



# Farm Workforce Modernization Act

## MYTH VS. FACT

Here are the **FACTS** about what the Farm Workforce Modernization Act does:

- Stabilizes existing workforce by giving those who have worked in Agriculture a chance to get a 5-year Certified Agriculture Worker (CAW) status to stay in the U.S. and work in agriculture. As long as the worker continues to meet minimum days in agriculture annually, they can continue to work in the U.S. with unlimited 5-year renewals. CAWs can cross the border as they need without restriction.
- Reforms H-2A by reducing duplicated paperwork- now only one filing needed instead of three.
- Enables employers to post openings on online job boards administered by the Department of Agriculture – no classified ads required.
- Enables employers to bring in foreign workers for specific jobs through staggered entry for H-2A employees.
- Makes available 60,000 year-round H-2A will be available for the first 3 years, growing annually by 12.5%. Dairy is guaranteed the first shot at 30,000 of these visas, but those unused by dairy will be available for other agriculture industries.
- CAWs can earn the opportunity to apply for a green card by continuing to work in agriculture for 8 years. If a CAW can prove 10 years of prior work in agriculture, they can apply for a green card at 4 years.

**MYTH:** This bill will codify wage surveys into law and result in multiple wage classes. Under this bill, wages will be much higher than the current Adverse Effect Wage Rate (AEWR).

**FACT:** This bill provides for granularity in wages and applies a one-year freeze of wages across all categories at the current rate. After the one-year freeze, all categories are then limited in wage growth to 3.25% with the ability to go down -1.5%. If the resulting wage is less than 110% of the Federal or state minimum wage, then the wage could go up by 4.25%. After year 10, the AEWR requirement ends, and the Secretaries of Agriculture and Labor must develop a new wage standard with input from stakeholders.

**MYTH:** Adjusted workers are treated immediately as U.S. workers, thus requiring employers to hire them. This displaces previous H-2A workers.

**FACT:** Certified Agriculture Workers (CAWs) have a requirement to work in agriculture that no domestic worker has. Because of that requirement and proven experience in agriculture work, CAWs do receive preference over admission of new foreign agriculture workers. It is important to note there is no expansion of the current workforce, CAW workers are already here and working in agriculture. What the bill does is eliminate the legal chaos farmers and workers face today.

**MYTH:** This bill does not allow associations to file as agents on behalf of their members.

**FACT:** This bill does not affect the ability of associations to file as agents. Under this bill allows agricultural associations to file as agents or as a joint or sole employer of workers.

**MYTH:** No relief for dairies or year-round agriculture.

**FACT:** This bill creates year-round access to the H-2A program for dairy and other farm sectors who desperately need workers but have previously been unable to utilize the program. Without this bill, year-round agriculture has no access to a legal immigrant workforce.

**MYTH:** This bill would create new funding for the Legal Service Corporation.

**FACT:** There is no new funding in this bill for Legal Service Corporation.

**MYTH:** This bill requires farmworker housing to meet Occupational Safety and Health Administration (OSHA) standards.

**FACT:** Current standards already require farmworker housing to meet OSHA standards. This bill makes no changes to that requirement. However, this bill does provide \$11 billion in additional funds for grower-provided housing and other farmworker housing.

**MYTH:** Under this bill, anyone can file complaint. It establishes a new formal complaint and investigation process.

**FACT:** There is no new process established in this bill. It simply codifies existing regulations.

**MYTH:** The bill requires more reporting on recruitment efforts by the employer.

**FACT:** There are no additional reporting requirements in this bill, and requirements for recruitment efforts have been simplified and modernized.

**MYTH:** This bill, under Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protections, creates a new private right of action for H-2A workers.

**FACT:** Under current law, any operation that hires one domestic worker is covered by MSPA. This bill would require that H-2A worker must first use mediation in any complaints.

**MYTH:** This bill gives workers up to two years to file a legal claim against an employer, even after the worker has returned to their home country.

**FACT:** Under current statute, H-2A workers already get this. There is nothing new in this bill.

**MYTH:** This bill gives the Department of Labor (DOL) the ability to sue on behalf of an employees.

**FACT:** Under the Fair Labor Standards Act (FLSA), DOL already has this ability. Nothing new in this bill.

**MYTH:** In order to overcome a denial of certification, based on workers rejecting employment, this legislation establishes that the employer has the burden of proof to overcome a denial of certification based on workers rejecting employment.

**FACT:** Nothing new in this bill. This provision already exists under current law.

**MYTH:** This bill permits very limited appeals and does not grant de novo appeals of denials or appeals of NODs.

**FACT:** This bill provides employers the opportunity to fix issues in their application, as is the case under current law. This bill also includes new emergency procedures for farmers, so issues are fixed faster and workers are not delayed.

**MYTH:** This bill establishes a new requirement for employers to provide housing for domestic workers outside of a 50-mile distance.

**FACT:** The bill does not change any current definition related to the housing requirement. The requirement remains the normal commuting distance for the geographic area.