

## Summary of H.R. 1773—The Agricultural Guestworker Act

### SECTION 2, H-2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM (p. 2)

- ▶ Creates a new H-2C visa to replace the current H-2A visa program for aliens coming “temporarily” to the U.S. to perform agricultural labor or services.

*Note: the analysis below reveals that the H-2C visa significantly expands the scope and duration of the H-2A agricultural guestworker program.*

- ▶ Grants the Secretary of Agriculture authority to define “agricultural labor or services” in regulations (Secretary of Labor has this authority for H-2A) and includes:
  - H-2A definition:
    - Agricultural labor definition in Internal Revenue Code sec. 3121(g);
    - Agriculture definition in Fair Labor Standards Act sec. 3(f);
  - Expanded definition for H-2C:
    - The handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state;
    - All activities required for the preparation, processing, or manufacturing of a product of agriculture for further distribution; and
    - Similar activities for fish or shellfish in aquaculture facilities.

*Note: dairies, food processors, and other non-seasonal agricultural employers may use the H-2C program.*

### SECTION 3, ADMISSION OF TEMPORARY H-2C WORKERS (pp. 3-6)

#### Key Definitions

- ▶ *Area of employment:* The area within “normal commuting distance” of the worksite or physical location where H-2C worker will work.
  - If located within a Metropolitan Statistical Area (MSA), any place within the MSA is considered within the area of employment.
- ▶ *Displace:* To lay-off a worker from a job that is “essentially equivalent” to the job for which an H-2C worker is sought.
  - *Essentially equivalent:* A job is essentially equivalent if it:
    - Involves essentially the same responsibilities as the other job;
    - Was held by a U.S. worker (defined below) with “substantially equivalent qualifications and experience;” and
    - Is located in the same area of employment (defined above) as the other job.
- ▶ *Eligible individual:* An individual who is not an unauthorized alien regarding the employment of the individual.
- ▶ *Employer:* An employer who hires workers to perform agricultural employment.
- ▶ *Lay off:* To cause a worker’s loss of employment, other than for cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary

employment contract entered into to evade the nondisplacement of U.S. workers requirement).

- A worker is not laid off if an employer offers as an alternative to loss of employment a similar employment opportunity at equivalent or higher compensation, regardless of whether or not the employee accepts the offer.
- ▶ *U.S. worker.* Any worker who is:
  - A U.S. citizen or national;
  - A LPR;
  - A lawfully admitted refugee;
  - An alien granted asylum; or
  - “An immigrant otherwise authorized by this Act or by the Secretary of DHS to be employed.”

## **I. Amnesty**

The bill grants amnesty to all illegal aliens if they will perform agricultural labor or services, not just illegal aliens currently in agricultural work. Amnestied illegal aliens are given work authorization and not considered unlawfully present as long as the illegal alien performs agricultural labor or services. (Sec. 7, p. 48; Sec. 9, p. 52)

- ▶ Waives grounds of inadmissibility (p. 48):
  - Alien workers without labor certification (INA 212(a)(5));
  - Aliens present without permission or parole (INA 212(a)(6)(A));
  - Aliens who fail to attend removal proceedings (absconders) (INA 212(a)(6)(B));
  - Aliens who obtain immigration documents through fraud (INA 212(a)(6)(C)(i));
  - Aliens who falsely claim citizenship (INA 212(a)(6)(C)(ii));
  - Stowaway aliens (INA 212(a)(6)(D));
  - Alien smugglers (INA 212(a)(6)(E));
  - Aliens subject to a final order of removal for document fraud (INA 212(a)(6)(F));
  - Alien students who violate terms of their visas (INA 212(a)(6)(G));
  - Immigrants who do not possess proper documents (INA 212(a)(7)(A));
  - Nonimmigrants who do not possess proper documents (INA 212(a)(7)(B)); and
  - 3 and 10 year bars based on the duration of unlawful presence in the U.S. (INA 212(a)(9)(B))
    - For only this provision, the bill grants the Secretary of DHS discretionary authority to waive the 3 and 10-year bars to admission for previously removed illegal aliens who are the spouses or children of U.S. citizens or LPRs. They will receive amnesty as an H-2C worker unless the unlawful presence occurred after the alien was granted H-2C status. (p. 45)
- ▶ Timelines for amnesty adjustment:
  - Illegal aliens physically present in the U.S. on Apr. 25, 2013 are granted amnesty. (p. 48)
  - Illegal aliens may adjust their status to H-2A beginning on the date of enactment and ending 2 years after the date of enactment. (p. 52)

- The amnesty provision is effective on the date of enactment and ends 2 years after the date of enactment. (p. 51)
- Amnestied illegal aliens may adjust from H-2A to H-2C once that program is effective. (see below)
- ▶ **Exempt from H-2C ceiling** (p. 44): any amnestied illegal alien under this Act does not count against the H-2C ceiling (see below) if, within 2 years of enactment, he or she:
  - Performed at least 575 hours of agricultural labor or services; or
  - Worked 100 days in which the illegal alien was employed 5.75 or more hours performing agricultural labor or services.

