

# GROWERTALKS

## Cover Story

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## Could H-2A Be Your Labor Savior?

*Jennifer Zurko*

At Wenke Greenhouse in Kalamazoo, Michigan, their position prior to and after starting with the H-2A program has been to hire all domestic people who are authorized and willing to work.

“But hiring became extremely difficult because there is nobody who comes in the door anymore—we don’t get very many applicants,” explained owner Lisa Ambrosio. “The general public seem to have the perception that we could hire domestic people if we just paid more. The number of times I’ve had to explain it didn’t matter if I paid \$30 an hour. If you already have a job, you’re not going to leave it to come take this job for three months.”

Amy Morris, co-owner of N.G. Heimos and Millstadt Young Plants in southwestern Illinois, was also experiencing high turnover and then virtually no one was applying.

“We could not find the labor, and if it wasn’t for H-2A, we probably could not get our product out the door or we would have had to cut back on so many customers,” she said. “And what people need to understand is we’re not stealing American jobs. We are providing the labor that is needed for our country that no American wants to do.”

So they and many other greenhouse growers like them have had to turn to the H-2A guestworker program to get extra help during peak times because they wouldn’t be in business without it.

### At wit’s end

Wenke Greenhouse has about 125 full-time employees year-round at all four locations in Michigan, but at peak, they need an extra 100. To fill 100 positions, they were interviewing and hiring 400 people. Lisa said that most didn’t even stay past the first morning.

Amy Morris said she went through 491 people to fill 60 jobs.

Dickman Farms in Auburn, New York, would hire seasonal workers off the street. Bob Dickman said that even if they had some that stayed, most of them started looking for other jobs with a month left of production because they knew the work was going to end soon.

These stories aren’t new or fiction. Unfortunately, this has been a consistent pattern with most growing operations during the last few years. Having to constantly search and worry about having a productive, reliable workforce is a frustrating, stressful waste of time and resources during the busiest time of the year.

“I was getting to the point where I was literally going crazy. My day consisted of training 20 new people on Monday and by that afternoon trying to figure out how many had stayed and how many had gone. And if we were lucky, by the end of the week, one would stick,” said Amy, who started using H-2A in 2018. She said the last straw was in

2017, when she found some of her workers trying to buck the system, like clocking in and then leaving, or clocking in three or four people at a time.

“I would spend four times a day going around the entire complex, making sure people were doing what they were supposed to do. That’s what I did all day long,” she said. “It was horrible and I said to my brother Bernie [Heimos], ‘I cannot do this anymore.’”

“The turnover was incredible,” said Lisa. “It was to the point that, if it had continued like that, some of our full-time people would have quit because it just wasn’t any fun anymore. You had no idea who was going to come to work. We had to schedule 20 people when you only needed 10 so that you hoped that at least five would show up. You were constantly training people and dealing with bad attitudes and people who clearly didn’t want to be there.”

Wenke started participating in H-2A in 2019. Lisa said it was either that or cut back their production.

“We had heard of other people who were using it,” she said. “I had thought of it as more of an agriculture program and there weren’t a lot of greenhouse growers using it. Our perception was that it was going to be so difficult and so expensive that it wasn’t really an option. But when we got to the point that we were desperate, then we really looked at it.”

## H-2 help ... but homework is due

H-2A is a government visa program, and as such, it’s a complicated system with a lot of moving parts. First, you have to prove to the government that all other means of hiring domestic workers have been exhausted or didn’t work. You can’t just sign up for the H-2A program without showing you tried. And there are a number of regulations and requirements that have to be followed to the exact letter, otherwise you can earn yourself government inspections and some hefty fines.

