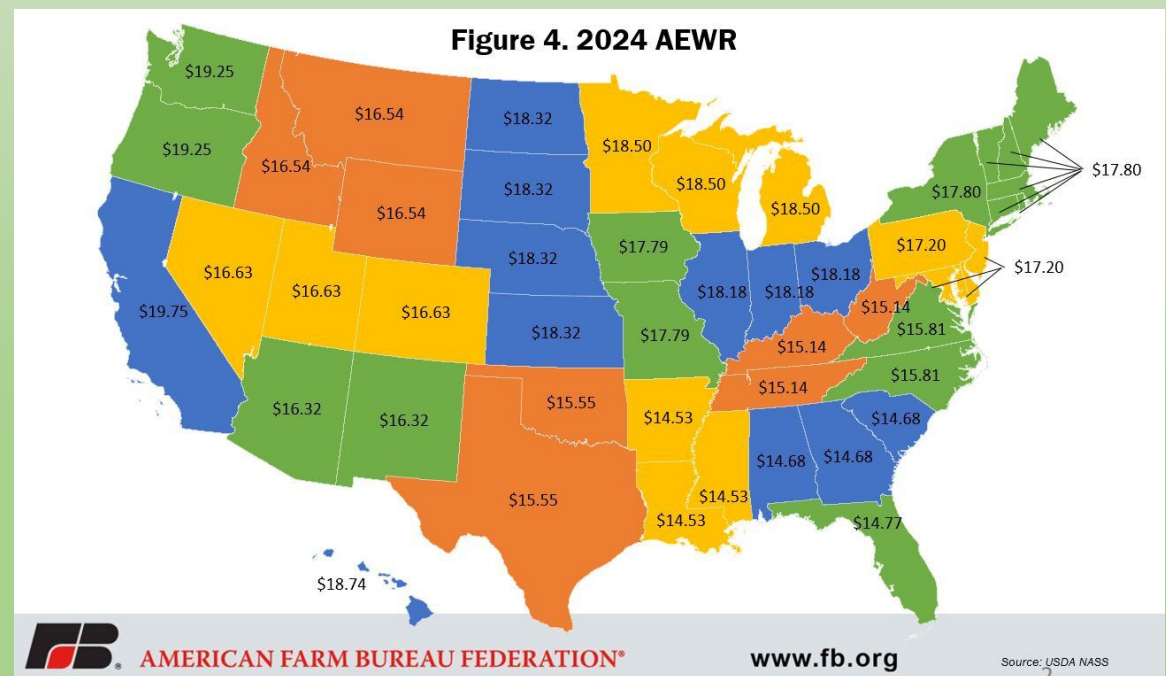


Ag Worker Labor & Employment Laws Study Group H-2A Information

PRESENTED BY | Alyson Eastman, Deputy Secretary
Steven Collier, General Counsel

Adverse Affect Wage Rate by State

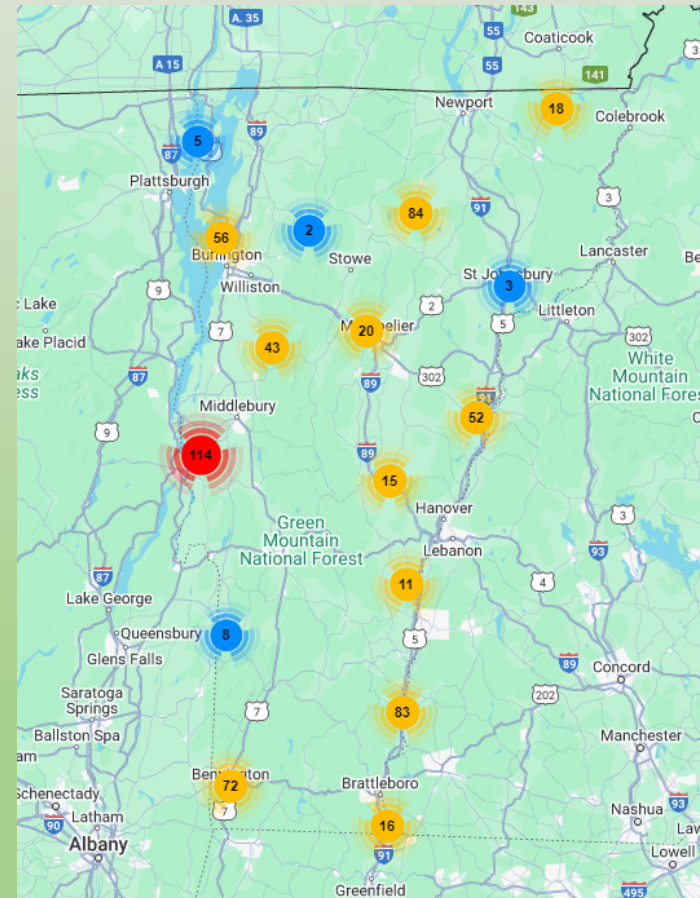
The Department of Labor published the February 2023 Final Rule revising the methodology used to determine the hourly AEWR's.



Vermont Map of H-2A Population 2024

- 1 Approx. 70 Agricultural Businesses in Vermont participate in the H-2A Program to date
- 2 Approx. 600 Workers were petitioned to work in Vermont for the 2024 Season to date
- 3 The program currently serves apiaries, fruit orchards, diversified fruit & veggie crop farms, maple farms, poultry farms, hop farms and logging.

Mapping data from spotlight.tcbmi.com



Adverse Affect Wage Rate by State by Year

1 Farms and ranches that rely on foreign born seasonal workers in the H-2A visa program must pay H-2A workers at least the AEWR in its region, unless the state minimum wage is higher, or a state workforce agency determines through its own survey that wages in the state are even higher than the AEWR.

