

ASSEMBLY THIRD READING
AB 636 (Kalra)
As Amended May 11, 2023
Majority vote

SUMMARY

Requires an H-2A visa employer, beginning on March 15, 2024, to give to an employee on their first day of work in California or upon transfer, the notice of basic employment-related information with a separate and distinct section in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protections under California law.

Major Provisions

- 1) Adds to the written notice of basic employment-related information given to an employee at the time of hiring information regarding the existence of a federal or state disaster declaration applicable to the county or counties in which the employee will be employed, as specified.
- 2) Requires an employer, beginning on March 15, 2024, to give to an H-2A visa employee on their first day of work in California or upon transfer, the notice of basic employment-related information with a separate and distinct section in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protections under California law, including but not limited to, information addressing:
 - a) overtime wage rates;
 - b) pay for piece rate workers;
 - c) transportation travel time compensation when required, including transportation from housing to work sites;
 - d) nonretaliation protections for complaints or organizing;
 - e) availability of potable water and handwashing facilities;
 - f) requirements relating to hot weather working conditions and the availability of shade;
 - g) training and necessary equipment and lighting for night work;
 - h) prohibitions against use of short-handled hoes and limits on hand weeding;
 - i) right to accrue and take sick leave; and
 - j) the right to complain to state or federal agencies and to seek advice from collective bargaining representatives or legal assistance organizations.
- 3) Provides that if an employer employs both H-2A and non-H-2A employees at the same time, the employer may satisfy the notice requirement with respect to its non-H-2A employees by opting to provide those employees with the notice for H-2A employees as specified in 2) above or by providing the basic written notice generally required for employees.

- 4) Requires the Labor Commissioner (LC) to prepare a template for the notices in 1), above, and to post the template on its internet website commencing March 1, 2024.
- 5) Specifies that the exemption from the notice requirement for employees covered by a collective bargaining agreement with specified provisions only applies to an H-2A worker if the collective bargaining agreement provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

COMMENTS

More than 43,000 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 percent 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 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 636 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 636 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

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

https://www.doleta.gov/naws/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.

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.

because the workers are not aware of their rights or how to have them enforced. With increased enforcement, AB 636 will promote economic equity for this vulnerable workforce."

Arguments in Support

A coalition of labor and legal services organizations, including the California Rural Legal Assistance Foundation, sponsor of the bill, states, "Rural legal services programs have recently settled wage theft actions for hundreds of H-2A workers that exceed 3 million dollars. A number of similar legal actions are pending, on behalf of over 6,000 workers, including one major H-2A worker rights case brought by the Division of Labor Standards Enforcement.

These workers have had to seek assistance from legal services law firms or the State of California in order to be paid overtime wages or to recover illegal deductions made for tools or equipment; for charges for meals that were not taken; for meal and rest periods that were denied to them; and for uncompensated travel time pay when riding in vehicles to work sites while under the control of the employer.

When asked by legal services attorneys if they knew that they had the right to be paid for overtime, or to be paid while being transported from the employer's housing to the job when that was required, many H-2A farm workers replied that they were unaware of these rights. And, even when workers were aware that their rights were being violated, many stated that they were afraid to complain because they knew they could be fired and sent back to their country at any time."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor and absorbable costs to the LC, also known as the Division of Labor Standards Enforcement (DLSE), as this bill does not contain a clear enforcement mechanism.

VOTES

ASM LABOR AND EMPLOYMENT: 5-0-2

YES: Kalra, Haney, Ortega, Reyes, Ward

ABS, ABST OR NV: Flora, Chen

ASM APPROPRIATIONS: 12-2-2

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Robert Rivas, Weber, Wilson

NO: Megan Dahle, Dixon

ABS, ABST OR NV: Mathis, Sanchez

UPDATED

VERSION: May 11, 2023

CONSULTANT: Megan Lane / L. & E. / (916) 319-2091

FN: 0000338