

Reforms: H-2A provides only a fraction of workers ag needs

Continued from Page 1

process and package crops.

An estimated 50-70% of those farm laborers are undocumented, and few American citizens are willing to do the strenuous work.

"Agricultural work is hard. It's done outside often, where it's warm," said Allison Crittenden, director of congressional relations for the Farm Bureau. "I think that one way we can quantify the proliferation of the domestic worker shortage is looking at growth in the H-2A program."

The H-2A program provides temporary visas for foreign agricultural workers to come into the U.S. The number of positions certified by the Department of Labor has risen every year since 2012, reaching 213,394 visas last year.

Florida farmers hired the most H-2A workers in 2020, followed by their counterparts in Georgia, Washington state, California and North Carolina, all of which exceeded 20,000 workers.

Still, H-2A provides only a fraction of the workers agriculture needs. As domestic workers continue to get older, Crittenden said they often pivot out of farm work and into other sectors of the economy, further exacerbating the labor shortage.

One study cited by the Farm Bureau shows the agricultural labor shortage accounted for \$3.3 billion in missed economic growth in 2012.

For that reason, Crittenden said any immigration reform must address both workers already in the country, as well as flaws in the H-2A program to ensure farms can rely on a steady and increasing supply of labor in the future.

"This is one of the top problems for our membership," Crittenden said. "We want to make sure, if the train is leaving the station, that we have a solution for agriculture."

Path to citizenship

The U.S. Citizenship Act, as its name suggests, focuses on one major aspect of the issue.

Biden wants to create a path to legality for undocumented migrants already living and working in the country. Under his proposal, undocumented immigrants could apply for temporary legal status with the chance to apply for a green card after five years if they pass criminal background checks and pay their taxes.

Immigrant farmworkers, as well as those with temporary protected status and Dreamers — those protected under the Deferred Action for Childhood Arrivals, or DACA Act — would be allowed to apply for green cards immediately, if they meet specific requirements.



Antonio de Jesus Bailon, H-2A-visa worker, picks Gala apples at Griggs Orchards, Orondo, Wash., in 2018. A new farm labor bill seeks to improve the H-2A foreign guestworker program.

Dan Wheat/Capital Press



Allison Crittenden



Dennis Nuxoll



Dan Fazio



Rep. Dan Newhouse

After three years, all green card holders who pass additional background checks and demonstrate a knowledge of English and U.S. civics can then apply to become citizens.

Legalizing the current workforce is critical to the survival of farms, said Dennis Nuxoll, vice president of government affairs for Western Growers.

"For us, making sure they are right with the law, that they come out of the shadows, is incredibly important for our industry," Nuxoll said.

Western Growers members produce roughly half of all U.S. fruits and vegetables and two-thirds of all tree nuts grown in Arizona, California, Colorado and New Mexico.

Without a path to citizenship for current workers, Nuxoll said the industry could not make up the labor shortage through guestworkers alone.

First, he said the H-2A visa program is not built to handle the volume that would be required. Certain industries that require year-round labor, such as dairy, also do not have access to H-2A.

At the same time, Nuxoll said farms would be losing longtime workers with years of institutional knowledge about the operations that can't be quickly absorbed by new crews.

"For our farmers, the existing workers they have, many of whom who have

been with them for decades, are the backbone of American agriculture, at least with regards to produce," Nuxoll said. "That's the reason, frankly, you're able to go to Safeway or Albertsons and enjoy fruits, vegetables and tree nuts."

H-2A missing

That being said, Nuxoll said the H-2A program is in need of reform.

"You have to do both," he said of immigration and guestworker reform. "They go hand-in-hand."

That is what critics say is missing from the Biden plan. A summary of the U.S. Citizenship Act on the White House website makes no reference to H-2A or guestworker reform, while the program continues to suffer from rising costs and complicated bureaucracy.

Sequeira, the attorney and former assistant labor secretary, said the conversation begins with ballooning wages.

The minimum wage for H-2A workers is calculated annually using a survey collected by the USDA. From that, the Labor Department issues what is known as the Adverse Effect Wage Rate, or AEWR, which is intended to keep wages for foreign workers high enough that they don't adversely affect the employment of domestic workers by displacing them.

Any domestic workers working alongside H-2A

workers also get that higher pay.