2 The weights are determined by the number of workers receiving H-2A prevailing wage certifications in each state during the most recent Federal fiscal year, as reported by the DOL.

State	2024	2023	1 yr % change	2 yr % change	10 yr % change
Vermont	\$17.80	\$16.95	5.01%	13.67%	58.65%
Georgia	\$14.68	\$13.67	7.39%	22.44%	46.80%
Florida	\$14.77	\$14.33	3.07%	19.02%	43.96%
Washington	\$19.25	\$17.97	7.12%	10.57%	62.17%
Texas	\$15.55	\$14.87	4.57%	12.03%	43.19%
Weighted Avg.	\$16.73	\$15.85	5.54%	14.34%	55.59%

<https://www.edgewortheconomics.com/insight-large-increases-prevailing-wage-farm-workers>

H-2A Federal & State Income Taxes

- 1 H-2A Workers are not exempt from Federal or VT State Income Tax
- 2 Since 2011 for Federal and 2012 for Vermont, H-2A Workers have been subject to paying income tax.

a Control number		OMB No. 1545-0008				
b Employer identification number 12-9876543		1 Wages, tips, other compensation \$4000.00	2 Federal income tax withheld \$210.00			
c Employer's name, address, and ZIP code JOHN DOE COLLEGETOWN, STATE 54321		3 Social security wages	4 Social security tax withheld			
		5 Medicare wages and tips	6 Medicare tax withheld			
		7 Social security tips	8 Allocated tips			
d Employee's social security number 123-45-6789		9 Advance EIC payment		10 Dependent care benefits		
e Employee's name, address, and ZIP code 54321 DORMATORY RD COLLEGETOWN, STATE 54321		11 Nonqualified plans		12 Benefits included in box 1		
		13		14 Other		
		15 Statutory employee <input type="checkbox"/>	Deceased <input type="checkbox"/>	Pension plan <input type="checkbox"/>	Legal rep. <input type="checkbox"/>	Deferred compensation <input type="checkbox"/>
16 State	Employer's state I.D. no.	17 State wages, tips, etc. \$4,000.00	18 State income tax \$160.00	19 Locality name	20 Local wages, tips, etc.	21 Local income tax

Form **W-2** Wage and Tax Statement
Copy 1 For State, City, or Local Tax Department

Department of the Treasury—Internal Revenue Service

H-2A Contract – the employer must include

- the beginning and ending dates of the contract period as well as the location(s) of work;
- any and all significant conditions of employment, including payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays);
- the hours per day and the days per week each worker will be expected to work;
- the crop(s) to be worked and/or each job to be performed;
- the applicable rate(s) for each crop/job;
- that any required tools, supplies, and equipment will be provided at no charge;
- that workers' compensation insurance will be provided at no charge; and
- any deductions not otherwise required by law. All deductions must be reasonable. Any deduction not specified is not permissible.

H-2A Contract – ¾ Guarantee

Guarantees to All Workers: H-2A employers must guarantee to offer each covered worker employment for a total number of hours equal to at least 75% of the workdays in the contract period – called the “three-fourths guarantee.” For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).

If during the total work contract period the employer does not offer sufficient workdays to the H-2A or corresponding workers to reach the total amount required to meet the three-fourths guarantee, the employer must pay such workers the amount they would have earned had they actually worked for the guaranteed number of workdays. Wages for the guaranteed 75% period will be calculated at no less than the rate stated in the work contract.

Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)

H-2A Contract – Housing

Housing: Employers must provide housing at no cost to H-2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day. If the employer elects to secure rental (public) accommodations for such workers, the employer is required to pay all housing-related charges directly to the housing's management.

In addition, employers are required to either provide each covered worker with three meals per day, at no more than a DOL-specified cost, or to furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals.

Employer-provided or secured housing must meet all applicable safety standards.

H-2A Contract – Transportation

Transportation: Employers must provide daily transportation between the workers' living quarters and the employer's worksite at no cost to covered workers living in employer-provided housing. Employer-provided transportation must meet all applicable safety standards, be properly insured, and be operated by licensed drivers.

Inbound & Outbound Expenses: If not previously advanced or otherwise provided, the employer must reimburse workers for reasonable costs incurred for inbound transportation and subsistence costs once the worker completes 50% of the work contract period. Note: the FLSA applies independently of H-2A and prohibits covered employees from incurring costs that are primarily for the benefit of the employer if such costs take the employee's wages below the FLSA minimum wage. Upon completion of the work contract, the employer must either provide or pay for the covered worker's return transportation and daily subsistence.

Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)

H-2A Contract – Records Required

Records Required: Employers must keep accurate records of the number of hours of work offered each day by the employer and the hours actually worked each day by the worker.

On or before each payday (which must be at least twice monthly), each worker must be given an hours and earnings statement showing hours offered, hours actually worked, hourly rate and/or piece rate of pay, and if piece rates are used, the units produced daily. The hours and earnings statement must also indicate total earnings for the pay period and all deductions from wages.

H-2A Contract – Additional Assurances and Obligations

Additional Assurances and Obligations: Employers must comply with all applicable laws and regulations, including the prohibition against holding or confiscating workers' passports or other immigration documents. In addition, employers must not seek or receive payment of any kind from workers for anything related to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, or the recruitment costs. Employers must also assure that there is no strike or lockout in the course of a labor dispute at the worksite for the H-2A certification which the employer is seeking. In addition, employers cannot discriminate against – or discharge without just cause – any person who has filed a complaint, consulted with an attorney or an employee of a legal assistance program, testified, or in any manner, exercised or asserted on behalf of himself/herself or others any right or protection afforded by sec. 218 of the INA or the H-2A regulations.

Questions

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