## II. Contract Employment of Temporary H-2C Workers (INA sec. 218A)

### EMPLOYER ATTESTATION (pp. 6-10)

- ▶ An employer seeking to employ H-2C workers must attest the following in a petition to the Secretary of Agriculture:
  - The employer is seeking to employ a specific number of agricultural workers on a temporary basis (defined as no longer than 18 months) at a specified wage rate.
    - Shepherders are exempt from the “temporary basis” requirement. *Note: temporary basis under H-2A is no longer than 12 months.*
  - The employer will provide, at least, the statutorily required wages and benefits (see below) to all workers employed in the jobs for which the H-2C worker is sought, and all other temporary workers in the same occupation at the place of employment.
  - The employer did not displace and will not displace a U.S. worker during the period of employment by an H-2C worker and the 30-day period immediately preceding.
  - The employer (1) conducted “adequate recruitment” before filing the attestation and (2) was unsuccessful in locating a qualified U.S. worker for the job.
    - An employer satisfies the “adequate recruitment” requirement by placing a local job order with the State workforce agency serving the local area where the work will be performed. The State workforce agency must post the listing within 3 days after receipt and it must be on the official website for a minimum of 30 days. The Secretary of Labor must include links to all State workforce agencies websites on a single page on the official Department of Labor website.
      - An employer is not required to file an interstate job order under 20 CFR sec. 653.
    - The U.S. worker recruitment requirement ends once the H-2C worker begins work.
  - The employer has offered or will offer the job to any eligible U.S. worker who:
    - Applies;
    - Is qualified; and
    - Will be available at the time and place of need.

*Note: this requirement does not apply after the H-2C worker begins work. This eliminates the “50-percent” rule under current law that requires an employer to replace an H-2A worker with a qualified U.S. worker who applies up until 50-percent of the work/contract is completed.*
  - The employer will provide, at no cost to the worker, injury insurance if the job is not covered by State workers’ compensation law.

- Exception: Employers may charge workers for injury insurance if allowed under State law.
- An H-2C worker may be transferred to another employer that has filed an H-2C petition.
- The employer is not engaged in a labor dispute.
- The employer has not, within the previous two years, employed H-2C workers and “knowingly violated a material term or condition” of approval, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.
- ▶ The employer must make a copy of each petition available for public examination, at the employer’s principal place of business or worksite, within 1 working day after the petition is filed.
- ▶ The Secretary must maintain a list of petitions filed that:
  - Are sorted by employer; and
  - Include the number of H-2C workers sought, the wage rate, the period of intended employment, and the date of need for each alien.

#### PETITIONING FOR ADMISSION (pp. 10-12)

- ▶ The Secretary of Agriculture may not require employers to file petitions for H-2C workers more than 28 calendar days before the first day of work.
- ▶ The Secretary must either approve or reject the petition within 10 business days unless the petition is incomplete or “obviously inaccurate.”
  - The Secretary must notify the petitioner through same or next day delivery.
- ▶ For incomplete or obviously inaccurate petitions, the Secretary must:
  - Within 5 business days of receipt of petition, notify the petitioner of the deficiencies to be corrected through same or next day delivery. *Note: the bill lacks specific language indicating what happens if the Secretary fails to notify a petitioner within 5 days.*
  - Within 10 business days of receipt of corrected petition, approve or deny the petition and notify the petitioner through same or next day delivery.
- ▶ By filing a petition for H-2C workers, a petitioner and each employer consents to allow access to the job site to the USDA and DHS for the purpose of investigations to ensure compliance with H-2C requirements and “the immigration laws.”
  - USDA and DHS cannot delegate their compliance functions to other agencies or Departments.