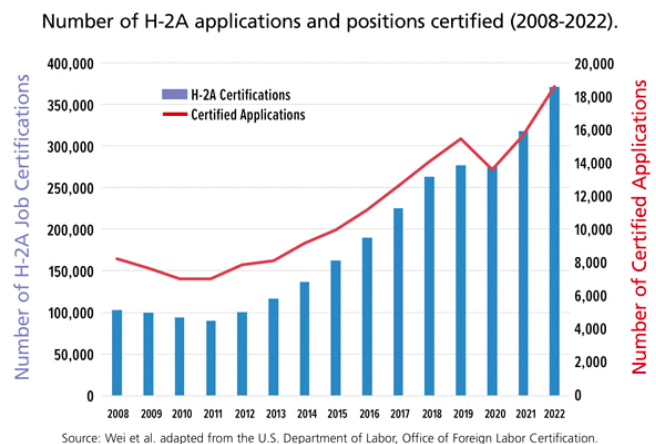
But there are options to help growers navigate the system so that it provides the help they desperately need. Many growers use a third-party labor contractor to help them manage the paperwork, fees and hiring. If you decide to participate in the H-2A program, you also have to provide transportation for the workers to and from their home countries, and housing for them while they’re employed at your greenhouse.

Craig Regelbrugge, Executive VP of Advocacy, Research & Industry Relations at AmericanHort, said more growers are using a third-party H-2A labor contractor and the compliance responsibilities are largely up to them.

There are three primary ways you can employ workers under the H-2A program:

1. Employ the workers directly, maybe using a third-party organization to help you fill out the paperwork. A lot of businesses will use a law firm or a workforce agent.
2. Hire a labor contractor to provide and supervise workers and comply with all program requirements.
3. Hire employees through a joint employer association, which may supply workers to member employers, who often have different seasonal needs and the workers are moved around. These associations have to be registered with the Department of Labor.

Craig said labor contractors employ about half of H-2A workers across ag segments—in our industry, direct employment is most common, but contractor use is growing.



Because there are many rules and requirements that come with using H-2A, there's lots to consider. First, do your homework.

"The reason I use [a third-party contractor] is because I know their reputation. I know that if I get in a bind, they'll be there to help support me through it," said Amy. "You need to make sure with your contractor, if any government action comes against you—as long as you've been truthful and honest in all actions and everything is fully disclosed—that they're there to back you and that is a major, major thing."

Lisa said the decision to hire a labor contractor to help them was difficult, but they knew they didn't have the internal resources to manage the program, which is a full-time job.

"I don't know how easy it would be if you didn't have to [use a labor contractor]," Lisa said. "There's so much involved that it would be very difficult. You're not just changing the toilet paper—it's a pretty intense partnership. They've become a very important part of the process."

Dickman uses a local labor contractor who has experience with the New York State Labor Department, so they already knew their reputation.

"Just developing a relationship with them and seeing how they operate, it made life for us so much easier because 1) they take care of all the H-2A burden; and 2) they get good, quality workers here every year," Bob explained. "For us, it was nice to actually work with a reputable H-2A contractor because they were able to walk us through every single turn and corner, making sure that we were in compliance."

Jan Nielsen, a manager at Garden State Growers in Pittstown, New Jersey, said they're halfway through their second season using H-2A after their traditional domestic seasonal labor became too unreliable. They trialed hiring a small group of H-2A workers in the fall of 2021, then made the decision to petition for a larger group in 2022. They also use a third-party labor contractor to help them with H-2A.

"When you go through an agency, it is a 90-day process, which is fairly painless, as they take care of all the formalities with the Department of Labor," said Jan. Garden State Growers provides the housing and makes sure it meets all of the compliance criteria set by the DOL.

And there's a ton of compliance you have to make sure you meet. Amy provides all of the recruiting information to her labor contractor and they own six houses on the property that can house up to 80 people (Heimos employs about 60 H-2A workers, currently). But the contractor helps her with all of the paperwork that's required before and during the process.

"Make sure you read all the paperwork because there are little tiny clauses that, if you don't make sure you execute every detail—if it's not DOL, it'll be Homeland Security—they will come back on you on every detail," said Amy. "And that's what I like about [our labor contractor]—they have the legal team that if I'm missing something or if something isn't right, they will contact me and let me know."

