



# Agricultural and Seasonal Workforce Services Advisory Committee

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## Meeting details

**Date:** Thursday, February 20<sup>th</sup>, 2020

**Time:** 8:30 a.m. to 4:00 p.m.

**Location:** Employment Security Department | 212 Maple Park Ave SE, Olympia, WA 98501

### Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Ramon Torres
- Erik Nicholson

### Committee members absent

None

### Non-voting agency representatives

- Todd Phillips
- Uriel Iniguez
- Ignacio Marquez

### ESD staff

- Sara Crosby
- Craig Carroll
- Dan Zeitlin
- Alberto Isiordia
- Gustavo Aviles
- Norma Chavez
- Tamara Johnson
- Wendy Goldmark
- Rene Maldonado

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## Summary

### Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked them to introduce themselves. When introductions were complete Todd Phillips, Director of Environmental Health and Safety Office for the Department of Health made the traditional meeting toast with slices of Washington-grown apples.

### Agenda

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. There were no questions. (See Addendum I.)

### ASWS Office Update

Dan Zeitlin formally introduced Tamara Johnson as the new administrative assistant to Norma Chavez, the Director of the Office of Agricultural and Seasonal Workforce Services (ASWS). Tamara will be taking on responsibilities previously held by Wendy Goldmark.

**November 22, 2019 Meeting Minutes**

Dan Zeitlin requested that everyone review the November 22, 2019 meeting minutes and provide their feedback. No changes were requested.

A motion to approve was initiated by Jon DeVaney and seconded by Erik Nicholson. The November 22, 2019 Meeting Minutes were approved.

**Ground Rules**

The meeting ground rules were presented and reviewed by Sara Crosby, Employment Security Department (ESD), LEAN Facilitator.

**H-2A Domestic Worker Referral Process**

- Craig Carroll provided an overview of the H-2A domestic worker referral process from ESD's perspective. (See Addendum II.)
- Sara Crosby conducted a facilitated LEAN exercise on the H-2A domestic worker referral process.

**H-2A Domestic Worker Referral Process – Exercise Summary****Shared Goal:**

Make it easy for workers to connect to employers. Increase # of applicants, increase % that result in hired

**Pain Points**

- Farmers and workers have community relationships – this process takes away from the feeling of a relationship
- Process doesn't include different dialects and isn't easy for workers
- Workers think WorkSource wants SSN and there's fear of sharing info about SSN
- Not all employers and workers know ESD referral process is available
- Staff in some offices aren't trained
- WorkSource opens a job order within 3-5 days; Employer can start recruiting after USDOL accepts application
- Barriers to creating WorkSource WA accounts: SSNs, internet access, language, difficulty of system, communication through system/portal is often missed
- Foreign Labor Applications don't always end up at one of the 9 significant MSFW offices; some end up at the non-ag WorkSource offices that are not familiar with the process and or need training.
- Qualified applicant info isn't shared directly with employer – worker is referred to contact employer
- Inconsistent tracking by offices of referrals via spreadsheets (tracking variety of referrals through system and outside WorkSource WA system)

**Improvement ideas**

- Call workers personally to recruit with direct and personal outreach – get phone numbers through the union (data sharing agreement)
- Improve relationships with community-based organizations, unions, etc. – improve community feeling
- Easier access / use of WorkSource WA

- If workers prefer going outside of the WorkSourceWa.com process, make that process as effective as possible
- Disclose worker info/referrals directly to employers – what is the consequence? Can we get a waiver?
- Find faster way to connect worker and employer; make this process more “lean”
- Translate side-by-side into Triqui and other dialects and languages
- Consistent tracking of referrals both through the system and outside WorkSource WA
- Smart phone app to scan when applying at a site
- Ensure follow up on referrals
- Can we provide employer identity as we do with other employers and that we now see on seasonal.jobs.dol.gov

**Further exploration needed**

- Determine whether domestic workers are really being displaced? Is there actually a labor shortage?
- Identify number of applicants (including outside ESD process)
- Identify number of workers hired outside ESD process
- How did ESD measure the # resulting in hires/jobs? (covered in verification process)
- Understand the process and the customer experience (covered more in employer process)
- What is the cost of the system and who pays?
- How does ESD determine who qualifies to be referred?
- Clarify what can and can't change? (pull and share list of relevant sections of law); what can we ask for waivers for?
- How many use the referral path outside of creating WorkSource.WA account? Is it preferred?
- How do we balance tracking of applicants outside WorkSource.WA accounts?
- Overlap Department of Labor and Foreign Labor Certification timelines onto the flowsheet also, show the related CFR/RCW

**H-2A Domestic Worker Referral Verification Process Discussion**

- Craig Carroll provided an overview of the H-2A domestic worker referral verification process from ESD's perspective. (See Addendum III.)
- Sara Crosby conducted a facilitated LEAN exercise on the H-2A domestic worker referral verification process.

