

Coronavirus and farmworkers

Farm employment, safety issues, and the H-2A
guestworker program

Report • By [Daniel Costa](#) and [Philip Martin](#) • March 24, 2020

Employment on farms is lower in March, but increases through the spring and peaks in July. Here are key issues to consider as farm employment is set to increase in the midst of the coronavirus pandemic:

- Farm employers will need to provide adequate safety equipment and implement social distancing measures to keep workers safe, even if some safety measures reduce productivity; they should also provide health insurance and paid sick days.
- Policies implemented in response to the coronavirus could affect the pool of farmworkers available, specifically school closures and changes in visa processing for H-2A farmworkers—migrant workers hired to fill temporary or seasonal agriculture jobs lasting less than one year.
- H-2A farmworkers make up 10% of crop farmworkers in the country. The Department of State’s visa processing policies in response to the coronavirus that limit processing to returning workers could reduce the number of H-2A workers who can be employed on U.S. farms by as many as 60,000, although federal agencies appear to be attempting to mitigate this by seeking to transfer current H-2A workers with contracts set to expire to other farms seeking workers.
- Employers are responsible for housing H-2A workers and providing them with daily transport, which means there are additional health and safety issues employers need to consider.
- The prospect of higher unemployment nationally and in key agricultural states during the coming months due to the coronavirus should motivate farm employers to increase their recruitment efforts among unemployed workers, including both U.S.-born and immigrant workers.
- Employers in five states, but especially in California, may see an increased need to pay more overtime hours to farmworkers. Paying more hours in overtime wages to their current workforce is a viable option if farmers end up facing a labor shortage

Work and travel restrictions for nonessential U.S. workers aimed at slowing the spread of the COVID-19 are being implemented across the country, but working remotely **is not an option** for most workers, including farmworkers, who are considered “**essential**.”¹

Farmworkers already labor under what can sometimes be **dangerous and unhealthy conditions**, and now COVID-19 presents an additional challenge.² Farm employers are also rightly concerned about the impacts of COVID-19 on the supply of farmworkers, who may be unable to work if they become infected. To prevent infections and the spread of COVID-19 on farms, farm employers should be planning and implementing safety measures to protect their employees. This report lays out what employers should consider and discusses three other major concerns that could impact farm labor: school closures,

the availability of H-2A guestworkers, and overtime pay.

Employment on farms is lower in March but will increase through spring and peak in summer

Most farmworkers are employed on crop farms, where employment reaches a low during the winter months, with peak employment in July. March is usually the trough month for “crop support employment”—mostly a measure of workers brought to farms by labor contractors—and is one of the lowest months for overall crop employment. The exceptions are in Arizona and Florida, where March is a peak month for employment on crop farms, as well as in the many farms in Mexico that export fruits and vegetables to the United States. In some sectors like animal agriculture, which includes work on dairies and poultry farms, there is little seasonal variation in employment.

One useful measure to help understand the employment cycle, is employer reports for unemployment insurance (UI) purposes, since over 80% of employment in agriculture is covered by UI (although smaller employers in some states are exempt). The UI-covered employers regularly report the number of workers they employ for the payroll period that includes the 12th of each month. Across the United States, UI-covered employment in crop, animal, and crop support agriculture peaked in July 2018 at almost 1.3 million and was less than one million in January 2018 (see **Figure A**). (Data for 2019 are not yet available).

Safety measures on farms are needed

The most important thing farm employers should do now is devise safety plans and procedures and procure additional safety and sanitation equipment. In order to keep healthy, farmworkers need access to masks, gloves, and other safety equipment, as well ways to disinfect their hands, tools, clothing, and machinery.