#### ROLES OF AGRICULTURAL ASSOCIATIONS (pp. 12-13)

- ▶ A petition for H-2C workers may be filed by an association of agricultural employers.
- ▶ If an association is a joint employer of H-2C workers, those workers may be transferred among its members to perform agricultural services.
- ▶ Treatment of violations:
  - If an individual member violates any condition of an approved H-2C petition, the Secretary of Agriculture will only penalize that individual member.
    - Exception: if the Secretary determines that the association or other member participated in, had knowledge of, or had reason to know of the violation, then the Secretary will also penalize that entity.

- If an association violates any condition of an approved H-2C petition, the Secretary will only penalize the association and not any individual member.
  - Exception: if the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation, then the Secretary will also penalize that entity.

#### EXPEDITED ADMINISTRATIVE APPEALS (p. 14)

The Secretary of Agriculture will establish regulations for an expedited procedure:

- ▶ For the review of a denial of an H-2C petition; or
- ▶ At the petitioner's request, a de novo administrative hearing at which new evidence may be introduced.

#### FEES (pp. 14-16)

- ▶ The Secretary of Agriculture will require, as a condition of approving an H-2C petition, the payment of a fee to recover the reasonable cost of processing petitions for temporary or seasonal jobs.
  - The fees must be paid by check or money order to the Department of Agriculture.
  - Employers of H-2C workers that are members of a joint employer association may pay the aggregate fees for all employers by 1 check or money order.
- ▶ The Secretary may not require the payment of such fees to recover the costs of processing petitions for jobs not of a temporary or seasonal nature.
- ▶ *Single employer*: \$100 plus \$10 for each approved H-2C; max fee is \$1,000 (this is the same fee structure for the H-2A program).
- ▶ *Association*: each employer-member of a joint employer association pays \$100 plus \$10 for each approved H-2C; max fee is \$1,000 (this is the same fee structure for the H-2A program).
  - Limitation: a joint employer association will not be charged a separate fee.

#### ENHANCED PENALTY SCHEME (PP. 16-19)

- ▶ The Secretary of Agriculture will conduct investigations and random audits of employers to ensure compliance with the H-2C program.
  - All monetary fines levied against violating employers will be used to enhance the Department of Agriculture's investigatory and auditing power.
- ▶ If the Secretary finds, after notice and opportunity for a hearing, (1) a failure to meet a condition of the H-2C program, or (2) a material misrepresentation of fact in a petition, the Secretary:
  - Has discretionary authority to impose other administrative remedies, including civil money penalties not exceeding \$1,000; and
  - May disqualify the employer from the H-2C program for 1 year.
- ▶ If the Secretary finds, after notice and opportunity for a hearing, (1) a willful failure to meet a material condition of the H-2C program, or (2) a willful misrepresentation of a material fact in a petition, the Secretary:

- Has discretionary authority to impose other administrative remedies, including civil money penalties not exceeding \$5,000;
  - May disqualify the employer from the H-2C program for 2 years;
  - May, for a subsequent violation, disqualify the employer for 5 years; and
  - May, for a subsequent violation, permanently disqualify the employer from the H-2C program.
- ▶ If the Secretary finds, after notice and opportunity for a hearing, (1) a willful failure to meet a material condition of the H-2C petition or (2) a willful misrepresentation of a material fact in a petition and (3) *the employer displaced a U.S. worker*, the Secretary:
- Has discretionary authority to impose other administrative remedies, including civil money penalties not exceeding \$15,000;
  - May disqualify the employer from the H-2C program for 5 years; and
  - May, for a second violation, permanently disqualify the employer from the H-2C program.
- ▶ If the Secretary finds, after notice and opportunity for a hearing, that an employer failed to provide the wages, benefits, and working conditions attested by the employer in the petition, the Secretary will “assess” the amount due any U.S. worker or H-2C worker and ensure the worker receives the proper compensation.

**50% WAGE GUARANTEE FOR CONTRACT H-2C WORKERS (pp. 19-24)**

- ▶ Employers must offer U.S. workers at least the same wages, benefits, and working conditions that the employer offers H-2C workers.
- ▶ *Required wages:* The employer must pay at least the greater of (1) the prevailing wage level for the occupational classification in the area of employment; or (2) the greatest applicable minimum wage.
- Employers may pay a piece rate or other alternative wage payment system as long as the employer guarantees each worker a rate at least equal to the required wage.
- ▶ *Employment guarantee:* The employer must guarantee to offer the worker employment for at least 50% of the hourly equivalent of work hours during the anticipated employment period.
- If the employer fails to meet the guarantee, the employer must pay workers the amount they would have earned if they had worked the guaranteed hours.
    - *Exception:* Workers are not entitled to the 50% guarantee if they (1) voluntarily abandon employment before the end of the contract period or (2) are terminated for cause.
  - Period of employment: means the total number of anticipated work hours and workdays excluding (1) the worker’s Sabbath and (2) Federal holidays.
- ▶ An employer may count the following in determining whether the guaranteed employment has been met:
- Hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker’s Sabbath, or on Federal holidays); and
  - Hours which the worker fails to work, up to the maximum number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so.

