must agree to abide by the terms and obligations of the H-2C program as if they had filed petitions for H-2C workers. H-2C workers can only seek at-will employment if they have already been admitted to the U.S. through an H-2C petition and have completed the agreed-upon period of employment with their initial employer or have been terminated by their original employer. Registered agricultural employers and H-2C workers may voluntarily terminate at-will employment at any time. The H-2C worker must then find additional at-will or petition-based employment within 30 days or must leave the U.S.</p> <p>In order to ensure that at-will H-2C workers do not seek unlawful nonagricultural employment, the at-will component will only be available once E-Verify is required for all U.S. employers and indicates whether a worker is eligible to be employed in all occupations or only to perform agricultural labor or services.</p>

Length of Stay	The maximum stay for H-2C workers in temporary or seasonal jobs is 18 months, after which an H-2C worker must remain outside the U.S. for a period equal to at least 1/6 of the duration of their stay on an H-2C visa. For H-2C workers in jobs that are themselves permanent, the requirement to remain outside the U.S. after the first 18 month period is waived. These workers can initially work for up to 36 months before having to leave the U.S. for a maximum period of 3 months (after which they must leave the U.S. after each 18 month period of work). Shepherders are exempted from the requirements to leave the U.S. periodically (as they had been in the past under the H-2A program).
Enforcement of Program Conditions	Attestation-based. The Department of Agriculture will be responsible for ensuring grower compliance with attestations.
Non-Seasonal Employers	Dairies, food processors and other non-seasonal agricultural employers may use the H-2C program.
Recruitment of U.S. Workers	An employer must place a local job order with the state workforce agency serving the local area where the H-2C worker will be employed. The state workforce agency shall post the job order on its official agency website for a minimum of 30 days and the Secretary of Labor shall include links to the official websites of all state workforce agencies on a single webpage on its website.
Wages	H-2C workers shall be paid the greater of the prevailing wage or the state minimum wage.
Escrow Account	To ensure that H-2C workers abide by the length of stay limitations in the program, employers of H-2C workers shall withhold from their wages an amount equivalent to 10 percent of the wages of each worker and pay such withheld amount into a Trust Fund. The workers can pick up the escrowed amounts plus interest at a United States embassy or consulate in their home countries.
Social Security and Unemployment Insurance	Employers of H-2C workers in jobs that are not temporary or seasonal shall pay to the federal government an amount equivalent to the federal Social Security and Unemployment Insurance taxes on the wages paid to H-2C workers that the employer would be obligated to pay had the H-2C workers been subject to these programs. The funds shall be provided to the Departments of Agriculture, Homeland Security and State in amounts equivalent to the expenses incurred by such officials in the administration of the H-2C program.
Employment Guarantee	In order to make H-2C workers' trips to the U.S. worthwhile, growers shall guarantee to offer H-2C workers employment for 50% of the work hours promised, except if the workers abandon employment, are terminated for cause or if a natural disaster or other reason beyond the control of the grower makes their services no longer required.
Transportation Expenses	Employers are not required to reimburse H-2C workers' transportation expenses.
Housing	Employers are not required to provide housing to H-2C workers.

Arbitration and Mediation	In order to discourage frivolous and abusive litigation against growers, growers may require as a condition of employment that H-2C workers be subject to binding arbitration and mediation of any grievances relating to the employment relationship. In all cases, civil actions for damages cannot be brought against employers unless at least 90 days prior to bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.
Legal Services Corporation	H-2C workers are not eligible for legal assistance under the Legal Services Corporation Act.
Family Members	H-2C workers cannot bring spouses and minor children unless they also qualify as guestworkers.
Unlawful Immigrant Participation	Aliens in the U.S. as of the date of introduction of the Act who are unlawfully present may participate in the H-2C program. Until the implementation of the H-2C program, such aliens may lawfully work in agriculture in the U.S.
Numerical Limitation	The total number of aliens who may newly receive H-2C status is limited to 500,000 a year. The Secretary of Agriculture has the authority to raise or lower this cap based on a number of considerations. Aliens who were unlawfully present in the U.S. and then, pursuant to this Act, work in agriculture for 100 days during the two year period after the enactment of this Act and before the implementation of the H-2C program will not be counted against the numerical cap should they later participate in the H-2C program.
Federal Public Benefits	H-2C workers are not eligible for federal public benefits, including Obamacare subsidies. They are also not eligible for refundable tax credits – the Earned Income Tax Credit and the Child Tax Credit.