

Agricultural Worker Definitions

H2-A WORKERS

MIGRANT AND SEASONAL AGRICULTURAL WORKERS

MAINE RESIDENT AGRICULTURAL WORKERS



Why Start Here?

- Foundational to subject matter of this Committee
- Future topics will address whether and how different types of ag workers are impacted
- Important to use terms accurately and consistently

H2-A Worker

Any temporary foreign worker who is lawfully present in the United States and authorized by DHS to perform **agricultural labor or services** of a **temporary or seasonal nature** pursuant to [federal immigration law].

29 CFR 501.3(a)

H2-A – Agricultural Labor means all services provided ...

ON A FARM TYPES OF SERVICES

- Stock
 - Dairy
 - Poultry
 - Fruit
 - Fur-bearing animals
 - Truck farms
 - Plantations
 - Ranches
 - Nurseries
 - Ranges
 - Greenhouses and similar structures
 - Orchards
- Cultivation of soil
 - Raising or harvesting any agricultural or horticultural commodity, including livestock, bees, poultry and fur-bearing animals and wildlife
 - Operations, management, conservation or improvement
 - Of a farm
 - Of farm equipment and tools
 - Production or harvesting of any agricultural commodity, as well as processing or delivering an agricultural or horticultural commodity to market, storage or a carrier (limited to commodities that the farm operator has produced at least 50% of)
 - **Does not include commercial canning or freezing**

H2-A – Temporary or Seasonal Nature

Seasonal Nature: tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.

Temporary Nature: where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

Migrant and Seasonal Agricultural Workers

- Migrant or Seasonal Agricultural Worker - an individual who is employed in **agricultural employment** of a **seasonal or other temporary nature**, and
 - Migrant – required to be absent overnight from his permanent place of residence.
 - Seasonal Agricultural Worker - not required to be absent overnight from his permanent place of residence:
 - Some additional criteria for seasonal workers on the type of work that qualifies
- Certain workers do not qualify:
 - immediate family member of an agricultural employer or a farm labor contractor
 - H2-A workers or workers on other employer-sponsored visas

29 CFR 500.20(p) & (r)

MSAW – Agricultural Employment

Relies on FLSA and IRS definitions, in addition to “the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.”

- IRS definition – very similar to H2-A

29 CFR 500.20(e)

FLSA definition of agriculture

- “Farming in all its branches” including
- cultivation and tillage of the soil
- Dairying
- the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities
- the raising of livestock, bees, fur-bearing animals, or poultry
- any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

MSAW – Seasonal or Other Temporary Basis

Seasonal Basis – where the employment is ordinarily “performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year. “

Temporary Basis – where the worker is employed “for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.”

Seasonal/Temporary **do not** include the employment of foremen or supervisors if they are effectively year-round workers. It also does not apply to workers who are effectively year-round workers if they are living at their permanent place of residence and are not primarily employed to do field work.

H2-A versus MSAW – what's the difference?

H2-A – significant process and requirements in advance of hiring the worker, as well as obligations that apply on hiring and during employment

MSAW – no process required in advance of hiring the worker, but obligations that apply on hiring and during employment

Maine Resident Agricultural Workers

The “agricultural labor” definition under 26 MRS 1043(1) is nearly identical to the H2-A definition, with minor differences.

Section 663(3)(A) exempts “Any individual employed in agriculture” as defined in 1043(1) from all of Subchapter 3, Minimum Wages. Individuals employed in fishing and seafood processing are also exempted from Subchapter 3 under 663(3)(G)*.

*This is not anticipated to change as a result of any proposed legislation.

Additional Questions:

Contact Melissa Harvey, Director of Job Services
Migrant Seasonal Farmworker Program
Foreign Labor Program (H2-A, H2-B)
Melissa.Harvey@maine.gov

Addition Resources :

<https://www.dol.gov/agencies/whd/agriculture>

<https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>

<https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system>