Last year, the Trump administration approved a two-year freeze of the AEWR, only to have it overturned by a federal judge in California. The 2021 AEWR for the Northwest, published on Feb. 11, is \$16.34 per hour for field and livestock workers — a 3% increase from 2020. The AEWR in California is at \$16.05 per hour.

Meanwhile, labor costs in Mexico are \$7 per day to produce the same crops, Sequeira said. And that's not taking into account the American farmer's obligation to provide free housing and transportation under the H-2A program.

"You tell me how you can come anywhere close to profitability when your products are sitting side-by-side on the grocery shelf," Sequeira said.

Cost is not the only problem. Bringing in guestworkers requires navigating several agencies, which can sometimes take months and cause delays in harvest.

A survey conducted by the Farm Bureau found that 72% of growers reported that H-2A workers arrived, on average, 22 days after their "date of need."

Dan Fazio, executive director of Wafra, formerly the Washington Farm Labor Association based in Olympia, said the H-2A program is overly complex for growers, and has been since it was created in 1986.

"It's not a workable program. Small employers can't use it," Fazio said. "That's why the West Coast never used the H-2A program. We had a better guestworker program — the 'y'all come' guestworker program."

Establishing unity

But simply legalizing undocumented workers is not in anybody's best interest either, Fazio said. He pointed to caravans of immigrants arriving at the U.S.-Mexico border, and declining economic conditions in Mexico as the country goes into a recession.

"That's what you see from the Biden administration. Their statements are all about a path to legalization," Fazio said. "You have this undocumented workforce coming here, and it's not in anybody's best interest to come here undocumented. Our best interest as a country is to have a simple guestworker program."

Fazio said the issue boils down to fairness. H-2A employers go through stringent regulations to hire seasonal workers, paying upward of \$25,000 per bed to build and provide housing, along with inflated wages, while farms with undocumented workers sidestep those responsibilities.

That has created tension within the industry, and led to fighting among friends as farmers seek reforms, Fazio said. The challenge, he said, will be uniting to push for common interests in the next round of legislation.

"In exchange for legalizing undocumented workers, we need a good working future flow program," he said. "If all of agriculture was on board with that, we would get a good working future flow program" that would help procure adequate numbers of workers in years to come.

Nuxoll, with Western Growers, agreed that unity is key.

"We have been working on this particular issue for the better part of 20 years,"

he said, "trying to create a system that gets our existing workers right with the law who are here today, and creates an improved guestworker program."

Congressional appetite

Crittenden, with the Farm Bureau, said the Biden plan is only a framework now, but it "demonstrates enthusiasm" for solving the issue.

"I think Congress recognizes that, if what they want is expediency and to show progress on immigration overall, perhaps we have to break these individual issues down," she said. "I think if it's broken up into pieces, you will see those individual pieces move faster."

For example, the Farm Workforce Modernization Act did pass the Democrat-controlled House with bipartisan support last year before stalling in the Republican-led Senate.

While Democrats now control both chambers of Congress by thin margins, Crittenden said any bill will still need substantial Republican support to reach 60 votes needed in the Senate to avoid a filibuster.

Rep. Dan Newhouse, R-Wash., was a chief sponsor of the Farm Workforce Modernization Act, along with Zoe Lofgren, D-Calif. That bill would have let farmworkers apply for legal status as a "Certified Agricultural Worker" if they had done 180 days of agricultural work over the last two years.

Workers would then be able to renew that status every five years if they claim at least 100 days of agricultural work per year. The bill also proposed streamlining H-2A and capping wage rate increases at 4.25% over 10 years.

Though it did not pass, Newhouse said the bill garnered support from more than 300 farm groups. He is bullish on reintroducing the bill before an April 1 deadline to avoid another round of lengthy committee hearings.

Newhouse said the Biden proposal, as is, likely stands no chance of passing as comprehensive reform among Republican lawmakers and even some moderate Democrats.

"It's actually very concerning to me, some of the things that are being talked about," Newhouse said. "I don't think it benefits our national security at all. We need to know who is coming into our country, why, and how long they will be staying."

Newhouse said there is still an appetite in Congress to solve the agricultural labor issue.

"The need in the industry is certainly as great, if not greater, now than it was two years ago," he said. "We're strategizing, meeting regularly and talking about how we move forward."