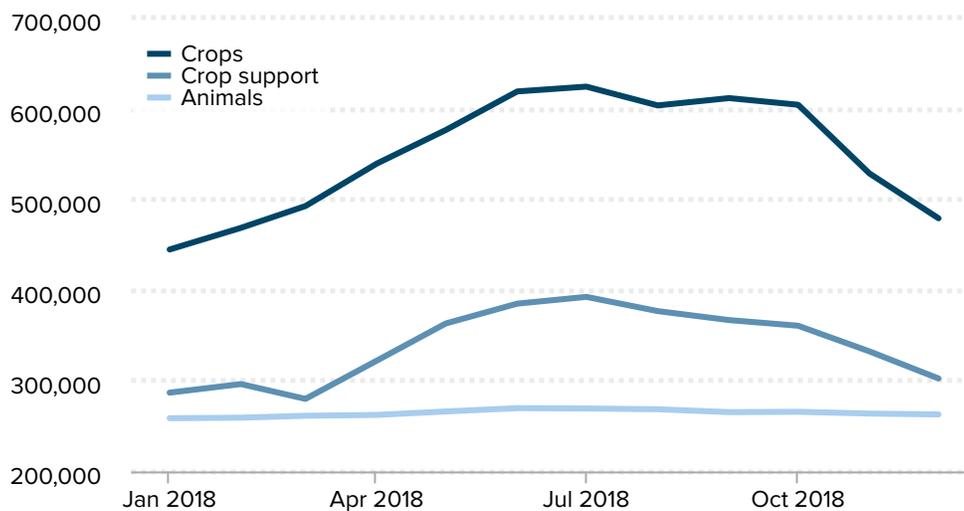
Employers may need to implement “social distancing” measures in fields and packing facilities to minimize the risk of farmworkers infecting one another. This will require changes in workplace habits that may be uncomfortable for workers and may reduce productivity if, for example, crews that work conveyor belts in vegetable fields are shrunk to avoid close contact.

Employers should encourage farmworkers to report when they feel ill and to stay home if they are sick, and not punish them for it. If workers think they will be disciplined, have their hours cut or be fired, they may work sick, endangering their colleagues. Some Mexican exporters are reportedly checking the temperatures of their workers and barring visitors, fearing that a COVID-19 case could prevent them from exporting produce to the United States.

Figure A

Farmworker employment increases in spring and peaks in the summer

Unemployment insurance–covered employment in crop, animal, and crop support agriculture, 2018



Note: "Crop support" is mostly a measure of workers brought to farms by labor contractors.

Source: Authors' analysis of U.S. Department of Labor, U.S. Bureau of Labor Statistics, Quarterly Census of Employment and Wages.

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The U.S. Department of Labor's [National Agricultural Workers Survey](#) (NAWS) found that less than half of crop workers have health insurance, and only 29% had a health plan that was provided by their employer.³ If farm employers want workers to stay home when they get sick and to seek treatment before returning to work, they should provide health coverage and offer paid sick days.

School closings could reduce the number of workers seeking farm employment

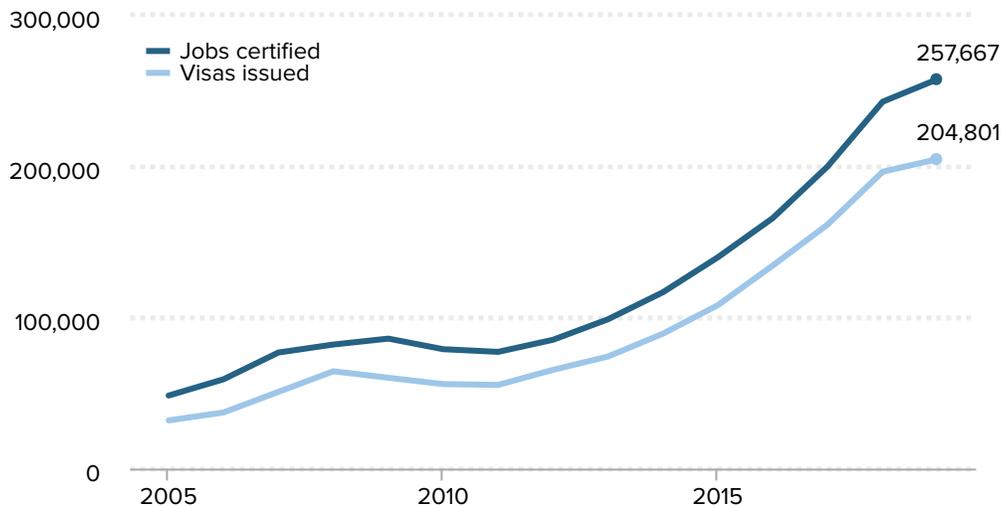
The closure of K–12 public schools may reduce the number of farmworkers because some would-be farmworkers will have to stay home as a result of child care responsibilities. According to the NAWS, half of crop farmworkers are parents of minor children, each with an average of two children under the age of 18 living in the household.⁴ Without classrooms, day care, and school-related activities to keep children occupied, many parents will be supervising and home-schooling their children full time for at least the next few months.

The number of H-2A temporary migrant workers may decrease in 2020 and additional safety

Figure B

Agricultural guestworker employment is rapidly expanding

H-2A jobs certified and visas issued, 2005–2019



Note: H-2A farmworkers—migrant workers hired to fill temporary or seasonal agriculture jobs lasting less than one year—make up 10% of crop farmworkers in the United States.