***H-2A Domestic Worker Referral Verification Process – Exercise Summary*****Shared Goal:**

Document referrals hired vs not hired for accountability and determine whether there's a labor market shortage

**Pain Points**

- Employers aren't aware of this process
- Inconsistent follow up with different offices

**Improvement Ideas**

- Create system where workers can self-report (increase worker accountability)
- Communicate benefit of process to workers
- H2A employers disclose DOL reports to ESD
- Tracking all referrals (regardless of whether it is through a WorkSource WA account)
- Communicate to workers what to expect next in the process (call agent/employer, interview, follow up, etc.)
- Make process more public
- Send email to employer when we do referral – ask for feedback on whether hired
- Public/worker reporting system

**Further Exploration Needed**

- Funding for H2A verification process?
- # of field checks
- # of fact-finding for referred workers not hired and outcomes

**H-2A Employer's Domestic Worker Recruitment Process Discussion**

- Delia Pena, Director of Orchard HR and H-2A at Zirkle Fruit Company provided an employer perspective on the domestic worker recruitment process. (See Addendum IV.)
- Sara Crosby facilitated a LEAN exercise on the H-2A employer's domestic worker recruitment process.

**H-2A Employer's Domestic Worker Recruitment Process Discussion – Exercise Summary****Pain Points**

- Incomplete applications
- Workers don't leave their contact info
- Barriers: contract requiring workers to stay full term and may not return or rehire if they don't stay
- Negative experience learning new specialized Agriculture skills
- Different pay rates contribute to workers switching to specific jobs throughout season
- Workers not being paid wages (by some labor contractors)
- Skilled labor force- feel like they want more appreciation for skillsets and pride
- Conflict of interest if recruiters paid more for H2A contract vs domestic
- Confusion about ESD, agents, contractors, farmers, etc. – who's the employer?

**Improvement Ideas**

- Clearly communicate to worker on the spot about whether qualified/hired (during interview/application)
- Offer more family housing
- Training for employers on domestic worker interviewing, questions to ask and not to ask
- Provide packet for employers on best practices for hiring process
- Create sample/template forms for interviews/applications

- Set clear guidelines around the roles of the agent, contractor and farmer. Interviews should be with farmer
- Field checks and field visits – is there opportunity for education during/after these?
- Support hiring workers even if they don't commit to finishing entire contract
- Need to balance migrant and stable workforces
- Embrace using different crews for different times of year and different crops
- Invest in training workers to help them learn new skills in Agriculture (Training Benefits Program?)

**Further Explanation Needed**

- Look at how we calculated domestic and foreign worker numbers, and how we calculated number of jobs vs number of people
- 26k – 27k H-2A labor certifications and about 20k actual visas issued.
  - Look at how we came up with number of jobs vs number of people

**Photography Release**

Dan Zeitlin asked all committee members for verbal agreement to be photographed for the final report. Every committee member agreed.

Public attendees were asked to sign a release form if they agreed to be photographed for the final report. Signed releases are on file at ASWS office in Kennewick.

**2020 Agricultural and Seasonal Workforce Services Advisory Committee Report**

Dan Zeitlin reminded committee members of the draft report timeline:

- Draft report due to the ASWS Advisory Committee by July 16, 2020
- ASWS Advisory Committee to approve draft report by August 20, 2020
- ASWS Advisory Committee to submit approved report to the Office of Financial Management by September 1, 2020.

**Agenda Items for Next Meeting**

- ASWS Office Update
- Domestic Worker Referral and Verification Updated Process with CFR's
- Discussion on Actions that ESD or the ASWS Committee can move forward from Facilitated Session Summary
- FLC Grant 101

**Public Comments**

(See Addendum V.)

**Closing Comments**

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 3:50 p.m.