- ▶ Special rule: employers may terminate a worker before the specified period of employment ends if the services are no longer required because of natural disaster or “any other reason beyond the control of the employer.” If a worker’s employment is terminated under this provision, the employer must:
  - Fulfill the employment guarantee for the work days that have elapsed through the date on which employment is terminated;
  - Make efforts to transfer U.S. workers to other comparable employment acceptable to the worker; and
  - Notify the Secretary of DHS within 24 hours of terminating H-2C workers.

**PERIOD OF “TEMPORARY” ADMISSION (pp. 25-28)**

- ▶ An H-2C worker is admitted for a maximum of 18 months (temporary or seasonal jobs) or 36 months (non-seasonal jobs).
  - Shepherders are exempt from the maximum period of admission.
  - Note: the maximum period of admission under the H-2A program is 12 months.
- ▶ The period of admission includes:
  - 7 days before employment begins to travel to the work site; and
  - Time to depart:
    - 14 days maximum following the period of employment; or
    - 30 days maximum following the period of employment for the purpose of seeking a subsequent offer of employment.
  - An alien who fails to depart within these time frames is subject to removal and is considered to have been unlawfully present for 180 days for purposes of inadmissibility under the 3 and 10-year bars as of the 15<sup>th</sup> or 31<sup>st</sup> day following the period of employment (depending on whether the alien seeks new employment or not).
- ▶ An H-2C worker may not be employed during the 14-day grace period to depart except for “otherwise authorized” employment.
- ▶ An H-2C worker who abandons agricultural employment:
  - Shall have failed to maintain H-2C status;
  - Shall depart the U.S. or be subject to removal; and
  - Shall be considered inadmissible for being unlawfully present for 180 days as of the 15<sup>th</sup> day following the period of employment.
- ▶ Employers must notify DHS within 24 hours after learning an H-2C worker abandoned employment.
- ▶ The Secretary of DHS must “promptly” remove any H-2C worker who violates any term or condition of the H-2C program.
- ▶ An alien may voluntarily terminate H-2C employment if the alien “promptly” departs the U.S.
  - If the alien does not depart within 14 days, the alien is subject to removal and considered inadmissible for being unlawfully present for 180 days as of the 15<sup>th</sup> day following the voluntary termination.
- ▶ An employer may replace an H-2C worker who abandons employment with another eligible alien. (This will not count against the ceiling for H-2C visas)

#### EXTENSION OF STAY OF H-2C WORKERS (pp. 28-29)

- ▶ Employers are required to request the extension of stay for a lawfully present H-2C worker (and change in employment, if applicable).
- ▶ H-2C workers maintain (or begin) work authorization upon the filing of an extension petition until and unless the petition is denied.
  - During this time the employer must provide the H-2C worker a copy of the petition and the alien must keep the petition with his other identification and authorization documents.
- ▶ Upon approval of an extension petition, the Secretary of DHS must provide new or updated employment eligibility documents.
  - At this point, the alien does not need to keep a copy of the petition for extension.

#### LIMITATION ON CONTINUOUS STAY IN STATUS (pp. 30-31)

- ▶ Temporary or seasonal workers
  - 18 months (including any extensions)
  - After the continuous stay limit is reached, an H-2C worker must remain outside the U.S. for a continuous period of 1/6 the duration of the previous period of authorized status before eligible to return as an H-2C worker.
- ▶ Non- seasonal workers
  - 36 months for initial term and 18 months subsequently
  - After the continuous stay limit is reached, and H-2C worker must remain outside the U.S. for a continuous period equal to the lesser of:
    - 3 months; or
    - 1/6 the duration of the previous period of authorized status before eligible to return as an H-2C worker.
- ▶ Shepherders
  - No maximum continuous period
  - No requirement to remain outside the U.S.
  - **Note: In effect, this turns shepherding into a permanently revolving nonimmigrant visa program.**

#### INCENTIVIZING WORKERS TO RETURN HOME (pp. 31-34)

A Trust Fund is created in the Treasury to provide a monetary incentive for H-2C workers to return to their country of origin upon the expiration of their visas.