Source: Authors' analysis of U.S. Department of Labor, Office of Foreign Labor Certification, [OFLC Performance Data](#) and U.S. Department of State, Bureau of Consular Affairs, "[Nonimmigrant Visa Statistics](#)."

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measures are needed for them in light of COVID-19

A major issue on the minds of farmers and farmworkers is the impact of COVID-19 on the H-2A program, the main U.S. work visa program to fill temporary and seasonal farm jobs with migrant guestworkers. The U.S. Department of State (DOS) issued over 200,000 visas to H-2A guestworkers in fiscal 2019 (see **Figure B**) and each H-2A worker was employed in the United States for an average of six months. That means that H-2A workers filled 10% of the roughly one million full-time equivalent jobs in U.S. crop agriculture.

The Office of Foreign Labor Certification (OFLC) within the U.S. Department of Labor (DOL) processes labor certifications for H-2A jobs—the first step in the process, when employers seeking to hire an H-2A worker must show that no U.S. workers are available. OFLC [announced in an FAQ](#) that its systems will remain “fully operational” during the COVID-19 pandemic and that it “continues to process and issue prevailing wage determinations and labor certifications” for H-2A jobs.⁵ However another key agency involved in H-2A is DOS, which [announced](#) March 17 that it was stopping mandatory in-person interviews for migrants who were applying for H-2A visas for the first time in Mexico as part of its efforts to reduce travel between the United States and Mexico (over 90% of H-2A workers are from Mexico).⁶ The in-person interview is a necessary step before H-2A workers can enter

and work in the United States. Reuters later **reported** that DOS would process H-2A visas in Mexico and waive the in-person interviews, but only for migrant applicants who are “returning workers,” meaning they had previously worked in the United States with H-2A visas.⁷

It’s not clear yet how the H-2A program will be affected by processing only returning workers. DOS has not published data on the share of H-2A workers who are returning workers or announced how long the new visa processing policy will last. Some farm employers and associations report that 80% to 90% of H-2A guestworkers are returning workers, while a representative from the Western Growers Association **told Reuters** that only 40% are returning workers.⁸ If DOS processes only returning worker applicants for the next month or two, the impact could be minor, regardless of the share who are returning workers, given the lower farm employment levels in March and April. But if this practice stays in place for six months or more, during which no new applicants for H-2A visas can enter the United States, the impact could be significant. If we assume that 80% of visa applicants are returning workers, after six months the result of the policy to permit only returning workers would be 20,000 fewer H-2A guestworkers compared with 2019. If we assume that only 40% are returning workers, then there’d be 60,000 fewer after six months.

During a White House press briefing on March 20, Secretary of State Mike Pompeo **addressed** the H-2A program and the measures taken to reduce travel across the U.S.-Mexico border:

*We’re real concerned about H-2A visas and particularly agricultural workers who are going to need to get across... We’re going to make sure we do everything we can to keep that part of our economic lifeblood working between our two countries.*⁹

DTN, an industry website, followed up and spoke with DOS, **reporting** that a spokesperson told them “offices will continue processing H-2A cases as much as possible while trying to ensure social distancing recommended by health authorities.” DOS further noted that “As a matter of policy, consular sections worldwide prioritize H-2A applications, given the significant economic importance of these workers for farmers and small business.”¹⁰

In an apparent nod to the possibility that fewer H-2A workers will be employed in 2020, the U.S. Department of Agriculture (USDA) and DOL published a joint statement **announcing a new partnership** to:

*help facilitate the identification of foreign and domestic workers that may be available and eligible to transfer to other U.S. agricultural sector employers to fulfill critical workforce needs within the U.S. under existing regulatory authority during the COVID-19 pandemic.*¹¹

What this means is that the agencies are searching for currently employed H-2A workers whose jobs are set to end, and will consider helping to arrange their transfer to other farm employers seeking workers if they have an existing approved labor certification from DOL. The agencies state that they have identified nearly 20,000 jobs “that have expiring

contracts in the coming weeks.”¹² As far as we know, this is an unprecedented move and it’s difficult to predict what kind of an impact it could have in practice.

