

# The Forecast for WORKFORCE ISSUES

Changes to H-2A may make the program even more challenging, but there are some glimmers of hope as the legislature heads into the fall.

BY CRAIG REGELBRUGGE

**A**s a “frustrated wannabe meteorologist” who couldn’t handle the requisite physics classes, I often turn to weather analogies to describe dynamics in the policy space. When it comes to labor and the horticultural workforce, the official forecast now calls for a high probability of storms and gusty, damaging winds through the fall, with possible peeks of sunshine after the November midterm elections.

If you struggle with labor scarcity, you are not alone. AmericanHort recently did a national employment survey of growers, with the assistance of experts from the University of California-Davis and Arizona State University. We’re just beginning to analyze the full results, yet clearly labor and workforce issues are top-of-mind for greenhouse and nursery growers.

Roughly two-thirds of our survey respondents reported difficulty hiring the number of workers they need. For every 100 workers grower respondents needed in 2021 to produce at full capacity, they were only able to find 82, forcing a wide array of response strategies ranging from working more days/hours to investing significantly in mechanization and automation to substituting crops. Simply stated, with a nearly 20% labor shortage on average, the industry is struggling — and underperforming. Economic opportunity is being left on the table.

## H-2A CHANGES COMING

Back to the proverbial forecast. Storms are on the horizon! In the

coming weeks, we are expecting not one but two H-2A regulatory revisions. These rule changes may make a high-cost and often challenging program even more so.

These rulemaking initiatives actually started during the last administration, with a “notice of proposed rulemaking” in July 2019. At the time, AmericanHort and others filed extensive comments pushing back against some of the proposed changes and offering alternatives. The Trump administration ultimately split the H-2A rules initiative into two parts. A revised H-2A wage rule was published in November 2020, but was blocked in the courts and ultimately rescinded. A separate program revision moved on a slower track and was never implemented.

Publication of the new program rule is now imminent; it may be official by the time you are reading this. As for details, “we’ll know it when we see it,” but are bracing for bad news. Among many potential provisions, it is likely that a new program rule will step up the costs and burdens for H-2A labor contractors (H2ALC). While most employers in horticulture employ H-2A workers directly, we have seen a real uptick in the number of growers turning to an H2ALC for help. A recent AmericanHort employment survey suggests that about 28% of H-2A users in our industry are using an H2ALC.

The next storm will come sometime later this fall in the form of a second rule addressing H-2A wages. That rule is expected to require



specific wage determinations for H-2A job orders (or specific positions) that include certain specialized tasks such as hauling/truck driving, or on-farm construction. Such wages could be substantially higher than the current adverse effect wage rates (AEWR). For instance, a grower currently paying a \$16 AEWR might see the wage nearly double if their job order includes truck driving/heavy hauling. We'll be watching closely whether such new requirements end up being based on the primary job duty, versus any performance of a job duty like truck driving among potentially several duties.

While we are on the subject of H-2A wages, and aside from the potential new wage rule, we anticipate significant increases for the 2023 AEWRs. We all know the labor market's been a pandemic-scrambled mess, and inflationary pressures continue throughout the American economy and much of the world economy. The 2023 AEWR numbers will become known when USDA publishes the annual Farm Labor Survey results at 3 p.m. ET on Nov. 23, 2022 (happy Thanksgiving, eh?). But we already know the first two quarters' results, and they are not pretty: 9% and

8.5% increases, respectively, national average. With little reason to expect the last two quarters will be better, we can anticipate next year's wages will go up at least 8% national average, and many regions will see double-digit increases. These increases are normally made official by the Department of Labor in mid-December, and take effect around Jan. 1.

### A LEGISLATIVE REFORM WINDOW?

Despite the generally dismal forecast, there are a few rays of hope for legislative progress. To refresh, negotiations on a farm workforce reform bill began in May 2019. The resulting Farm Workforce Modernization Act (FWMA) passed the House in December of that year on a strong bipartisan vote, and passed again in a new Congress in March 2021. Senate negotiations followed, led by Sens. Mike Crapo (R-ID) and Michael Bennet (D-CO). While a couple sticking points remain, the differences have been narrowed. The most realistic window for consideration will come after the November midterms, but before this Congress adjourns.

The politics around immigration and foreign worker visas have never been easy

and have deteriorated in recent years as political polarization has worsened and the ranks of moderate politicians willing to work across the aisle and find compromise have thinned. Still, present-day concerns about food security, food cost inflation, and the contributing role of farm labor shortages are broad-based and resonate among many consumers (and voters!). Lawmakers are paying some attention to the issue.