Even if some workers are returning from the previous year, every single one has to fill out a new application and go through training. Amy advises that you keep a file for every single piece of paper—every license, visa, I-9, etc.—because the Department of Labor WILL check. She's had inspectors come to her greenhouse, pull aside 10 workers and ask them questions about their training and onboarding.

Transportation and housing is another aspect to the program. Regardless, if you or the labor contractor is handling it, you have to make sure that you're in compliance and that your workers have everything they need. For instance, transporting vehicles must have heat and air conditioning, and the housing has to be able to accommodate dozens of workers comfortably, with plenty of space to sleep and eat. Amy said you have to check the housing once a

month, at a minimum.

“Housing is one of the biggest challenges of this. It is a big part of the reason why we went with a farm labor contractor rather than trying to do it ourselves,” said Lisa, who both owns and rents the housing they provide their workers. “Not only is it an issue of having the physical location, but then there’s the management of the housing. What are the rules? Who makes sure that people are following those rules?”

“Some of these laws and regulations change from year to year, so if you have an H-2A compliance handbook from 2019—well, that’s outdated at this point,” said Bob. “There are a ton of horror stories of growers that get caught up in non-compliance and then it’s off to the races with fines and even getting kicked out of the guestworker program.”

Frank Arnosky has owned Texas Specialty Cut Flowers in Blanco, Texas, for over 30 years, and for 20 of those, he’s been using the H-2A program. (Many cut flower and nursery growers have been using H-2A for a decade or more.) When he first started with the program, he was handling all of his own applications and compliance requirements, and there weren’t many third-party labor contractors out there. Today, Frank said he couldn’t imagine getting into the program from scratch on his own. But he would add a caveat.

“Be aware that many of the organizations that help process H-2A applications are not attorneys. Don’t think you’re hiring a law firm,” he said. “Many of them are just service firms—they may have an attorney on staff—but many that I’ve looked at just process applications.”

Craig said one option would be a formal certification process for third-party contractors to help protect growers, but for now, if you decide to use a labor contractor, go in with your eyes open and do your due diligence with vetting them. Because AmericanHort doesn’t endorse any specific labor contractors, his advice is to ask your peers who you know are using a third-party to share their thoughts and experiences.

“People who have been in this program for 20-plus years told me I was crazy not to use it,” said Bob. “They seemed to have it figured out. The heartbeat of all of our companies is the workers that produce the products. From the greenhouse sector, we’ve struggled with that. Even though we pay more, the long dollar is worth it.”

## **Benefits up and down the chain**

It’s not just the peace of mind knowing you’ll have workers who’ll actually be there to work, but using H-2A also benefits the rest of the staff. For domestic workers who desire a more flexible schedule, you can accommodate that even during peak season when you have a reliable group that can pick up the slack. If you have team members that need to come in late or leave early because of child care or other family obligations, you can scatter different shifts so that someone is always there, all of your workers get their hours in and the work gets done.

“The really great thing about H-2A workers is that they are here to work,” said Lisa. “It is very evident in their attitude and their willingness to work with us. The reality is that we are dependent on the weather and when the weather is nice, we’re really busy. That doesn’t always work for somebody who has a home life and needs to pick up kids at 4:00 p.m. So having that flexibility works out really well when you have guestworkers here.”

Plus, having the domestic seasonal workers not show up stresses out your full-time staff and dampens morale. It’s truly a win-win for everybody.

“It’s made us be able to accommodate a work/life balance for our full-time, year-round staff,” said Bob. “We would just grind on people [during peak] who have kids and lives. Now, we have a solid group of workers who show up every day to complete tasks, so we basically built our process around the H-2A workers.”

## **H-2A going forward**

The H-2A program is great when all of the different departments approve your paperwork on time, the consulate

grants all the visas and you get your workers when you need them. But you also have to be realistic that, as a government program, there's a lot of bureaucracy, which means that delays can happen. So you need to be optimistic and prepared at the same time.

