

GROWERTALKS

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Steep 2022 H-2A Wage Increases Expected

Jennifer Zurko



Most H-2A visa users are bracing for hefty 2022 wage increases. The new wages were published in the Federal Register in December by the Department of Labor (DOL) and we already knew what to expect, since the USDA's Farm Labor Survey (FLS) results were out. The regional gross average wages that become the H-2A Adverse Effect Wage Rates (AEWRs) are derived from this survey. The AEWR is typically the applicable minimum wage that must be paid to H-2A workers and U.S. workers in "corresponding employment" who are performing any job tasks

in common.

Growers in Delaware, Maryland, New Jersey and Pennsylvania will take the biggest hit, with a 9.6% increase. California's AEWR will increase over 8%; Arizona, New Mexico, North Carolina and Virginia will go up in excess of 7%; and Kentucky, Tennessee and West Virginia will see an increase of 6.7%. The national average increase is above 6%.

Is there any relief in sight? The only sure way to relief is federal legislation. Provisions of the House-passed Farm Workforce Modernization Act (FWMA) would freeze the AEWR for one year, then limit annual AEWR increases to 3.25% for most states. For 2022, only six states (AL, FL, GA, ID, MT, SC and WY) will see increases below that cap, meaning that if the FWMA provisions were law, nearly every state would get some needed relief. AmericanHort and coalition allies continue to press Senate negotiators to develop and pass their version of the FWMA.

Meanwhile, further regulatory changes to the AEWR are in the works, but these changes will not be helpful for growers. On December 1, DOL published a proposed rule that would further modify the AEWR methodology by requiring specific prevailing wages for certain job duties, such as truck-driving/hauling and on-farm construction. Such wages, sourced from the Bureau of Labor Statistics' Occupational Employment Statistics database, may be significantly higher than the traditional AEWRs. If DOL proceeds as proposed, inclusion of such specialized tasks in an H-2A job order would result in the highest applicable wage being required for all workers employed pursuant to the job order and any U.S. workers in corresponding employment.

AmericanHort and other ag leaders and legal experts huddled at a recent agricultural labor forum to begin assessing how to best challenge the proposal. We also discussed growing concerns over DOL questioning seasonality, and in

some cases, denying applications for H-2A temporary labor certification over this issue.

—Craig Regelbrugge, Executive VP – Advocacy, Research & Industry Relations, AmericanHort

House Passes Build Back Better; Senate Fate Remains Uncertain

The House passed the \$1.75 trillion Build Back Better bill on November 19 by a vote of 220-213. The reconciliation bill, which represents a large portion of President Biden's agenda, would spend hundreds of billions on climate programs and tax incentives, family leave and numerous other priorities. Tax offsets to fund the package include increased taxes on high-income individuals and large corporations, IRS funding for enforcement and surcharges on stock buybacks.

The bill now faces an uncertain path in the Senate, where Democrats cannot lose a single vote; procedural rules and uncertainty on support from Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) complicate things. Some relevant provisions in the bill include the following:

Labor and workforce:

- The measure would provide as many as four weeks of paid leave for the birth or adoption of a child, to care for a family member with a serious health condition or for an employee's own serious health condition that prevents them from working
- \$4.6 billion for grants to industry partnerships—including employers and education and training providers—to expand employment and apprenticeship programs in high-skill, high-wage or in-demand jobs
- Authorizing penalties for employers that commit unfair labor practices under the National Labor Relations Act
- Increasing penalties for violations related to workplace safety, child labor and minimum wage

Climate:

- \$29 billion to support nonfederal financing to deploy zero-emission technologies, including solar rooftop systems and zero-emission vehicles
- \$5 billion for grants and rebates to replace school buses, garbage trucks and other heavy-duty vehicles with zero-emission vehicles and to train workers to operate them

Agriculture:

- \$9.7 billion for assistance to rural electrical cooperatives to promote resiliency, reliability and affordability, and for carbon capture and storage projects
- \$3.75 billion for competitive grants to promote conservation and tree planting by state, local and tribal governments and nonprofit organizations
- \$2.88 billion for rural electrification loans, including for energy storage projects, that would be forgiven if certain conditions are met

Immigration:

- The bill would grant “parole” to undocumented immigrants who've been present in the U.S. since before 2011. The bill wouldn't award permanent residency, but granting of parole may open up family or employer sponsorship paths to a green card. This provision is widely considered unlikely to survive a Senate procedural challenge.

- The measure would roll over and convert unused employer-sponsored green cards to family-sponsored visas each year, allowing for additional immigrant visas to be issued when the numerical cap on employer-sponsored immigration visas isn't reached.

AmericanHort will continue to provide updates on the bill's progress in the Senate.

—*Tal Coley, Director of Government Affairs, AmericanHort*

FNGLA Meets With Members of Congress to Discuss Industry Issues

The Florida Nursery, Growers & Landscape Association (FNGLA) sat down last week for a special meeting hosted by U.S. Representative Kat Cammack (R-FL). She brought U.S. Representative GT Thompson (R-PA) to directly hear the concerns of Florida agriculture. Since we were meeting in his congressional district, U.S. Representative Scott Franklin (R-FL) also participated. FNGLA was there with Florida's other agriculture associations.

You might ask why was it important for FNGLA to meet with a member of Congress from Pennsylvania? First, he is the ranking Republican on the House Agriculture Committee. Second, Congressman Thompson is slated to chair the committee if the GOP regains control of the U.S. House in the 2022 elections. This means he would be the congressional leader overseeing the entire policy formulation of the 2023 Farm Bill. This is the every-five-year legislation that reviews and revises virtually all of our nation's ag policies.

While listening to FNGLA, it was clear Congressman Thompson was impressed to learn Florida not only produces the lion's share of our nation's tropical foliage and indoor houseplants, but Florida is also the nation's second largest nursery and greenhouse crop-producing state.

Among the issues FNGLA and the others discussed were the continuing workforce shortage, the need for reforms to the H-2A agricultural guestworker program and more H-2B visas for landscape firms. We also discussed the frustrating supply chain challenges hampering the demand for all sorts of hardgoods. FNGLA also raised the need for the upcoming 2023 Farm Bill to continue to authorize and fund agriculture's ongoing research needs.

—*Ben Bolusky, CEO, Florida Nursery, Growers & Landscape Association*

WOTUS Proposed Rule Published

The Environmental Protection Agency (EPA) and the Army Corps of Engineers (ACOE) announced a revised definition rule on the Waters of the United States (WOTUS) rule in late November. That rule was published in the Federal Register on December 7, with the comment period currently slated to end 60 days later on February 7.

Once this 60-day period has ended, there will be an interim rule, which will be part one of a two-step process to repeal and replace the Navigable Waters Protection Rule (NWPR). This interim rule will strongly resemble the 2015 WOTUS rule. The process for replacement has a long way to go because of changes in administrations and the many conflicting District Court opinions. EPA and ACOE plan to add a second rule that will strengthen the interim rule late in 2022.

AmericanHort will continue to provide updates on these regulatory developments.

—*Tal Coley*

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