

ASSEMBLY THIRD READING  
AB 857 (Katra)  
As Introduced February 17, 2021  
Majority vote

## SUMMARY

Requires H-2A visa employers to provide notice of specified state and federal employment rights in Spanish, and if requested, in English, to all H-2A farm workers on their first day of work or when they are transferred to another employer.

### Major Provisions

- 1) Requires an employer to include in their written notice to all employees at the time of hiring, health and safety information regarding the issuance, as specified, of a federal or state emergency or disaster declaration applicable to the county or counties in which the employee will be employed.
- 2) Prohibits an employer from retaliating against an employee for raising questions about the declarations' requirements or recommendations that may relate to employment, housing, or working conditions.
- 3) Requires an employer to provide an H-2A employee, as defined, on the day the employee begins work in the state, or begins work for another employer after being transferred, a written notice in Spanish and, if requested by the employee, in English, regarding an H-2A employee's rights pursuant to federal and state law, to include, among other things:
  - a) The applicable overtime wage rate.
  - b) Required pay periods.
  - c) Required rest and meal periods.
  - d) Compensation for travel time from employer-provided housing to the worksite when the employee must take the transportation provided by the employer.
  - e) Housing protections and tenant rights.
  - f) The right to be free from retaliation.
  - g) Required health and safety protections and training.
  - h) Coverage under workers' compensation.
- 4) Requires the Labor Commissioner (LC) to prepare a template for H-2A employers, in Spanish and English, with substantially the same information as set forth in 3) above in a separate and distinct section of the template titled: "Summary of Key Legal Rights of H-2A Workers under California Laws." This information shall be combined with the notice template required under current law.
- 5) Provides that the template shall describe the right to compensation for travel time as declaratory of existing law and state the following: An H-2A employee is required to be

compensated by an H-2A employer at their regular rate of pay for time spent while being transported by the employer or its agents to or from the housing provided by the employer or its agents to or from the employer's or agent's worksite when the H-2A employee:

- a) has no personal vehicle;
  - b) cannot take public transportation to or from the worksite(s); and
  - c) has no other real alternative than to take the transportation provided by the employer or agent; or
  - d) when the H-2A employee is required by the employer or agent to take transportation provided or paid for by the employer or agent.
- 6) Requires that the template be made available to employers in a manner determined by the LC, but shall be posted on the LC's internet website commencing January 2, 2022.
- 7) Requires the LC to revise language in the template as necessary, to do all of the following:
- a) Provide, update, or expand useful agency contact information.
  - b) Correct inconsistencies with current laws or regulations, including, adding, deleting, or changing information because of new developments in case law pertinent to any provision referenced in the template.
  - c) Add any other information that the LC deems material and necessary.
  - d) Add or delete information because of the enactment of new laws or regulations or because of the repeal of existing laws or regulations.
- 8) Codifies night work safety standards for agriculture that obligate an employer to provide, among other things, reflective garments, specified lighting, and daily safety meetings.
- 9) Exempts from the provision of compensation for travel time, as specified, H-2A employees who are covered by a collective bargaining agreement that meets certain criteria.

## COMMENTS

More than 25,000 H-2A farm workers came to California last year to support our agricultural industry. These workers are admitted through a federal program that temporarily allows them to work in the United States, provided local workers are not available to fill these positions. The H-2A program requires that a worker be tied to a specific employer, thereby giving the worker little control over their housing, transportation, or working conditions. Their jobs are low-wage, with 14% of H-2A workers in the United States making less than \$10,000 a year.<sup>1</sup> In addition, working in agriculture is highly dangerous compared to other industries and the COVID-19 pandemic has elevated the risks associated with overcrowded and largely unsanitary working conditions. In June of 2020 there was a significant outbreak of the virus at farm worker housing

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<sup>1</sup> National Agricultural Worker Survey. Fiscal years 2015-2016.  
[https://www.doleta.gov/news/research/docs/NAWS\\_Research\\_Report\\_13.pdf](https://www.doleta.gov/news/research/docs/NAWS_Research_Report_13.pdf).

in Ventura County with nearly a hundred workers testing positive.<sup>2</sup> Such an outbreak is extremely serious given that few farm workers have health insurance, the means to obtain medical care, or paid sick leave available for a two-week quarantine.