To be clear, FWMA is far from a perfect bill (perfect legislation only exists in our fantasies) but it has many attractive elements. For one, it would pause for one year the annual increase in the H-2A AEWRs. A recent report published by USDA's Economic Research Service estimated that had the bill been



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enacted in 2020, this one-year pause might have saved employers roughly \$169 million. With the rapid expansion in H-2A use since 2020, and the fact that the estimate presumed a 4.1% annual wage increase versus the 8% increase we may see in 2023, savings now could be more than double that original estimate.

Secondly, the bill would implement caps on annual H-2A wage increases. For most, that would mean future increases of no more than 3.25%, bringing about a degree of planning and budgeting certainty we've never had. It would also eliminate mid-contract wage increases, a boon for most greenhouse growers.

The Senate version under negotiation will be improved over the House-passed bill, reflecting Republicans' leverage stemming from the need for at least 10 or 12 Republican votes in order to overcome the threat of a filibuster. Remaining sticking points include how much to expand the program for non-seasonal jobs, and how to balance workers' rights versus

employer concerns over more litigation. We are optimistic that the gaps in agreement can be bridged.

The question for all is this: Will greenhouse and nursery growers be able to perform better if this legislation passes, versus continuing with a deteriorating status quo? We believe the answer is a resounding "yes."

and foreign worker program reforms will not be a priority. After this year, the environment will not be conducive to progress before at least 2025.

If the 117th Congress gavels out in December without having acted on farm workforce modernization, we'll face buffeting headwinds for years to come. There is no time like the present to urge your two U.S. senators to lend a hand, and help Senators Crapo and Bennet get their bill enacted. One easy way is to visit our advocacy grassroots website at [www.americanhort.org/advocacy/take-action](http://www.americanhort.org/advocacy/take-action) and send a customized message to your senators.

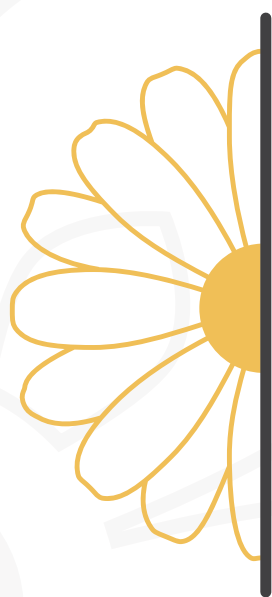
As always, we value your engagement, support and feedback. If you are not yet an

AmericanHort member, we invite you to join today! ■

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## The last 20 years have taught us that waiting and hoping for a better political environment is not a strategy.

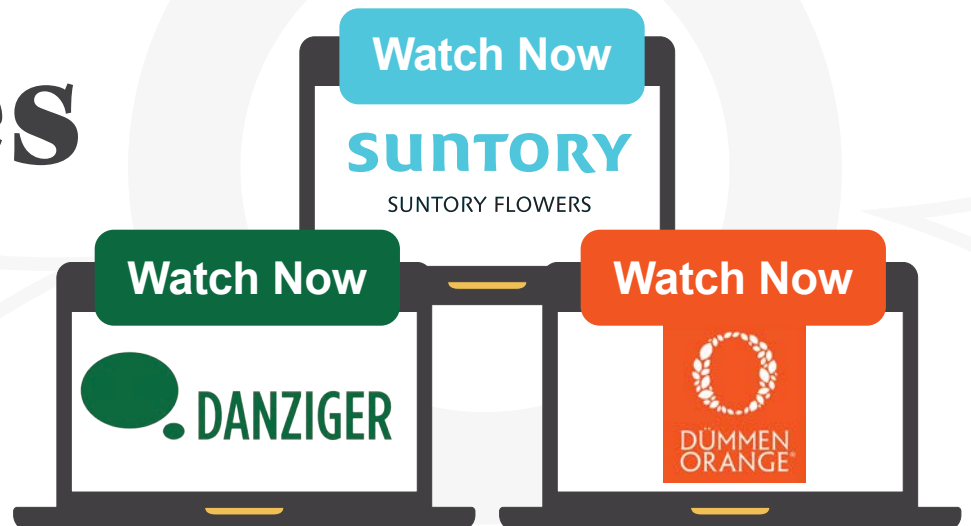
The last 20 years have taught us that waiting and hoping for a better political environment is not a strategy. While the midterm election dynamics are evolving, the GOP is still favored to gain control of the House of Representatives. GOP leaders have already made it clear that immigration



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