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**2020 meetings**

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **March 19, 2020 – 8:30 a.m. to 3:00 p.m.**  
**WorkSource Columbia Basin**  
**815 N. Kellogg, Suite D**  
**Kennewick, WA 99336**

ADDENDUM I



Agenda

Agricultural and Seasonal Workforce Services (ASWS)  
Advisory Committee

Thursday, February 20, 2020 | Employment Security Department | 212 Maple Park Ave SE, Olympia, WA 98501

Agenda Items

Time	Topic
8:30 am	Introductions <ul style="list-style-type: none"> <li>Welcome from Dan Zeitlin, Director – ESD Policy, Data, Performance and Integrity Division</li> <li>Agenda Review</li> </ul>
8:50 am	Approval of November 22, 2019 Meeting Minutes
9:00 am	H-2A Domestic Worker Recruitment Process <ul style="list-style-type: none"> <li>Overview of process from ESD perspective</li> <li>Questions about process</li> <li>Identify Pain Points</li> </ul>
10:15 am	Break
10:30 am	H-2A Domestic Worker Referral Verification Process <ul style="list-style-type: none"> <li>Overview of process from ESD perspective</li> <li>Questions about process</li> <li>Identify Pain Points</li> </ul>
12:00 pm	Lunch
1:00 pm	Domestic Worker Recruitment Discussion <ul style="list-style-type: none"> <li>Employer perspective</li> <li>Worker perspective</li> <li>Recommendations and next steps</li> </ul>
3:00 pm	<ul style="list-style-type: none"> <li>Discuss Agenda Items for Next Meeting – March 19, 2020 at WorkSource Columbia Basin, Kennewick and future meetings.</li> <li>Discuss adding additional meetings to the calendar.</li> </ul>
3:25 pm	Public Comments
3:55 pm	Closing Comments
4:00 pm	Adjourn

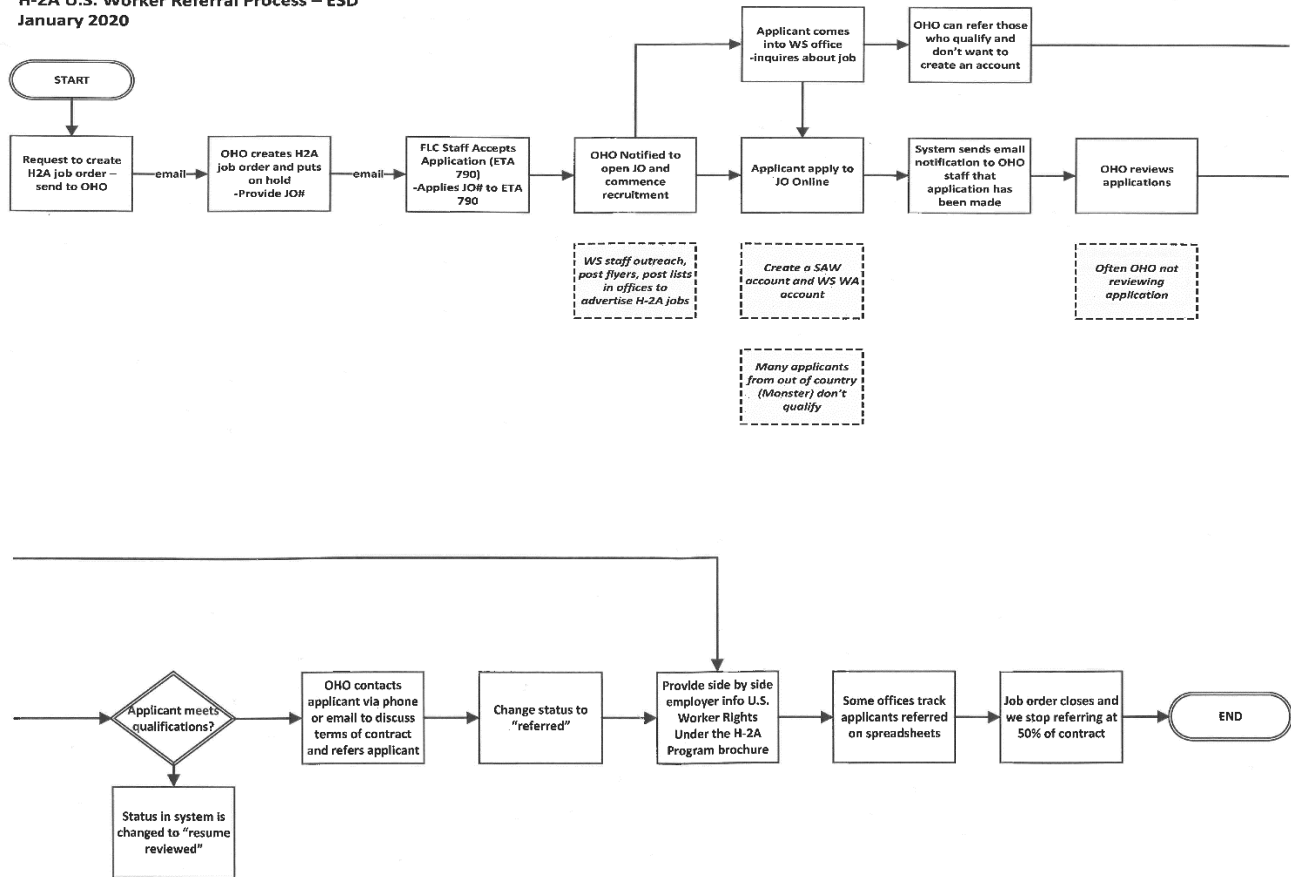
or more information, please visit the ASWS website at <https://esd.wa.gov/newsroom/Ag-committee>

