How Many California Farmworkers Could Be Legalized?

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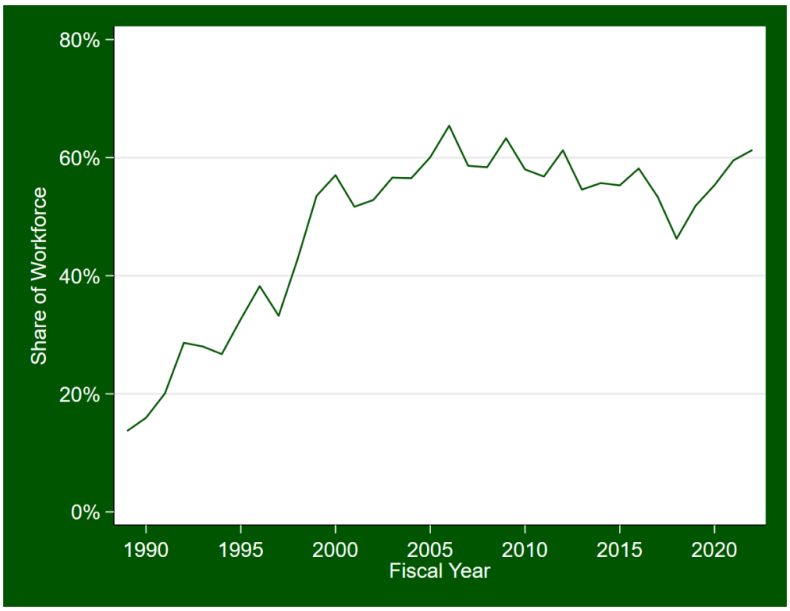
Keywords: Farmworkers, Farm Workforce Modernization Act, Undocumented, Green Cards, H-2A

California is a powerhouse in fruit, vegetable, and horticultural crop production, producing a third of US vegetables and almost three-quarters of US fruits and nuts. California has remained the largest employer of farm labor in the United States (US), accounting for up to a third of average farm employment and farm labor expenses.

Most California farm workers are Mexican immigrants, many of whom are unauthorized to work in the US. In 1986, the Immigration Reform and Control Act (IRCA) included a Special Agricultural Worker program that allowed 1.1 million undocumented farmworkers to become legal immigrants, including 600,000 in California. Over half of these legal workers left the farm workforce, so that half of California crop workers were unauthorized by the mid-1990s, a higher share than before IRCA. Figure 1 shows that 20% of farmworkers were undocumented in California in 1990, just after the 1987-88 SAW program ended, but the unauthorized share rose rapidly in the 1990s and has remained at over half in most years since.

Figure 1. Share of Undocumented Crop Workforce in California



Employer groups argue that undocumented workers will often tolerate poor working and living conditions until they become unbearable and that they are subject to widespread

wage theft and other abuses. They have also argued that the understaffing of federal and state agencies has made it difficult to investigate these problems. Farmworker advocates argue that supporting legislation that would provide a pathway to legal status would help reduce farmworker vulnerability.

Rising wages amidst labor scarcity have sparked interest in another legalization program for undocumented farmworkers. The Farm Workforce Modernization Act (FWMA) approved by the House in 2019 and 2021, and recently re-introduced, would allow undocumented farmworkers to obtain legal work authorization by providing evidence of farm work during the previous two years. But how many unauthorized California crop farmworkers would qualify?

Title 1 of the FWMA aims to ensure that a domestic agricultural workforce is available in the near future. Title 1 will allow undocumented farmworkers to seek and obtain Certified Agricultural Worker (CAW) status, which is a temporary legal status for workers who have been engaged in agricultural work for at least 180 days during the previous 2 years. If passed, CAW status can be renewed every year if workers continue to engage in agricultural work for at least 100 days per year. Workers will not be required to do anything else to keep their legal status, but they could earn a green card if they pay a $1,000 fine and continue to engage in agricultural work for (i) four more years if they have done at least 10 years of agricultural work in the US or (ii) eight more years if they have done less than 10 years of agricultural work in the US.