"The hard part about using the program is you've got four government agencies to work with," said Frank.

"Unfortunately, the biggest challenge that has not changed is that each one of those departments send the paperwork back to you to forward it to the next place. And none of these agencies is guaranteed to process your paperwork on time. So you can't start early enough—there are going to be delays."

Frank experienced a delay by seven weeks this past year, estimating that his business lost between \$75,000 to \$100,000 in spring production. The Department of Homeland Security "lost" his paperwork for about five weeks until a call from a senior member of Senator John Cornyn's office suddenly located it within 24 hours. By that time, Frank said he was pulling his hair out.

"As soon as the petition goes through the U.S.CIS it's like a vacuum—you have no idea who's coming, who's not. Until they issue visas at the consulate, you don't know," said Bob.

When I compared the process to cogs in a wheel and the growers were the hamsters, Bob replied, "And, really, as greenhouse growers, we're betting all of our livelihood on those cogs. It can be very stressful, especially if there are delays within the petition process and the visa issuing."

There's also the situation with the Adverse Effect Wage Rate (AEWR), where the DOL sets what the required wages should be for H-2A workers based on regional surveys, which growers say lead to wage inflation. The program intention is to ensure that H-2A workers are not paid less than domestic workers doing the same job, depressing wages. However, there's an argument that it needlessly inflates hourly wages, especially in states where the state minimum wage is already high. This year, states like Washington and Michigan had to pay over \$17 an hour. California pays over \$18.

The other problem is that not only does the AEWR go up every year, but the percentages of how much they go up are all over the place. And the DOL doesn't announce the percentages until the end of December. By that time, all of your paperwork for your H-2A workers has already been submitted.

"I would like the AEWR to become a standard increase across the board," said Amy. "This jumping from 14% to 3% to 2%—it should be a United States minimum wage that follows the same percentage and not how the government feels."

(There is legislation that has been introduced on the House floor to address the AEWR, like the Farm Workforce Modernization Act and the Dignity Act, but there's not a lot of hope that anything will get passed anytime soon.)

Still, since 2008, participation in the H-2A program has increased by over 300% (that's not a typo—see the sidebar) and the pattern shows that more and more greenhouse growers will be turning to it to find workers. So I asked Craig if he thinks there will be a point where the government can't support the demand. He said AmericanHort and other ag-oriented trade organizations do have capacity/processing concerns at each stage of the process, i.e., DOL applications for labor certification, DHS visa petitions and state visa issuance.

"Some of these processes are user-fee funded; some require appropriations," said Craig. "In all three steps, there are process innovations and streamlining possibilities that could help manage capacity limitations."

There have been incremental improvements to the H-2A program over the years, albeit small. Frank said the fact that growers can now access their application history via a digital platform is a huge upgrade.

"It used to be for almost 20 years I would have to file my application every year as if I never existed before," he said.

So, for now, growers, ranchers, dairy farmers and other agricultural businesses will have to continue using the H-2A program if they want to get the labor they need to keep their doors open.

“Was the H-2A program designed to meet all of our industry’s needs? No. Is it the best option we currently have? Yes,” said Craig.

“If I have to pick the worst of the two evils, I’m still going with the H-2A program,” said Bob. “Doing it the H-2A way, at least I can go home every night, lay my head on my pillow and know that 36 workers are going to be at my place tomorrow morning.”

In the meantime, organizations like AmericanHort and business owners like Amy, Lisa, Bob and Frank will continue to visit their representatives in Washington, D.C. and invite them to visit their operations to make them understand what growers are up against with regard to finding good, reliable labor.

“Overall, the program works,” said Frank. “That’s the real takeaway—we couldn’t have run our farm for the last 20 years without it and we have to keep trying every year to make it better. And that’s why I go to D.C. To try and move the needle a little bit every year.”

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AmericanHort recently held three sessions in their Mastery Series called [“Navigating H-2A and H-2B”](#) and it’s free for AmericanHort members.