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II

H-2A U.S. Worker Referral Process – ESD  
January 2020



Key



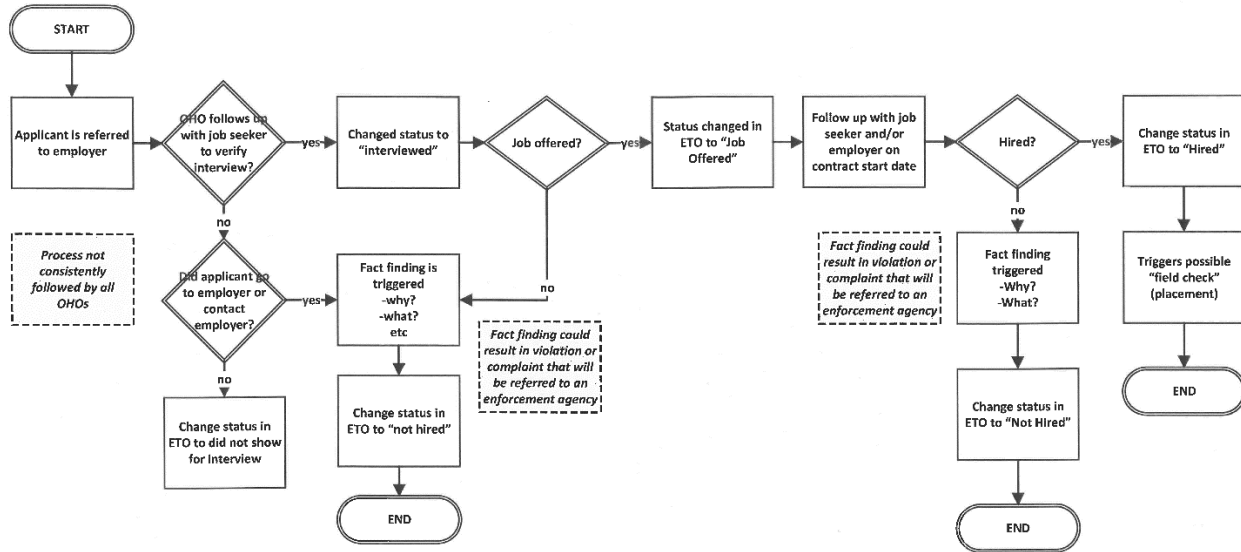
Acronyms

- ESD Employment Security Department
- ETA Employment & Training Administration
- ETO Efforts to Outcomes (ESD System)
- FLC Foreign Labor Certification
- JO Job Order
- OHO Office
- SAW Secure Access Washington
- WS Work Source