We used the National Agricultural Worker Survey (NAWS) to estimate the *share* of the workforce that would be CAW eligible and the Quarterly Census of Employment and Wages (QCEW) to estimate the *number* of crop farmworkers. Combining these data sources allows us to estimate the number of farmworkers who could get regularized in California.

According to the 2022 QCEW, there are about 350,000 full-time equivalent non-H-2A jobs in California crop agriculture, including directly hired workers and those brought to farms by crop support services. Due to worker turnover and seasonality, the number of individual farm employees filling those jobs is higher. A recent study by the California EDD and co-authors found that two employees fill each full-time equivalent job, so we multiply the QCEW employment numbers by 2 to provide an estimate of the number of employees filling these jobs.

CAW Status Eligibility

We estimate that 41% (292,000 workers) of the crop farm workforce (NAICS 111 and 1151) would be eligible for CAW status, including Kern County with 48,000 CAW eligible

workers, Monterey County with 43,000, Fresno County with 31,000, Tulare County with 26,000, and Santa Barbara County with 22,000 (see Figure 2). About half of those eligible for legalization are in the San Joaquin Valley (see Table 1).

Figure 2: Number of Farmworkers in California Eligible for CAW Status

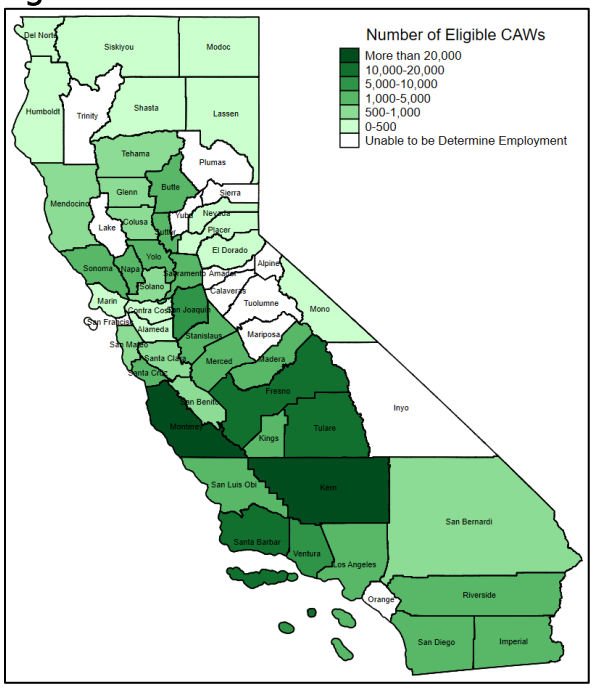


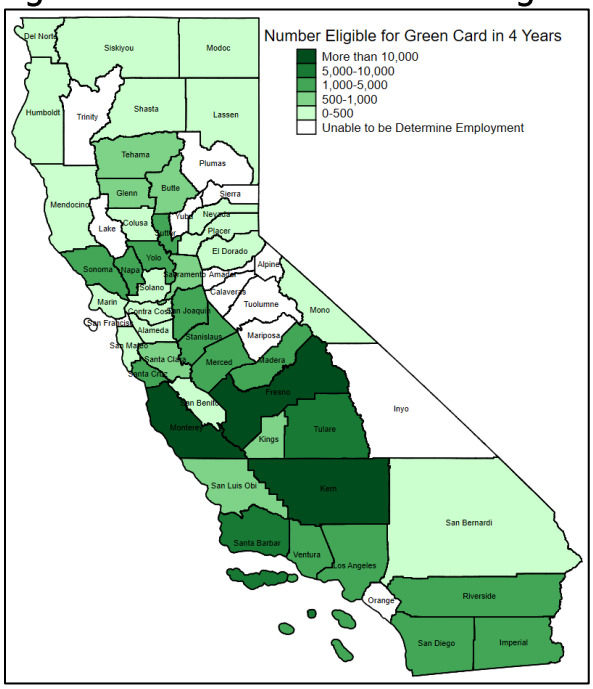
Table 1: Estimated CAW Eligible Workers by County in California

