



FARMWORKER JUSTICE BULLETIN

AgJOBS Legislation

January 2008

Summary of AgJOBS: The Agricultural Job Opportunities, Benefits and Security Act of 2007

What is AgJOBS?

AgJOBS, the Agricultural Job Opportunities, Benefits and Security Act, is a proposed immigration law that would provide agricultural employers with a stable, legal labor force while protecting farmworkers from exploitative working conditions. The AgJOBS compromise was reached in 2000 after years of Congressional and labor-management conflict resulting in tough negotiations between the United Farm Workers (UFW), major agricultural employers, and key federal legislators. On January 10, 2007, Senators Kennedy (D.-Mass.), Feinstein (D.-Cali.), and Craig (R.-Idaho) and Reps. Cannon (R.-Utah) and Berman (D.-Cal.) introduced AgJOBS in the 110th Congress.

Last Congress, AgJOBS enjoyed several victories—notably, the Senate included AgJOBS in the bipartisan, comprehensive immigration bill it passed in May 2006. In contrast to the successes of AgJOBS, the efforts of Senator Chambliss to undermine AgJOBS and pass one-sided reform of the H-2A agricultural guestworker program without giving farmworkers a chance to earn permanent immigration status failed repeatedly. AgJOBS sponsors and supporters look forward to passing AgJOBS this Congress. The new bill numbers are S. 340 and H.R. 371.

If enacted, AgJOBS would (1) create an “earned adjustment” program, allowing many undocumented farmworkers and agricultural guestworkers to obtain temporary immigration status based on past work experience with the possibility of becoming permanent residents through continued agricultural work, and (2) revise the existing agricultural guestworker program, known as the “H-2A temporary foreign agricultural worker program.”

Who would qualify for the earned legalization program and what is the process?

This compromise only applies to workers in agriculture, primarily employees of farms and ranches. Undocumented farmworkers and recent H-2A guestworkers wishing to become immigrants would have to complete a two-step process.

Step One: Apply for “Blue Card” Temporary Resident Status. Under this law, a farmworker could apply for a “blue card” (temporary residency) through a government-approved organization, a licensed attorney or a recognized immigration practitioner. The application period would begin seven months after the law is enacted and would last 18 months. Eligible workers are those who satisfy the following requirements:

- worked in U.S. agriculture for at least 150 days or 863 hours during the 24-month period ending December 31, 2006;
- are not excluded by certain immigration laws;
- have not been convicted of any felony or a misdemeanor that involves bodily injury, threat of serious bodily injury or harm to property in excess of \$500;
- pay an application fee and a \$100 fine upon obtaining a blue card.

Step Two: Earn Legal Permanent Resident Status: Prospective Work Requirement. After obtaining “blue card” status, participants must do the following to earn a “green card”:

- perform agricultural work for at least
 - 100 work days per year for each of 5 years during the 5-year period beginning on the date of enactment of the Act; OR
 - 100 work days for one year and 150 work days per year for 3 years during the 4-year period beginning on the date of enactment of the Act; OR

- 150 work days per year for each of 3 years during the 3-year period beginning on the date of enactment of the Act;
- pay a \$400 fine and application fee; and
- by the date of adjustment to lawful permanent status, establish payment of income taxes for work performed to meet the future work requirement.

Workers who don't meet these requirements, who are found to have filed a fraudulent application, or who don't apply for permanent status by the seventh year would lose their “blue card” status and would be required to leave the country. Conviction of a felony, three misdemeanors, or a single crime that involves bodily injury, threat of serious bodily injury, or injury to property in excess of \$500 also would end the “blue card” temporary status.

Immediate Family of Farmworkers. When a worker obtains “blue card” temporary resident status, his/her spouse and minor children residing in the U.S. may be granted “derivative” legal status. Derivative family members can remain in the U.S. and are not removable. The derivative spouse may apply for a work permit and the derivative spouse and minor children may also travel outside of and return to the U.S. Once the worker fulfills the requirements to receive permanent resident status, his/her spouse and minor children also will be granted immigration status as long as they meet other requirements under immigration law and have not been convicted of any felonies or a misdemeanor that involves bodily injury, threat of serious bodily injury or harm to property in excess of \$500. (Minor children who become adults during the process are covered, too.)

How would AgJOBS reform the H-2A Temporary Foreign Agricultural Worker Program?

The compromise would modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guestworkers to fill agricultural jobs that last no longer than ten months. Most basic H-2A requirements that protect U.S. workers from adverse effects and foreign workers from exploitation would continue, including the “50% rule” requiring the hiring of U.S. workers who apply during the first half of the season, the “¾ minimum work guarantee,” workers’ compensation coverage, and transportation cost reimbursement.

The bills would modify some current H-2A requirements in important ways:

- The program’s application process would be streamlined to become a “labor attestation” program, rather than the current “labor certification” program, to respond to employers’ demands to reduce paperwork, time frames and government oversight.
- H-2A employers must provide free housing to non-local U.S. and foreign workers but, under AgJOBS, could choose to provide a monetary housing allowance if the state’s Governor has certified that there is sufficient farmworker housing available in that area.
- Employers would still offer the highest of the “Adverse Effect Wage Rate” (AEWR), the prevailing wage or the federal or state minimum wage. AgJOBS would reduce the AEWR to the 2002 levels and freeze them for 3 years. During this 3-year period, the Congressional General Accountability Office (“GAO”) and a special commission would issue studies and recommendations as to the appropriate wage rate formula. If Congress fails to enact a new formula within 3 years after enactment, the AEWRs will be adjusted by the previous years’ inflation in the consumer price index, and annually thereafter, up to 4% per year.
- H-2A workers would have the right to file a federal lawsuit to enforce their wages, housing benefits, transportation cost reimbursements, minimum-work guarantee, motor vehicle safety protections, and the other terms of the written H-2A job offer.
- Employers of goat herders and dairy workers would join employers of sheepherders in being eligible to participate in the H-2A program even when they seek year-round workers. These workers would be able to work up to three consecutive years, at which time they would be eligible to apply to adjust status to lawful permanent residency subject to the availability of employment-based visas. Other H-2A workers would continue to hold temporary work permits with no opportunity to become permanent residents through the H-2A program.