

Department of Agricultural and Resource Economics

UPDATES ON THE H-2A PROGRAM IN THE MIDST OF COVID-19

March 25, 2020

You may have read headlines from various media outlets such as: “U.S. to pause visas from Mexico during coronavirus pandemic”; “Feinstein calls on State Department to expedite H-2A visas”; “As borders close, questions remain about H-2A program.” You may have already contacted your agent or recruiter to clarify what these headlines mean to you, your H-2A workers and your farm. In this publication, we address a few questions you may have regarding the H-2A program in the midst of the COVID-19 crisis. Keep in mind that information is changing very quickly, so make sure you check with your agent or recruiter or contact us (mvelandi@utk.edu) for updates.

Are nonimmigrant visa services at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico suspended?

Yes. The website for the U.S. Embassy and Consulates in Mexico (<https://bit.ly/3dx3iWH>) contains information regarding the fact that immigrant and nonimmigrant services are suspended starting March 18, 2020, until further notice. This includes both visa interviews at the embassy and consulates as well as processing at the Centros de Atención a Solicitantes (CAS).

How could this closing affect the arrival of your H-2A workers?

New workers that have not held an H-2A visa within the past year will be affected if they have not completed the process, as their interviews will be cancelled and, therefore, will not be able to complete the process until further notice. Nonetheless, returning workers, workers that have held an H-2A visa during the past year, have been granted an interview waiver that allows them to get a visa without going through an interview process. Therefore, the returning workers likely will not have any problems getting to their corresponding farms. ***Check with your agent for avenues to recruit additional returning workers.***

The U.S. Department of Agriculture and the Department of Labor identified nearly 20,000 H-2A and H-2B certified positions that have expiring contracts in the coming weeks. There will be workers leaving these positions who could be available to transfer to a different employer's labor certification (<https://www.farmers.gov/manage/h2a>). Will this be an avenue for me to get additional workers?

An agent helping farmers in various U.S. southeastern states obtain H-2A workers indicated that transferring H-2A workers in the U.S. may not be as easy as the headline suggests. Prior to the workers beginning work for the new employer, U.S. Citizenship and Immigration Services (USCIS) has to approve the transfer. Therefore, if the worker agrees to the transfer, but the farmer is not in the E-Verify system, they will have to wait for the worker's paperwork to get updated. This process could take three to six weeks.

Additional requirements for the transfer include that the worker must be able to prove that in the last two years they had a full 60 days outside of the U.S. or 90 days within the last three years. One of the challenges farmers may be facing when trying to access workers through transfers is that the U.S. Consulate in Mexico and USCIS do not communicate. Therefore, just because a worker has a visa does not mean they are eligible for a transfer. There may be other challenges associated with having access to transferred workers. Below is an example of the difficulties farmers could face when trying to get workers through a transfer:

A farm agrees on March 1 to transfer workers to an employer when their current contract ends on March 7. They must wait for the approval from USCIS to begin work. While they will not be considered out-of-status since the paperwork was filed, they may get tired of not working for weeks and decide to leave. Then the grower is out of workers because the agent will have to petition again for the visa.

In general, transferring workers may include additional paperwork and uncertainty. Make sure you consult with your agent before you consider worker transfer as an option to get the additional H-2A workers you may need.

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