

CONCURRENCE IN SENATE AMENDMENTS

AB 857 (Kalra)

As Amended August 24, 2022

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.

Senate Amendments

- 1) Change the effective date from January 2, 2022, to March 1, 2023, for the posting of the template notice on the Labor Commissioner's (LC) website.
- 2) Add an effective date of March 15, 2023, for the requirement that employers furnish workers with a copy of the template notice.
- 3) Require the LC to include in the notice template information that the LC deems material and necessary respecting all of the topic headings set forth in the bill in a separate section of the template, as specified.
- 4) Authorize the LC to revise language in the template for the purpose of adding any other information relating to any or all of the topic headings, or revise the topic headings in the template if the LC deems the additions or revisions material and necessary.
- 5) Remove all explanatory language for each topic heading outlined in prior version of the bill and revise topic headings to be generally more descriptive.
- 6) Remove provision outlining the factors that create an obligation for an H-2A employer to compensate employees for travel time.

COMMENTS

More than 30,000 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.¹ 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 in Ventura County with nearly a hundred workers testing positive.² Such an outbreak is

¹ National Agricultural Worker Survey. Fiscal years 2015-2016.

https://www.doleta.gov/news/research/docs/NAWS_Research_Report_13.pdf.

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

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.³ Over 60% had to take out a loan just to come to the United States.⁴

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, AB 857 proposes unnecessary and costly changes in law."

³ "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).

⁴ Id. at 7.

FISCAL COMMENTS

According to the Senate Appropriations Committee, pursuant to SR 28.8, negligible state costs.

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

ASSEMBLY FLOOR: 43-21-14

YES: Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Holden, Jones-Sawyer, Kalra, Lee, Low, Maienschein, McCarty, Medina, Muratsuchi, Nazarian, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Chen, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Levine, Mathis, Nguyen, Patterson, Quirk, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Aguiar-Curry, Choi, Cooper, Daly, Frazier, Grayson, Irwin, Mayes, Mullin, O'Donnell, Petrie-Norris, Quirk-Silva, Blanca Rubio, Villapudua

UPDATED

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