ADDENDUM III

H-2A U.S. Worker Verification Process – ESD  
January 2020



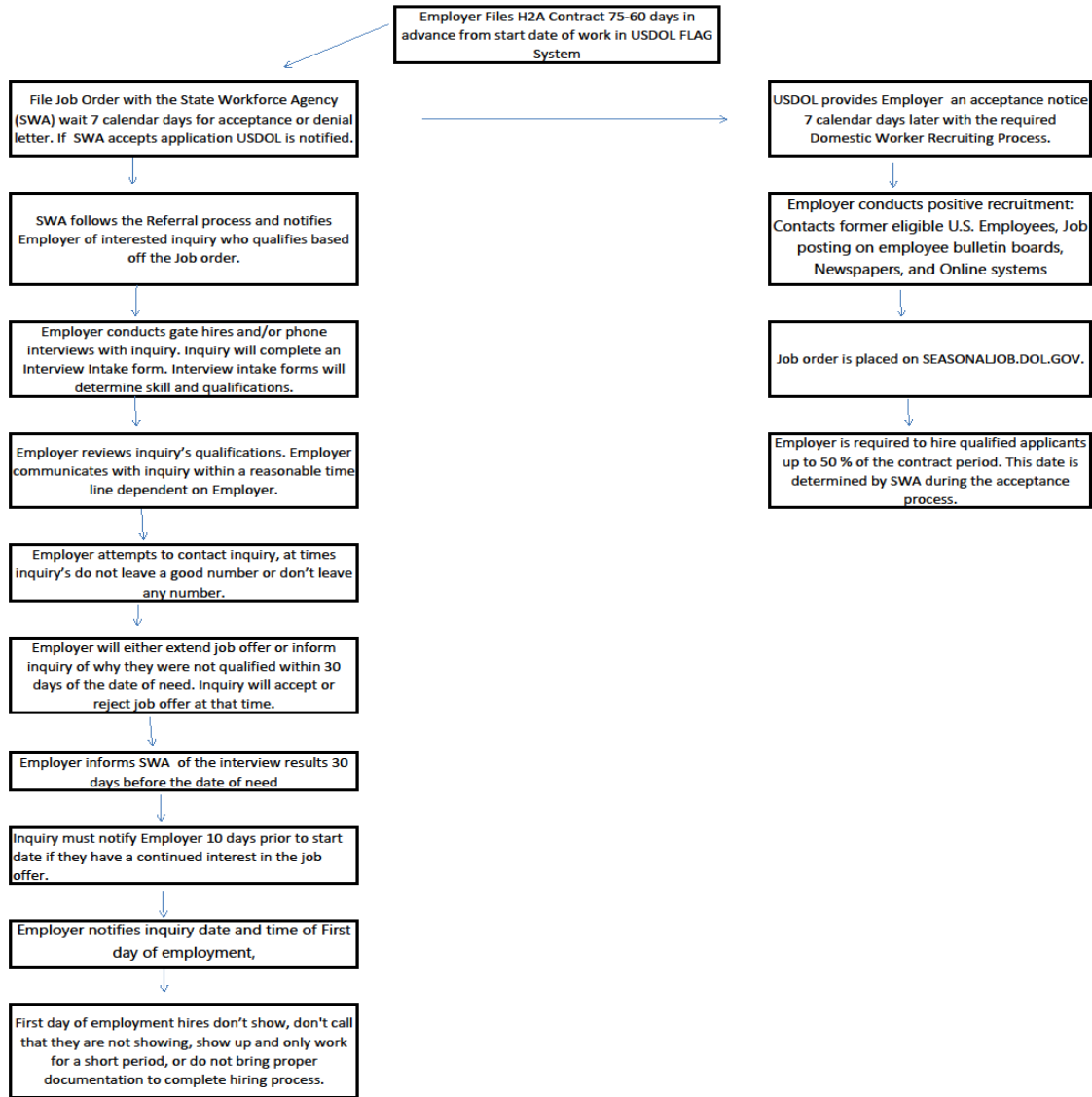
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Key



## ADDENDUM IV H-2A Employer's Domestic Worker Recruitment Process



ADDENDUM V  
PUBLIC COMMENTS



February 20, 2020

ESD Ag and Seasonal Workforce Committee  
C/O Dan Zeitlin  
ESD Director of Policy, Data, Performance, and Integrity  
dzeitlin@esd.wa.gov

**RE: Testimony/Request for February 20, 2020 Committee Meeting.**

Dear Committee Members:

My name is Ryan Ogburn. I am the Director of Visa Services at wafla. I work with employers and the agencies who oversee the H-2A program.

**We urgently request that you correct the information ESD provided to legislators in 2019 regarding the number of H-2A workers present in Washington state.**

During discussions of the H-2A fee bill, ESD testified that there were more than 25,000 H-2A workers in Washington during 2018, and estimated this number would grow to 30,000 workers in 2019. **Neither figure was correct.**