- ▶ All employers of H-2C workers must withhold 10% of each worker's wages and deposit in the Trust Fund.
- ▶ Employers of non-seasonal H-2C workers must also pay into the Trust Fund the equivalent Federal tax on wages the employer would be obligated to pay if H-2C workers were subject to chapters 21 and 23 of the Internal Revenue Code.
- ▶ The Secretary of State will distribute the 10% withholding to the worker if:
  - The worker applies for payment at a U.S. embassy or consulate in the worker's home country within 30 days of the expiration of authorized stay as an H-2C worker;
  - The worker establishes compliance with the H-2C program in the application; and
  - The H-2C worker confirms his/her identity.



- ▶ Amounts paid into the Trust Fund for the equivalent Federal tax payment will be distributed to the Secretaries of State, Agriculture, and DHS in amounts equivalent to the expenses incurred in the administration of the H-2C program that are not otherwise reimbursed.

### **III. At-Will Employment of Temporary H-2C workers (INA sec. 218B)**

#### **AT-WILL EMPLOYMENT (pp. 36-39)**

- ▶ An H-2C worker may perform at-will agricultural labor or services for any “registered agricultural employer” under these terms:
  - The H-2C worker is already lawfully present in the U.S. as an H-2C worker on a contract basis; and
  - Has either:
    - Completed the period of employment; or
    - The employer terminated the H-2C worker because the work was unnecessary due to natural disaster or any other reason beyond the control of the employer.
- ▶ An H-2C worker who abandons contract employment may not perform at-will employment until:
  - The worker has returned to his/her home country;
  - The worker is readmitted to the H-2C program for contract employment; and
  - The worker (1) completes the period of employment or (2) the employer terminated the H-2C worker because the work was unnecessary due to natural disaster or any other reason beyond the control of the employer.
- ▶ An at-will H-2C worker is subject to the same period of admission, limitation of stay in status, and requirement to remain outside the U.S. applicable to contract H-2C workers.
- ▶ At the conclusion of at-will employment or the contract term making an H-2C worker eligible for at-will employment, the H-2C worker must find at-will employment within 30 days.
  - Failure to find at-will employment within this timeframe means the worker:
    - Failed to maintain H-2C status; and
    - Must depart from the U.S. or be subject to removal.
  - An H-2C worker who does not so depart will be considered inadmissible for having been unlawfully present.
    - The alien is considered unlawfully present for 180 days as of the 31<sup>st</sup> day after employment ended and the H-2C worker did not find at-will or contract employment.
- ▶ Either a registered agricultural employer or an H-2C worker may voluntarily terminate the worker’s at-will employment at any time.
- ▶ Spouses and children may not be admitted under the H-2C program unless they are independently eligible as H-2C workers. (p. 41)

#### **REGISTERED AGRICULTURAL EMPLOYERS (pp. 39-41)**

- ▶ The Secretary of Agriculture will establish a process to accept and process applications for registered agricultural employer status.
  - The Secretary will require approved employers to pay a fee to recover the reasonable cost of processing applications.

- ▶ The Secretary will designate an employer as a registered agricultural employer if the employer:
  - Employs individuals who perform agricultural labor or services;
  - Has not been subject to debarment from the H-2A program within the last 5 years;
  - Has not been subject to disqualification from the H-2C program within the last 5 years;
  - Agrees to:
    - The attestations required in the petition by an employer of contract H-2C workers;
    - The minimum wage and benefits applicable to employers of contract H-2C workers; and
      - Except at-will employers are not subject to the 50% wage guarantee
    - The Trust Fund obligations applicable to employers of contract H-2C workers.
  - Agrees to notify the Secretaries of Agriculture and DHS each time it employs at-will H-2C workers:
    - Within 24 hours of the start of employment; and
    - Within 24 hours of the end of employment.
- ▶ The registered agricultural employer designation is valid for 3 years and extendable for unlimited 3-year terms.
  - The Secretary shall revoke the designation at any time if the employer is subject to disqualification from the H-2C program.
- ▶ The Secretary of Agriculture is responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of at-will H-2C employment.
  - All monetary fines levied against violating employers will be used to enhance the Department of Agriculture's investigatory and audit power.
- ▶ The Secretary of DHS must "promptly" remove any at-will H-2C workers who violate any term or condition of their H-2C status.

