



Formerly known as Friends of Farmworkers

March 14, 2022

Via email to ETA.OFLC.Forms@dol.gov

Brian Pasternak
Administrator
Office of Foreign Labor Certification
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

**RE: Agency Information Collection Activities for H-2B Foreign Labor
Certification Program, 87 Fed. Reg. 1787**

Dear Mr. Pasternak:

As you are aware Justice at Work (Pennsylvania) formerly Friends of Farmworkers, Inc. and our long time client Comité de Apoyo a los Trabajadores Agrícolas have long been involved in monitoring the H-2B program and in particular regulations protecting wage rates in relationship to that program.

We have closely worked with Texas Rio Grande Legal Aid and its litigation partners in pending litigation in the United States District Court for the District of Columbia *Williams v. Walsh*, No. 1:21-cv-01150-RC (D.D.C) and prior litigation and advocacy relating to the establishing of wage rates under the H-2B program. We join in the annexed comments prepared by Texas Rio Grande Legal Aid in relationship to necessary regulatory changes in order to appropriately implement Congressional appropriation riders establishing terms for usage of employer provided wage surveys in relationship to that program.

The March 2022 Consolidated Appropriation Act for 2022 provides:

The determination of prevailing wage for the purposes of the H-2B program shall be the greater of—(1) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position in the same location; or (2) the *prevailing wage level for the occupational classification of the position in the geographic area in which the H-2B non-immigrant will be employed*, based on the best information available at the time of filing the petition. In the determination of prevailing wage for the purposes of the H-2B program, the Secretary shall accept private wage surveys even in instances where Occupational Employment Statistics survey data are available unless the Secretary determines that the methodology and data in the provided survey are not statistically supported.

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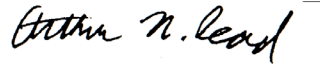
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As noted in the TRLA annexed comments the failure of the ETA9165 and DOL operating procedures to require employer wage surveys to use established occupational classifications undermines the legislative requirements for establishing prevailing wages for the H-2B program.

Very truly yours,

A handwritten signature in black ink, appearing to read "Arthur N. Read". The signature is written in a cursive, flowing style. To the right of the signature is a short horizontal line.

Arthur N. Read, Esq.

General Counsel Justice at Work