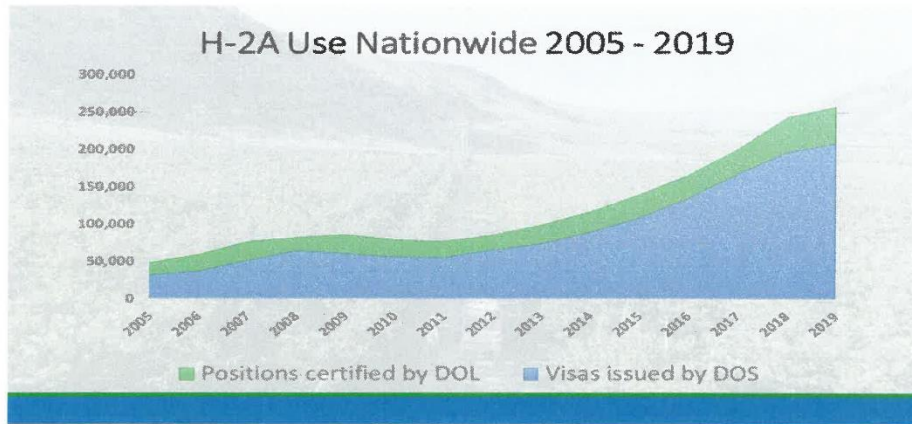
The reason for the inaccuracy is that ESD confused "LABOR CERTIFICATIONS" with actual workers. It is true that there were approximately 25,000 **labor certifications** in 2018, but there were far fewer actual workers, just as there were far fewer than 30,000 H-2A workers in Washington during 2019.

The difference between a labor certification and an actual worker is best explained by example. Suppose an employer needs 1,500 workers for apple harvest and 500 workers for pre-harvest activities such as pruning and thinning. This employer would most likely file an early season application for 500 workers, and a harvest application for 1,500 workers. The 1,500 harvest workers would consist of the 500 pre-harvest workers who would be transferred into the harvest H-2A application, combined with 1,000 workers recruited solely for harvest.

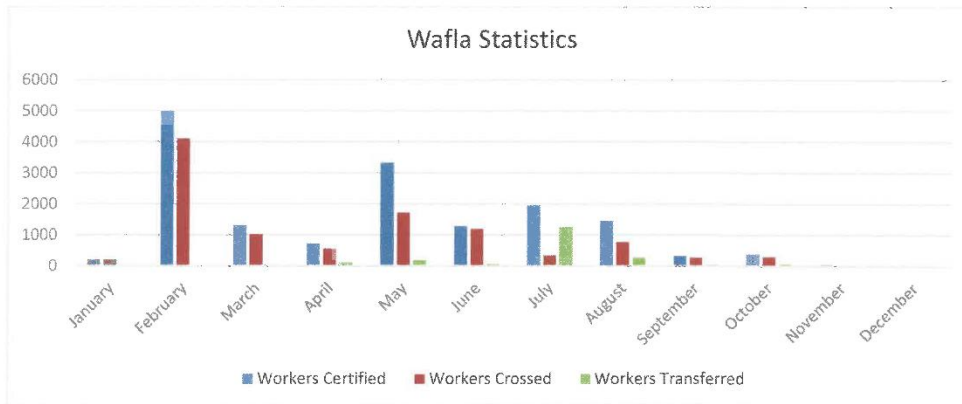
In this example, there would be 1,500 actual workers, but ESD and DOL would provide **2,000 labor certifications**. The 500 workers from the early season application would be double-counted, and this should have been explained to lawmakers. Below is a graph detailing the number of labor certifications approved by the federal DOL compared with actual H-2A visas issued by the U.S. Department of State.

8830 Tallon Lane Northeast, Suite C • Lacey, WA 98516 • (360) 455-8064  
[wafla.org](http://wafla.org)

Dan Zeitlin  
February 20, 2020  
RE: Request for Correction of Data  
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Closer to home, in 2019, wafila employer members hired approximately 12,000 **actual H-2A workers**, but these same employers requested more than 16,000 **labor certifications**. **The actual number of workers was only 75 percent of the number of labor certifications.** We discussed this with ESD staff and they agreed with our estimate. Here is a graph demonstrating wafila's number of workers certified, workers crossed (received H-2A visas) and workers transferred in 2019:



In addition to transferring workers from one H-2A contract to a second (or third) contract, there are reasons why the number of labor certifications exceeds the actual number of foreign workers. Since employers don't know the number of U.S. workers who will show up for a work opportunity, they often apply for the maximum number of labor certifications possible, but only bring foreign workers when there is a shortage of U.S. workers. For example, a farmer with housing for 50 workers will likely seek 50 labor certifications. The farmer will likely petition for

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fewer H-2A visas, because some of the beds may be taken by U.S. workers, and some of the positions may be filled with U.S. workers who do not require housing. Once again, the number of labor certifications – 50 in this case – almost always exceeds the actual number of foreign workers.