#### NUMERICAL CEILING OF H-2C WORKERS (pp. 42-44)

- ▶ There is a 500,000 ceiling on H-2C visas. *Note: in FY 2011 (the most recent published data) the U.S. admitted approximately 55,000 visas under the uncapped H-2A program.*
- ▶ However, the Secretary of Agriculture may increase or decrease the number based on:
  - A shortage or surplus of agricultural workers;
  - Changes in the U.S. agricultural industry that has increased or decreased the demand for agricultural workers;
  - The level of unemployment and underemployment of agricultural U.S. workers;
  - The number of H-2A and H-2C workers sought by employers during the preceding FY;
  - The number of H-2C workers who, in the preceding FY, had to depart or were subject to removal because they could not find additional at-will employment within 30 days;
  - The estimated number of U.S. workers who worked in agriculture during the preceding FY pursuant to the H-2A and H-2C programs; and
  - The number of H-2A and H-2C workers during the preceding FY who remain in the U.S. out of compliance the terms of their status.
- ▶ The Secretary has discretionary authority to increase the number on an emergency basis for severe shortages of agricultural labor or services.

#### SECTION 4, MEDIATION

An H-2C nonimmigrant may not bring a civil action for damages against the employer unless:

- ▶ The H-2C worker made a request to the Federal Mediation and Conciliation Service at least 90 days before bringing the action; and
- ▶ Mediation was attempted.

#### SECTION 5, MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION (p. 46)

Adds H-2C workers under the provisions of Sec. 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act.

#### SECTION 6, BINDING ARBITRATION (p. 47)

- ▶ An employer may require as a condition of employment that H-2C workers be subject to mandatory binding arbitration and mediation for any grievance relating to the employment relationship.
  - The employer must provide notice of this condition at the time the job offer is made.
- ▶ The employer and the H-2C worker will equally split any cost associated with any arbitration and mediation process, except each party is responsible for the cost of its own counsel, if any.

#### SECTION 8, ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND REFUNDABLE TAX CREDITS

(pp. 48-49) The following rules apply to H-2C workers, including amnestied illegal aliens through Sec. 7:

- ▶ **Federal public benefits:**
  - Not entitled to the tax credit authorized in Obamacare (26 U.S.C. 36B);
  - Shall be subject to the **rules** applicable to individuals not lawfully present set forth in subsection (e) of such section; and
  - Shall be subject to the **rules** applicable to individuals not lawfully present that are set forth in section 1402(e) of Obamacare.
- ▶ Refundable tax credits: not allowed any credit under section 24 or 32 of the Internal Revenue Code
  - If filing jointly, no credit shall be allowed if *both* spouses are H-2C workers, including amnestied illegal aliens through Sec. 7

#### SECTION 9, EFFECTIVE DATES, SUNSET, REGULATIONS (pp. 50-53)

- ▶ The following provisions are effective 2 years after the date of enactment of this Act:
  - H-2C contract visa program, including:
    - Prohibition of family from accompanying H-2C workers;
    - H-2C visa cap;
    - Waiver of bars to admissibility; and
    - Prevailing wage requirement;
  - Mediation;

- Migrant and seasonal agricultural worker protection for H-2C workers; and
- Binding arbitration.
- ▶ At-will H-2C employment takes effect on the date it either:
  - Becomes unlawful for any person or other entity to hire, or to recruit or refer for a fee, for employment in the U.S. an individual without participating in the E-Verify Program; or
  - An employment eligibility verification system patterned on E-Verify; **and**
  - Only if such Program responds to inquiries by providing confirmation, tentative nonconfirmation, and final nonconfirmation of an individual's identity and employment eligibility in a way that indicates whether the individual is eligible to be employed:
    - In all occupations; or
    - Only as an H-2C worker
      - If only authorized as an H-2C worker, the Program further shows:
        - ✓ If the worker is in compliance with their maximum continuous period of authorized status; and
        - ✓ The date the alien would cease to be in compliance with their maximum continuous period of authorized status
- ▶ H-2A program:
  - The Department of Labor H-2A regulations (73 Fed. Reg. 77110 et seq.) apply to petitions for H-2C workers beginning on the date of enactment.
  - No new petitions for H-2A workers will be accepted 2 years after the date of enactment (H-2A program sunsets two years after enactment).
- ▶ The Secretary of Agriculture must develop regulations within 18 months after the date of enactment.