The potential for a reduction in the number of H-2A workers available, coupled with the prospect of higher unemployment nationally due to COVID-19, should motivate farm employers to increase their recruitment efforts among unemployed workers in the United States. Three key agricultural states alone—California, Florida, and New York—are projected to lose 3.4 million jobs by the summer, 1.6 million in California alone.¹³ The NAWS reveals that a quarter of crop workers were born in the United States, which shows that that U.S.-born workers are willing to work on farms, and suggests that some unemployed U.S.-born workers could be recruited to work in agriculture.¹⁴ In addition, many immigrants working in service industries in the United States are likely to lose their jobs over the next few months. Targeted outreach efforts to both groups—unemployed U.S.-born and immigrant workers—has the potential to result in additional farmworkers.

Regardless of how many H-2A workers end up employed in 2020, all H-2A employers are responsible for housing H-2A workers and providing them with daily transport between the worksite and living quarters, which raises additional health and safety issues. Many H-2A workers share bedrooms, raising the question of whether employers should arrange additional housing, as well as alternate housing for workers who get sick or are exposed to the virus and need to be quarantined. Will employers allow infected workers to recover in employer-provided housing or will they fire them, causing them to lose their immigration status and become deportable? Like other farmworkers, many H-2As lack health care coverage; will employers assist them in finding a doctor and help pay medical bills? The coronavirus raises other questions too, including how to adequately clean transport vehicles and implement social distancing during transport.

Farm employers might have to pay additional overtime wages

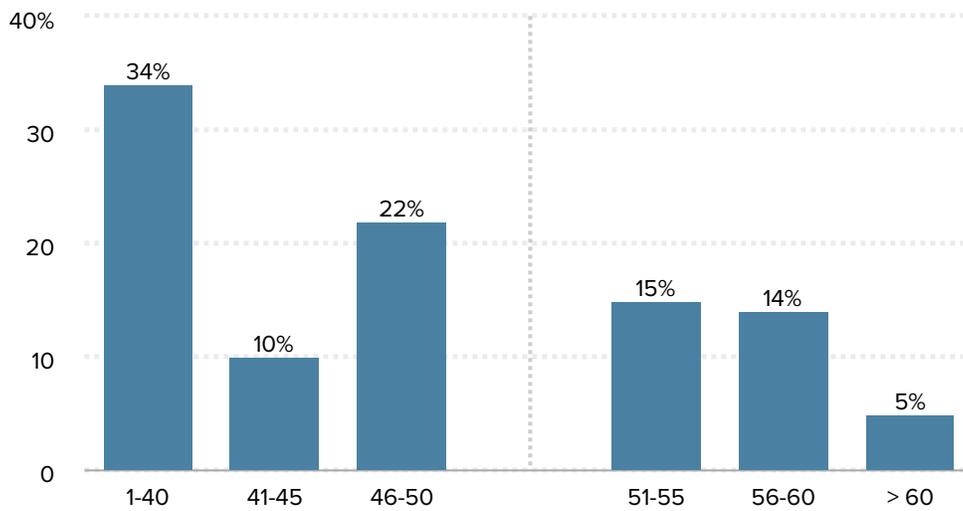
Another issue in some states will be the impact of overtime pay for farmworkers. Five states—including California—require overtime pay after workers exceed a threshold number of hours worked per day or week. California requires larger farm employers to **pay overtime wages** to farmworkers after nine hours a day and 50 hours a week in 2020.¹⁵ Many farmers want to avoid paying overtime wages, arguing that paying 1.5 times a worker’s usual wage is too costly. However, if fewer farmworkers are available due to closed schools and fewer H-2A workers are entering the United States, it might be difficult to find additional farmworkers and avoid overtime pay.

NAWS data show that one-third of farmworkers in California were employed more than 50 hours per week in 2015–2016, including 5% who were employed more than 60 hours a week (see **Figure C**). Paying more hours in overtime wages to their current workforce is a viable option if farmers end up facing a labor shortage.

Figure C

One-third of California crop workers are employed more than 50 hours per week

Share of California crop workers with given number of average hours worked per week, 2015–2016



Source: U.S. Department of Labor, Employment and Training Administration, *National Agricultural Workers Survey*.

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About the authors

Daniel Costa is the director of immigration law and policy research at the Economic Policy Institute. His areas of research include a wide range of labor migration issues, including temporary labor migration programs, immigrant workers' rights, and forced migration. He has testified on immigration before the U.S. Congress and state governments and shared his expertise in a number of news outlets, including ABC News, *The New York Times*, *Roll Call*, *La Opinión*, and *The Sacramento Bee*. He has an LL.M. in International and Comparative Law from Georgetown University Law Center and a J.D. in International Law from Syracuse University.

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Endnotes

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