

Chapter 50.75 RCW
H-2A TEMPORARY AGRICULTURE PROGRAM

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RCW 50.75.005 Intent. The legislature finds that the agricultural industry in the state of Washington employs more than one hundred thousand workers per year and brings more than seven billion dollars of economic activity to our state. This industry and its workers are a vital part of Washington's role in the global economy. The legislature further finds the number of the H-2A temporary agricultural workers coming into the state of Washington to harvest crops has grown by more than one thousand percent since 2007 and the funding provided by the federal government is insufficient to adequately ensure the protection of workers and growers. The legislature also finds the need to ensure this growth does not have an adverse impact on the domestic agricultural labor force.

The legislature declares it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide adequate protections for foreign and domestic workers and provide education and outreach opportunities to help growers maintain the stable workforce they need. [2019 c 441 s 1.]

RCW 50.75.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "Department" means the employment security department.

(3) "Employer" has the same meaning as in 20 C.F.R. Sec. 655.103. "Employer" also includes a "fixed-site employer," as defined in 20 C.F.R. Sec. 655.103, and an employer in a "joint employment" relationship, as defined in 20 C.F.R. Sec. 655.103.

(4) "Field check" means an unannounced inspection and audit of an employer to determine and document whether the employer is providing wages, hours, and working and housing conditions as specified in the employer's approved H-2A application, as required by the United States department of labor.

(5) "Field visit" means a scheduled visit to an employer's premises where H-2A workers work, live, and gather to discuss employment services and other employment-related programs with workers, as required by the United States department of labor.

(6) "H-2A application" means an agricultural food processing clearance order form ETA 790 that describes the material terms and conditions of employment and is submitted in connection with a future

application for temporary employment certification for H-2A workers to the United States department of labor under 20 C.F.R. Part 655, as amended.

(7) "H-2A worker" means any temporary foreign worker who is lawfully present in the United States to perform agricultural labor or services of a temporary or seasonal nature pursuant to Title 8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) of the immigration and nationality act, as amended.

(8) "Office" means the office of agricultural and seasonal workforce services established in RCW 50.75.020. [2019 c 441 s 2.]

RCW 50.75.020 Office of agricultural and seasonal workforce services—Creation—Duties. (1) The office of agricultural and seasonal workforce services is established within the department.

(2) The duties of the office are:

(a) Processing and adjudicating foreign labor certification applications from employers;

(b) Processing complaints consistent with 20 C.F.R. Part 658, Subpart E;

(c) Conducting field checks and field visits, as required by the United States department of labor. When conducting a field check, the office shall coordinate, to the extent possible, with the department of labor and industries, department of health, and department of agriculture in order to limit disruption to agricultural employers and efficiently use government resources;

(d) Administering the discontinuation and reinstatement of services process pursuant to 20 C.F.R. Part 658, Subpart F; and

(e) Conducting training and outreach activities to employers who are using agricultural and seasonal workforce services and programs within the employment security department. [2019 c 441 s 3.]

RCW 50.75.030 Application—Requirements—Procedure. (1) An employer must submit an H-2A application in the manner and on a form prescribed by the department. The H-2A application is not subject to chapter 50.13 RCW.

(2) The department may not process an H-2A application if the:

(a) Employer refuses to agree to be subject to field checks and field visits; or

(b) Department discontinued services to the employer pursuant to 20 C.F.R. Part 658, Subpart F and that discontinuation remains in effect. [2019 c 441 s 4.]

RCW 50.75.040 Advisory committee—Composition—Report to governor and legislature. (1) The commissioner shall appoint an advisory committee to review issues and topics of interest related to this chapter.

(2) (a) The committee is composed of eight voting members:

(i) Four voting members representing agricultural workers' interests: One of whom shall be a farmworker; and all of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of workers;

(ii) Four voting members representing agricultural employers: One of whom shall be an agricultural employer; and all of whom shall be

appointed from a list of at least four names submitted by a recognized statewide organization of agricultural employers; and

(iii) One ex officio member, without a vote, shall represent the department and serve as the chair.

(b) The department of labor and industries, department of health, and department of agriculture shall each have one nonvoting ex officio member serve on the advisory committee.

(3) On issues and topics of interest related to this chapter, the committee shall provide comment on department rule making, policies, implementation of this chapter, and initiatives, and study issues the committee determines require consideration.

(4) In even years, the committee shall submit a report to the governor and the legislature by October 31st that:

(a) Identifies and recommends approaches to increase the effectiveness of the employment security department's recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington; and

(b) Analyzes the costs incurred by the office to administer the H-2A program, the funds to administer other department programs for farmworkers, and the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department.

(5) The committee members shall serve without compensation, but are entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may utilize department personnel and facilities as it needs, without charge. [2019 c 441 s 5.]

RCW 50.75.050 Conflict with federal requirements—2019 c 441.

If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [2019 c 441 s 6.]

RCW 50.75.060 Data collection. (1) Whenever the department conducts a field check or field visit of an employer, the department must collect the following information:

(a) The number of H-2A workers the employer has at each work site; and

(b) The actual geographic location of where the H-2A workers are living during their employment with the employer.

(2) The department must compile the information and compare the number of workers sought by an employer on the employer's H-2A application with the number of H-2A workers actually working for the employer.

(3) The department must make the information available to the advisory committee appointed under RCW 50.75.040 on a quarterly basis.
[2024 c 233 s 1.]

Conflict with federal requirements—2024 c 233: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."
[2024 c 233 s 3.]