County	CAW Eligible	Eligible for Green Card in 4 Years	Eligible for Green Card in 8 Years
Kern	48,460	33,420	15,020
Monterey	43,340	29,900	13,440
Fresno	31,260	21,580	9,700
Tulare	26,260	18,120	8,140
Santa Barbara	21,940	15,140	6,800
Ventura	13,900	9,600	4,320
San Joaquin	10,100	6,960	3,140
Stanislaus	9,260	6,400	2,880
Madera	9,200	6,340	2,860
Merced	8,880	6,120	2,760
Top 10 Counties	223,000	154,000	69,000
All Other	70,000	48,000	22,000
Total	293,000	202,000	91,000

Immigrant Visas

The share of the crop farm workforce that would be eligible for a green card in 4 years is 29% (or 69% of the CAW eligible workers). This share amounts to 202,000 workers. Figure 3 shows the number of crop production employees in each county who could obtain a green card in 4 years, led by Kern County with 33,000 workers, Monterey with 30,000, Fresno with 22,000, Tulare with 18,000, and Santa Barbara with 15,000.

Figure 3: Number of Farmworkers Eligible for Permanent Resident Status After 4 Years

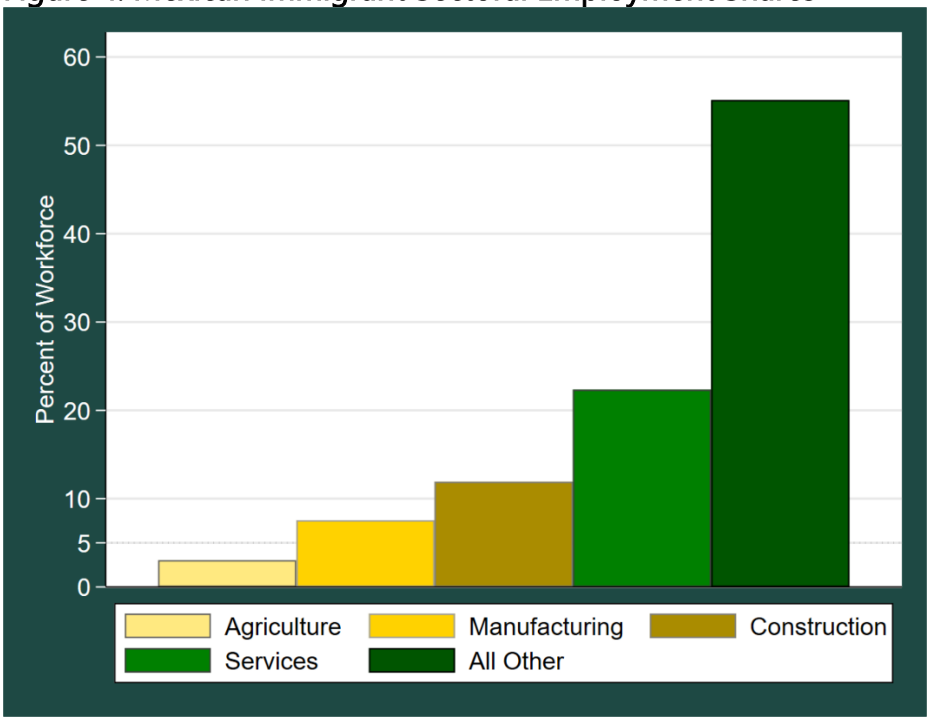


The share of the crop workforce in California eligible for permanent resident status in 8 years is 13% (or 31% of the CAW-eligible workforce). We estimate that 91,000 undocumented workers would be eligible for a green card after 8 years, including Kern County with 15,000 workers, Monterey with 13,000, Fresno with 10,000 workers, Tulare with 8,000, and Santa Barbara with 7,000 workers.

Regularization of undocumented farmworkers has important implications for California's rural communities. Farmworker advocates argue that legal status would reduce worker vulnerability and increase worker welfare. They argue that farm employers would have legal workers who would continue to do farm work in order to earn immigrant visas. However, employers are concerned that if farmworkers gain legal work authorization, they might leave the agricultural sector for work in non-farm sectors of the economy. Figure 4 shows that only a small share of the Mexican Immigrant labor force works in the agricultural sector, revealing that labor market competition between agriculture and other sectors is a valid concern. If CAW workers exit agriculture after receiving immigrant visas,

employers may hire more H-2A guest workers, who are typically more expensive than settled US workers, including unauthorized workers, because of the need to pay for their housing and transportation.

