

Judge Blocks New DOL H-2A Farmworker Visa Rule in 17 States

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Seventeen states joined in a suit in June to block the Department of Labor (DOL) from enforcing its new rule providing more protections to farmworkers employed as H-2A temporary visa holders. Now, Judge Lisa Godbey Wood of the U.S. District Court for the District of Southern Georgia has granted a preliminary injunction preventing the DOL from enforcing the new rule in the plaintiff states during the pendency of the case. The rule is [set to go into effect](#) in non-plaintiff states on Aug. 29, 2024.

The H-2A program allows U.S. employers and U.S. agents to bring foreign workers to the United States to fill temporary or seasonal agricultural jobs. Unlike H-2B visas for all other temporary or seasonal workers, there is no limit to the number of H-2A visas available annually, but, like H-2B visas, they are only [available to workers from eligible countries](#).

The new rule was issued to address abuses related to working conditions and retaliation against agricultural workers. Among the areas covered, the rule provides that H-2A employers cannot retaliate against an H-2A visa holder who engage in certain organizing and collective bargaining activities. It was [set to go into effect](#) on June 28, 2024, but the DOL [postponed](#) the effective date to Aug. 29, 2024, after the litigation was filed in Georgia.

While the court found that the new rule did not exceed the agency's rulemaking authority under the Administrative Procedures Act, it did find that the new rule specifically violated the National Labor Relations Act (NLRA) and therefore exceeded DOL's authority. The court held that the NLRA specifically exempts agricultural workers from protection for engaging in concerted activity, and therefore the DOL could not grant those rights. The court focused primarily on the self-advocacy and labor exploitation provisions of the rule and stated that those aspects created unconstitutional collective bargaining rights.

The preliminary injunction will stop the DOL from enforcing the new rule in:

1. Arkansas
2. Florida
3. Georgia
4. Idaho
5. Indiana

6. Iowa
7. Kansas
8. Louisiana
9. Missouri
10. Montana
11. Nebraska
12. North Dakota
13. Oklahoma
14. South Carolina
15. Tennessee
16. Texas
17. Virginia

The injunction also includes the two other plaintiffs, the Miles Berry Farm and Georgia Fruit and Vegetable Growers Association.

Acquiring H-2A visas is a complex [three-step process](#). It requires a labor certification approved by the DOL. Then a Form I-129, Petition for Nonimmigrant Worker, must be filed with USCIS. Finally, the foreign national must apply for the H-2A visa at a Consulate abroad. The purpose of the application is to prove that:

- The job offer is temporary or seasonal;
- A labor market test has established that there are not enough U.S. workers able, willing, qualified, and available for the job; and
- Hiring the foreign nationals will not adversely affect wages and working conditions of similarly situated U.S. workers.

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