Last year at this time, ESD estimated that there would be 30,000 H-2A workers in 2019, and further estimated that the number of workers would increase by 20 percent per year. ESD of course meant 30,000 labor certifications. The estimate of labor certifications for 2019 was incorrect. We hope that you inform legislators of this.

How important is knowing the actual number of H-2A workers? That is debatable. What is not debatable is that lawmakers need accurate information, and **requesting accurate information is a job for this committee. We therefore request that you immediately send a letter to lawmakers notifying them of the mistake, and set about fixing it.** We would be happy to assist you in obtaining a more accurate estimate of the number of H-2A workers in our state.

There is another important matter to discuss – the number of U.S. workers referred by ESD compared to the number of qualified U.S. workers who actually show up at the worksite seeking employment, and the number of workers actually hired. We read the minutes of your November 2019 meeting and applaud you for studying this issue. Some ESD referrals never show up at the farm. Other recruits tell employers they are not interested in the job but are there to satisfy a job search requirement. Finally, farmers report that recruits from ESD typically stay less than three days on the farm. There is nothing ESD can do about this, but it makes farmers skeptical of ESD referrals. The data you have collected bears this out. Thank you for providing it.

Once again, please let us know if we help in any way.

Sincerely,



Ryan Ogburn  
Director of Visa Services  
wafla  
(360) 455-8064 ext. 110  
rogburn@wafla.org

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wafla.org



### Facts about Agricultural H-2A Wages and Surveys

The wage for employers who use the federal H-2A program is set by the federal government based on a mandatory federal survey. This wage is called the Adverse Effect Wage Rate.

Washington State has the highest wage in the nation for H-2A employers, \$15.83 per hour. This is the minimum wage for all workers – local and foreign – who work for a farmer enrolled in the H-2A program.

Farmers who do not use H-2A must pay the state minimum wage of \$13.50 per hour.

### Facts about State Wage Surveys

States are free to conduct a secondary survey called a prevailing wage survey, to cover locally prevailing conditions. State surveys must comply with an obsolete federal handbook and must be accepted by the feds.

If the U.S. Department of Labor (DOL) accepts the state survey, the wages impact farmers who use H-2A. Farmers who do not use H-2A do not need to comply with the state wage survey. State surveys are voluntary. Of the top five H-2A states, it appears that only Georgia and Washington conduct surveys, and only Washington actually reports results. California, Florida, and North Carolina do not appear to conduct surveys.<sup>1</sup>

The DOL Agriculture Online Wage Library lists 20 states that have conducted surveys, but only five states have published rates. The other 15 states simply list “NO FINDING,” a general indication that the survey did not comply with DOL standards.<sup>2</sup>

If a state conducts a survey, DOL advises the state to spend 20 percent or less of its H-2A grant on the survey. The Washington Employment Security Department spends greater than 100 percent of its state H-2A grant on its survey. ESD reports that it typically expends more than \$500,000 on the survey, by far the most of any state. The survey is conducted by the University of Washington. Washington State University conducted a prevailing wage survey for the H-2B program for the Washington Association of Landscape Professionals (WALP) that was accepted by DOL. The survey covered King, Pierce, and Snohomish County landscape workers and cost less than \$10,000.

In response to feedback from a small focus group, ESD changed the survey in 2019. The change created confusing survey results. Farmers and farm groups allege that the 2019 survey was not accurate. ESD is making changes in 2020 to simplify the survey.

<sup>1</sup> Source: U.S. DOL Agricultural Online Wage Library, <https://www.foreignlaborcert.doleta.gov/aowl.cfm>  
<sup>2</sup> Data and survey methodology must comply with USDOL ETA Handbook 385, which was written in 1981 and has not been updated.

EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DOL

**OFFICE OF FOREIGN LABOR CERTIFICATION**

H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019

**Applications Received<sup>1</sup>**

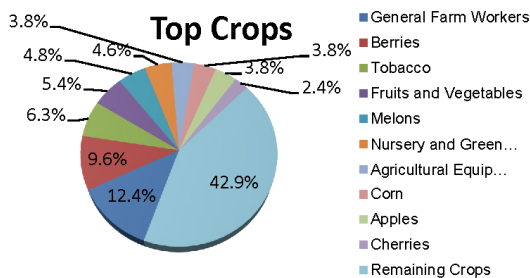
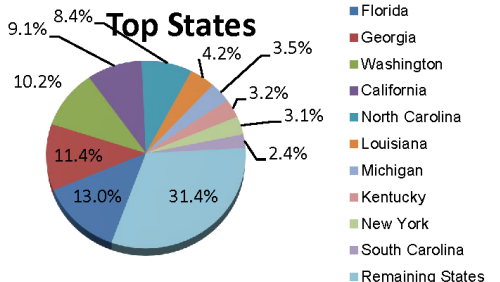
FYTD	Q1	Q2	Q3	Q4	% Change FY 2018
13,081	3,175	5,380	2,948	1,578	10.8%