Figure 4. Mexican Immigrant Sectoral Employment Shares



The H-2A Program

Recent empirical and anecdotal evidence suggests that the farm labor supply is becoming smaller due to a number of political, economic and demographic factors. This trend has led to labor shortages for some regions of the US and has stimulated use of the H-2A program.

The H-2 program was initiated by Congress in 1952 with the passage of the Immigration and Nationality Act. The H-2 program allowed foreign laborers to work in the U.S. on a temporary basis to perform "low-skilled labor" in both the agricultural and non-agricultural sectors. When the Immigration Reform and Control Act was passed in 1986, the H-2 program was divided into the H-2A program for agricultural workers and the H-2B program for non-agricultural workers. The intent of the H-2A program is to fill labor shortages in US agriculture while making sure that US-based farmworkers are not negatively impacted. The H-2A program historically comprised only a small proportion of the US farm labor force, but over the past decade, use of the H-2A program has expanded rapidly. Between fiscal years 2012 and 2023, the number of H-2A jobs certified by the US

government increased steadily from 85,000 to 378,000.

The Farm Workforce Modernization Act includes provisions that would make it easier and cheaper to employ H-2A guest workers. Farm employers seeking certification to recruit and employ H-2A workers must (1) try to recruit available, willing, and qualified US workers, and (2) employers must offer and pay the highest of several wages, including the prevailing wage or the Adverse Effect Wage Rate (AEWR), to avoid adversely affecting the wages and working conditions of US workers.

The AEWR is a measure of average gross hourly earnings that serves as the minimum wage for H-2A visa employees and the US-based workers who are employed by H-2A employers in similar jobs. The United States Department of Agriculture (USDA) administers the Farm Labor Survey (FLS), which serves as the basis for the AEWRs paid to seasonal agricultural guestworkers working under the H-2A visa program. The AEWRs were originally implemented to help prevent wage depression that might occur from foreign workers being employed by domestic farm employers. The original purpose of the FLS was to provide "the basis for employment and wage estimates for all workers directly hired by US farms and ranches (excluding Alaska)." The FLS surveys farmers in 18 Farm Labor Survey regions, excluding Alaska. All the regions contain more than one state except for California, Florida and Hawaii.

AEWRs vary across states and range from less than $15 in southeastern states to $19.75 in California in 2024, when the state's minimum wage is $16. The FWMA would freeze the AEWR at current levels while DOL and USDA study the need for an AEWR and the appropriate database and formula to change the AEWR.

Currently, most H-2A workers can be employed only in seasonal farm jobs and remain in the US for up to 10 months. The FWMA would grant H-2A workers three-year visas and allow up to 20,000 H-2A workers a year to be employed in year-round jobs, as in dairies and other animal agriculture, provided that farm employers with year-round jobs offered family housing to their guest workers and a trip home each year. Employers argue that a cap of 20,000 year-round H-2A visas would be insufficient to meet the needs of the industry and would like to see a cap that is non-binding.

There has long been concern that guest workers are vulnerable because they are tied by contracts to a single US farm employer. The FWMA would create a Portable Agricultural Worker (PAW) pilot program that would allow up to 10,000 foreigners a year to enter the US and work for a variety of farm employers for six years. DHS, DOL, and USDA would study the PAW program and make recommendations on its fate.

What Next?

Congress has been unable to enact significant immigration reforms to deal with unauthorized migration since IRCA in 1986. Meanwhile, DOL's Office of Foreign Labor Certification has become something of a political football, relaxing regulations on employers under Republicans and tightening them under Democrats.

Without legislation, there are likely to be more regulatory changes that favor employers or workers instead of win-win changes that would benefit both employers and workers. One such change would introduce a TSA-style precheck system for H-2A employers willing to undergo increased scrutiny during an initial vetting process and grant these employers certification to employ H-2A workers for 3 to 5 years. Most of the employers likely to apply for such precheck clearance are large. However, two-thirds of H-2A guest workers are employed by the 600 largest employers, freeing up enforcement resources to deal with the 12,000 smaller H-2A employers.