

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438**

Chapter 441, Laws of 2019

66th Legislature  
2019 Regular Session

H-2A TEMPORARY AGRICULTURAL PROGRAM--EMPLOYMENT SECURITY DEPARTMENT

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 22, 2019  
Yeas 35 Nays 12

CYRUS HABIB

**President of the Senate**

Passed by the House April 11, 2019  
Yeas 96 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 21, 2019 1:45 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 21, 2019

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5438

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AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

**State of Washington**                      **66th Legislature**                      **2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators McCoy, Saldaña, Conway, Van De Wege, Keiser, Rolfes, Wellman, Dhingra, Hasegawa, and Kuderer; by request of Employment Security Department)

READ FIRST TIME 03/01/19.

1            AN ACT Relating to establishing the office of agricultural and  
2 seasonal workforce services within the employment security  
3 department; and adding a new chapter to Title 50 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.            **Sec. 1.**            The legislature finds that the  
6 agricultural industry in the state of Washington employs more than  
7 one hundred thousand workers per year and brings more than seven  
8 billion dollars of economic activity to our state. This industry and  
9 its workers are a vital part of Washington's role in the global  
10 economy. The legislature further finds the number of the H-2A  
11 temporary agricultural workers coming into the state of Washington to  
12 harvest crops has grown by more than one thousand percent since 2007  
13 and the funding provided by the federal government is insufficient to  
14 adequately ensure the protection of workers and growers. The  
15 legislature also finds the need to ensure this growth does not have  
16 an adverse impact on the domestic agricultural labor force.

17            The legislature declares it to be in the public interest to  
18 clarify the state's role in the H-2A temporary agricultural program  
19 to provide adequate protections for foreign and domestic workers and  
20 provide education and outreach opportunities to help growers maintain  
21 the stable workforce they need.

1        NEW SECTION.     **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires  
3 otherwise.

4        (1) "Commissioner" means the commissioner of the employment  
5 security department.

6        (2) "Department" means the employment security department.

7        (3) "Employer" has the same meaning as in 20 C.F.R. Sec. 655.103.  
8 "Employer" also includes a "fixed-site employer," as defined in 20  
9 C.F.R. Sec. 655.103, and an employer in a "joint employment"  
10 relationship, as defined in 20 C.F.R. Sec. 655.103.

11       (4) "Field check" means an unannounced inspection and audit of an  
12 employer to determine and document whether the employer is providing  
13 wages, hours, and working and housing conditions as specified in the  
14 employer's approved H-2A application, as required by the United  
15 States department of labor.

16       (5) "Field visit" means a scheduled visit to an employer's  
17 premises where H-2A workers work, live, and gather to discuss  
18 employment services and other employment-related programs with  
19 workers, as required by the United States department of labor.

20       (6) "H-2A application" means an agricultural food processing  
21 clearance order form ETA 790 that describes the material terms and  
22 conditions of employment and is submitted in connection with a future  
23 application for temporary employment certification for H-2A workers  
24 to the United States department of labor under 20 C.F.R. Part 655, as  
25 amended.

26       (7) "H-2A worker" means any temporary foreign worker who is  
27 lawfully present in the United States to perform agricultural labor  
28 or services of a temporary or seasonal nature pursuant to Title 8  
29 U.S.C. Sec. 1101(a)(15)(H)(ii)(a) of the immigration and nationality  
30 act, as amended.

31       (8) "Office" means the office of agricultural and seasonal  
32 workforce services established in section 3 of this act.

33       NEW SECTION.     **Sec. 3.**    (1) The office of agricultural and  
34 seasonal workforce services is established within the department.

35       (2) The duties of the office are:

36       (a) Processing and adjudicating foreign labor certification  
37 applications from employers;

38       (b) Processing complaints consistent with 20 C.F.R. Part 658,  
39 Subpart E;

1 (c) Conducting field checks and field visits, as required by the  
2 United States department of labor. When conducting a field check, the  
3 office shall coordinate, to the extent possible, with the department  
4 of labor and industries, department of health, and department of  
5 agriculture in order to limit disruption to agricultural employers  
6 and efficiently use government resources;

7 (d) Administering the discontinuation and reinstatement of  
8 services process pursuant to 20 C.F.R. Part 658, Subpart F; and

9 (e) Conducting training and outreach activities to employers who  
10 are using agricultural and seasonal workforce services and programs  
11 within the employment security department.

12 NEW SECTION. **Sec. 4.** (1) An employer must submit an H-2A  
13 application in the manner and on a form prescribed by the department.  
14 The H-2A application is not subject to chapter 50.13 RCW.

15 (2) The department may not process an H-2A application if the:

16 (a) Employer refuses to agree to be subject to field checks and  
17 field visits; or

18 (b) Department discontinued services to the employer pursuant to  
19 20 C.F.R. Part 658, Subpart F and that discontinuation remains in  
20 effect.

21 NEW SECTION. **Sec. 5.** (1) The commissioner shall appoint an  
22 advisory committee to review issues and topics of interest related to  
23 this chapter.

24 (2) (a) The committee is composed of eight voting members:

25 (i) Four voting members representing agricultural workers'  
26 interests: One of whom shall be a farmworker; and all of whom shall  
27 be appointed from a list of at least four names submitted by a  
28 recognized statewide organization of workers;

29 (ii) Four voting members representing agricultural employers: One  
30 of whom shall be an agricultural employer; and all of whom shall be  
31 appointed from a list of at least four names submitted by a  
32 recognized statewide organization of agricultural employers; and

33 (iii) One ex officio member, without a vote, shall represent the  
34 department and serve as the chair.

35 (b) The department of labor and industries, department of health,  
36 and department of agriculture shall each have one nonvoting ex  
37 officio member serve on the advisory committee.

1 (3) On issues and topics of interest related to this chapter, the  
2 committee shall provide comment on department rule making, policies,  
3 implementation of this chapter, and initiatives, and study issues the  
4 committee determines require consideration.

5 (4) In even years, the committee shall submit a report to the  
6 governor and the legislature by October 31st that:

7 (a) Identifies and recommends approaches to increase the  
8 effectiveness of the employment security department's recruitment  
9 process as part of the H-2A application. If deemed advisable by the  
10 committee, the report may include recommended changes to state law  
11 that would lead to increased recruitment and hiring of domestic  
12 workers in agricultural employment in Washington; and

13 (b) Analyzes the costs incurred by the office to administer the  
14 H-2A program, the funds to administer other department programs for  
15 farmworkers, and the amount of funds allocated by the federal  
16 government to administer the H-2A program and all other agricultural  
17 programs within the department.

18 (5) The committee members shall serve without compensation, but  
19 are entitled to reimbursement for travel expenses as provided in RCW  
20 43.03.050 and 43.03.060. The committee may utilize department  
21 personnel and facilities as it needs, without charge.

22 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
23 conflict with federal requirements that are a prescribed condition to  
24 the allocation of federal funds to the state or the eligibility of  
25 employers in this state for federal unemployment tax credits, the  
26 conflicting part of this act is inoperative solely to the extent of  
27 the conflict, and the finding or determination does not affect the  
28 operation of the remainder of this act. Rules adopted under this act  
29 must meet federal requirements that are a necessary condition to the  
30 receipt of federal funds by the state or the granting of federal  
31 unemployment tax credits to employers in this state.

32 NEW SECTION. **Sec. 7.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

36 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act  
37 constitute a new chapter in Title 50 RCW.

Passed by the Senate April 22, 2019.  
Passed by the House April 11, 2019.  
Approved by the Governor May 21, 2019.  
Filed in Office of Secretary of State May 21, 2019.

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