**Applications Processed<sup>3</sup>**

Determination	FYTD	Q1	Q2	Q3	Q4
<b>Total Determinations</b>	13,095	1,964	5,800	3,357	1,974
- Certified	12,626	1,880	5,660	3,242	1,844
- Denied	211	34	67	53	57
- Withdrawn	258	50	73	62	73
<b>Positions Requested</b>	268,729	36,477	91,161	85,454	55,637
<b>Positions Certified</b>	257,667	35,449	87,868	82,094	52,256
<b>Processed Timely<sup>3</sup></b>	86.1%	92.6%	77.5%	85.6%	96.3%

**Selected Statistics by Worker Positions Certified**

Review of Positions Certified FY 2019 EOY (% of total certified FY 2019 EOY)			
Top 10 States	Florida	33,598	13.0%
	Georgia	29,480	11.4%
	Washington	26,226	10.2%
	California	23,321	9.1%
	North Carolina	21,605	8.4%
	Louisiana	10,816	4.2%
	Michigan	9,096	3.5%
	Kentucky	8,315	3.2%
	New York	8,104	3.1%
	South Carolina	6,082	2.4%
Top 10 Employers	North Carolina Growers Association (NCGA)	11,223	4.4%
	Fresh Harvest, Inc.	4,812	1.9%
	WAFLA	4,369	1.7%
	Zirkle Fruit Company	3,400	1.3%
	Farm-Op Kuzzens H2A, LLC	2,658	1.0%
	Ag Labor, LLC	2,409	0.9%
	Foothill Packing, Inc.	2,398	0.9%
	Overlook Harvesting Co.	2,396	0.9%
	R & R Harvesting, Inc.	2,094	0.8%
	Rancho Nuevo Harvesting	2,024	0.8%
Top 10 Crops/ Occupation	General Farm Workers	31,967	12.4%
	Berries <sup>4</sup>	24,661	9.6%
	Tobacco <sup>5</sup>	16,252	6.3%
	Fruits and Vegetables <sup>6</sup>	13,995	5.4%
	Apples <sup>7</sup>	12,479	4.8%
	Melons <sup>8</sup>	11,876	4.6%
	Nursery and Greenhouse Workers	9,885	3.8%
	Agricultural Equipment Operators <sup>9</sup>	9,869	3.8%
	Corn <sup>10</sup>	9,776	3.8%
	Tomatoes	6,252	2.4%



<sup>1</sup>Applications Received<sup>1</sup> is derived from data not publicly disclosed.  
<sup>2</sup>Cumulative numbers may not match the numbers on previous reports due to changes in case processing status.  
<sup>3</sup>Percent of complete H-2A applications resolved 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g. housing inspection report, workers' compensation, recruitment report) necessary for the OFLC Certifying Officer to issue a final determination 30 days before the start date of need.

<sup>4</sup>Berries Category includes Primary Crops of Berries, Blackberries, Blueberries, Cranberries, Raspberries and Strawberries.  
<sup>5</sup>Tobacco Category includes Primary Crops of Air-cured, Burley, Cutting, Flue-cured, Setting, Stripping, and Tobacco.  
<sup>6</sup>Fruits and Vegetables Category includes Primary Crops of Fruits, Fruits and Vegetables, and Vegetables.  
<sup>7</sup>Apples Category includes Primary Crops of Apple Crops, Apples, and Fuji Apples.  
<sup>8</sup>Melons Category includes Primary Crops of Cantaloupes, Melons, and Watermelons.  
<sup>9</sup>Agricultural Equipment Operators Category includes Primary Crops of Agricultural Equipment Operator, Custom Combine Harvesters, and Logging.  
<sup>10</sup>Corn Category includes Primary Crops of Corn, and Sweet Corn.

Data as of September 30, 2019. All figures are rounded and not audited.

**Contact information**

Dan Zeitlin, Director of Policy, Data, Performance & Integrity Division [DZeitlin@ESD.WA.GOV](mailto:DZeitlin@ESD.WA.GOV)

Employment Security Department • Policy, Data, Performance and Integrity