Other factors contribute to the precarious nature of H-2A farm work. A 2020 study by the Centro De Los Derechos Del Migrante found that many workers are subject to economic coercion by their employer-sponsor. The majority of surveyed H-2A workers reported that they started their employment in debt and 43% reported that the salary they received was less than what they were promised.<sup>3</sup> Over 60% had to take out a loan just to come to the United States.<sup>4</sup>

### **According to the Author**

"AB 857 will help advise H-2A workers of their rights under California law by ensuring adequate notice on their first day of work or when they are transferred to another employer. The notice shall include information on employment rights such as the right to meal and rest periods, overtime, rest period compensation for piece rate workers, compensable transportation time, prohibited deductions, worker health and safety protections, sexual harassment training, and timely payment of wages.

The written notice would also inform H-2A workers of their right to report a violation of California law, how to report violations, and their right to be free from retaliation. In doing so, AB 857 will create safer, more legally compliant workplaces and reduce any incentive unscrupulous H-2A employers may have to hire workers who they can underpay and mistreat because the workers are not aware of their rights or how to have them enforced."

### **Arguments in Support**

A coalition of worker advocates, including the California Rural Legal Assistance Foundation, argues in support, "The purpose of AB 857 is to provide these vulnerable farm workers with a timely, informative notice that allows them to independently determine whether their employer is complying with applicable California laws. For example, nothing in the federal H-2A contract given to workers by their employer requires this specific state law information to be disclosed in writing on their first day of work in California."

### **Arguments in Opposition**

A coalition of agricultural employers, including the Western Growers Association, argues in opposition, "Agriculture in California is a diverse industry that provides food and fiber to our state, nation, and the world. Our employees are the heart of our industry and their workplace safety and health is our top concern.

Unfortunately, the reality of continued rising employer costs has made competing with other states and nations even more challenging for our industry. California's ongoing increases to the minimum wage, overtime rules, nitrate/irrigated land program mandates, loss of crop protection tools, and regulatory restrictions on water supply threaten the survival of our family farms. The COVID-19 pandemic has further compounded the challenges that we face as an industry and has caused economic devastation for far too many. At a time when the industry is struggling most,

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<sup>2</sup> Press Release: County of Ventura, Public Health Department, "COVID-19 Outbreak in Farmworker Community in Oxnard," June 29, 2020.

<sup>3</sup> "Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program," Centro De Los Derechos Del Migrante, Inc., p. 5 (updated in 2020 to reflect the COVID-19 pandemic).

<sup>4</sup> Id. at 7.

AB 857 proposes unnecessary and costly changes in law.

*Travel Time:* AB 857 changes law and creates a right that is contrary to long established judicial precedence. AB 857 falsely states that it is 'is declaratory of existing law.' In reality, this bill attempts to change the law by expanding the definition of 'voluntary' and 'mandated' travel time, as decided by the California Supreme Court in *Morillion v. Royal Packing (2000)*. Therefore, AB 857 adds new situations whereby travel time would be required to be paid to H-2A employees."

## FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor fiscal impact. The Division of Labor Standards Enforcement's (DLSE) cost to develop and update a template will be absorbable, and this bill does not contain a clear enforcement mechanism. DLSE could go to court to obtain an order to require an employer to provide the notice, but such an action is likely to be rare. Additionally, DLSE does not anticipate many retaliation claims from H2-A workers who ask questions about an emergency declaration's impact on their employment.

## VOTES

### ASM LABOR AND EMPLOYMENT: 5-2-0

**YES:** Kalra, Lorena Gonzalez, Jones-Sawyer, Reyes, Ward

**NO:** Flora, Seyarto

### ASM APPROPRIATIONS: 9-5-2

**YES:** Lorena Gonzalez, Ward, Calderon, Carrillo, Chau, Gabriel, Quirk, Robert Rivas, Friedman

**NO:** Bigelow, Megan Dahle, Davies, Fong, Levine

**ABS, ABST OR NV:** Eduardo Garcia, McCarty

## UPDATED

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