## A Brief History of the H-2A Program

The Immigration & Nationality Act of 1952 established the H-2 non-immigrant visa program, under which temporary foreign workers were admitted to the United States to perform temporary and seasonal employment. However, the origins of the current H-2A program can be traced back to the Reagan Administration. The Immigration Reform & Control Act of 1986 (IRCA) amended the Immigration & Nationality Act to separate the pre-existing H-2 visa program into H-2A for agricultural workers and H-2B for seasonal non-agricultural employment.

At the time of the creation of IRCA, the total admission of all temporary and seasonal workers to the United States was around 30,000, with farmworkers occupying the major share. The goal of the H-2A program remained identical to that of the overall H-2 visa program, which was to meet the United States’ temporary and seasonal labor needs without adding to the country’s permanent population. It was also meant to provide better oversight of the influx of foreign farmworkers in the country, while protecting wages and working conditions of domestic workers.

Since its inception, H-2A has become the largest temporary visa program in the United States. In 1987 when the program was first established, the State Department issued 44 visas for H-2A foreign workers. Since then, the issuance of H-2A visas quickly expanded, and in fiscal year 2020, the department issued around 213,000 visas for temporary foreign farmworkers.

—Source: *The Bipartisan Policy Center*

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## A Deep Dive Into the Use of H-2A

According to the DOL Office of Foreign Labor Certification, between 2008 and 2022, H-2A agricultural guest worker applications increased by more than 240%, while the number of H-2A job certifications rose by 360%. In 2022 alone,

greenhouse and nursery growers secured 20,966 of the 370,907 certified H-2A jobs, accounting for 6% of all certified H-2A jobs.

A study by researchers at the University of Florida, the University of Georgia and Rutgers University looked at the decision-making process of ornamentals growers when it comes to hiring H-2A workers. Growers' decisions are primarily influenced by two factors: their home states' enforcement of the 287(g) program, and the industry's employment and wage payment trends. Growers are more likely to participate in the H-2A program if their home states have implemented the 287(g) program (which allows state and local law enforcement selected by DHS to enforce immigration law). However, an increase in domestic workers' industry employment will likely discourage participation in the H-2A program, while rising industry wage costs may encourage participation.

In terms of green industry firm characteristics, the study found that an increase of \$1 million dollars in farm sales value only marginally increases the probability of program participation. This suggests that the current H-2A program may pose a hurdle for small growers, but benefit larger growers.

States such as California, Florida, Washington and Georgia that produce mainly specialty crops (ornamental plants, fruits, vegetables, etc.) have shown an increased dependency on the H-2A program. The procedural burden and pre-employment costs (e.g., housing and transportation) of the current H-2A program may have created a hurdle that potentially disincentivized small and medium-sized firms from recruiting H-2A workers. Additionally, the AEWR increase can also make it more challenging for growers to use the H-2A program.

—Source: *“What Firms Hire H-2A Workers? Evidence from the U.S. Ornamental Horticulture Industry”* by Xuan Wei, Benjamin L. Campbell, Hayk Khachatryan & Robin G. Brumfield, *HortScience* 58(4):375-382.

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## Some Recent Labor Stats

Earlier this year, AmericanHort conducted a study called the Greenhouse & Nursery Labor Employment Survey to gather data on the state of our labor workforce. The responses (which were focused on the year 2021) reflected broad coverage across the United States. A few key findings from the survey:

- 63% said they were unable to hire all of the employees they needed for production
- 61% said that COVID-19 caused them to experience additional labor shortages; over 80% said it was because employees were either 1) exposed or quarantined; 2) diagnosed or suspected to have COVID; or 3) had a family member exposed or quarantined
- 71% said they had too few employees in their state
- About a third of the respondents reported using H-2A; 41% use a third-party agent to help with the application process
- 47% said they've been using H-2A between two and five years
- 49% said new investments in labor-saving technology reduced labor costs

—JZ