Pay: 'There are a lot of serious problems with the substitute (bill)'

Continued from Page 1

If farms can't find a worker, the back wages would have to be paid to Labor and Industries, which would set up a committee to pay out back wages. Farms that don't pay upfront could be sued.

"There are a lot of serious problems with the substitute (bill) passed out of the committee," Washington State Tree Fruit Association President Jon DeVaney said.

"However, chair Keiser did acknowledge that this is an incomplete proposal and a work in progress," he said.

The committee's five Democrats voted for the reworked bill. King took a neutral stance, banking on future negotiations.

"I look forward to working with all of you to try to find reasonable, sensible and fair solutions," he said.

The committee's three other Republicans voted "no."

"I absolutely will be voting 'no,'" said Sen. Mark Schoesler, R-Ritzville.

Schoesler said that less than a year ago dairy farmers were dumping milk because of COVID problems. "Now we're kicking these people while they're down," he said.

The dairy federation estimates that dairies would have to pay out \$90 million to \$120 million if the overtime decision were applied to a three-year period that ended when the Supreme Court ruled.

Wood said Monday the federation has roughly calculated that retroactively applying the decision to all agricultural employees would cost \$2 billion.

The court's ruling overturned a law passed by lawmakers in 1959. The bill endorsed by the Senate labor committee goes farther than any court has in punishing agricultural employers for following that law, Wood said.

If lawmakers don't provide relieve, the dairy federation likely would pursue a federal lawsuit, he said.

Dairy: The 7,228-acre dairy has undergone a turbulent past

Continued from Page 1

for \$225 million, accusing the ranch of faking invoices and charging the company for more than 200,000 cattle that, in fact, did not exist.

Both Easterday Ranches and Easterday Farms have since filed for Chapter 11 bankruptcy protection. Easterday Farms is the family's farming business, growing 22,500 acres of potatoes, onions, corn and wheat in the Columbia Basin.

In a statement to the Capital Press, Cole Easterday, one of the owners of Easterday Dairy, said the company is still working to secure a Confined Animal Feeding Operation, or CAFO, permit from the Oregon Department of Agriculture and Department of Environmental Quality to reopen the dairy near Boardman.

"Though the situation with Easterday Ranches and Easterday Farms is unfortunate, Easterday Dairy LLC's commitment to our current CAFO permit and our permit application is unchanged," he said.

Cole Easterday declined to comment on the lawsuit or bankruptcy filings.



George Plaven/Capital Press

The milking parlor at Easterday Farms Dairy includes two rotating carousels capable of milking 180 cows at a time.

The 7,228-acre dairy has already undergone a turbulent past. As Lost Valley Farm, it opened in early 2018 and was shut down within a year after racking up more than 200 permit violations under previous ownership, including open-air lagoons overflowing with liquid manure.

Easterday Farms bought the property, including buildings and infrastructure — but not the cows — for \$66.7 million in 2019. The family promised to invest \$15 million in the dairy, upgrading its wastewater treatment system and correcting environmental deficiencies that led to Lost Valley's demise.

"It's a state-of-the-art dairy," said Cody Easterday,

president of Easterday Farms, during a tour and interview in July 2019. "It just needs to be finished, and it needs to have the correct management."

Easterday Dairy applied for a CAFO permit in June 2019. Oregon's CAFO program is jointly administered by the state Department of Agriculture and Department of Environmental Quality to ensure operations will not pollute "waters of the state."

According to its permit application, the dairy will have 9,700 mature dairy cows, 8,600 dairy heifers and 10,000 additional non-dairy cattle kept on site. Those animals would produce an estimated 5.4 million cubic feet of liquid manure, 5.9 million

cubic feet of solid manure and 11.7 million cubic feet of processed wastewater annually.

The dairy would recycle all that nitrogen-rich manure by using it as fertilizer on 5,390 acres of surrounding farmland, a process known as land application. It would additionally have storage capacity for more than 10 million cubic-feet of manure in lagoons for up to 111 days, and year-round storage for more than 13 million cubic-feet on an impervious soil pad.

Wym Matthews, CAFO program manager for ODA, said the Easterday Dairy application is under review and agencies are working toward issuing a draft permit that would then be available for public review.

"There is quite a bit of back and forth between the agencies in developing the permit," Matthews said. "One of the things, because this proposed site is located in a groundwater management area, it's a new source of nitrogen in an area that already has known concerns about nitrate levels in groundwater."