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U.S. COVID-19 Policy Affecting Agricultural Labor

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Introduction

Businesses around the world have been affected by the COVID-19 pandemic. In the United States, stay-at-home orders, voluntary safety practices, and other public health regulations in response to the spread of COVID-19 have corresponded to disruptions to normal business operations. Businesses deemed essential, such as those in the food supply chain, have adapted to continue operations during the pandemic.

This article discusses the major policies affecting the supply and demand of labor in agricultural production during the pandemic. There has been significant concern in recent months about the availability of staple products, particularly food products. Shortages of some food products have drawn media attention to disruptions in the food supply chain; simultaneously, agricultural producers face excess production and low prices for some commodities (Jeffery and Newburger, 2020; Yaffe-Bellany and Corkery, 2020). The pandemic and these associated disruptions have drawn attention to the safety, availability, and productivity of essential workers, especially those in agriculture.

This attention is not unwarranted. Recent data from the Washington State Department of Health found that “agriculture, forestry, fishing, and hunting” employees tested positive for COVID-19 at higher rates than any other employment category after “health care and social assistance” (Washington State Department of Health, 2020). It is frequently the case that essential workers in the agricultural supply chain cannot expediently or effectively adhere to safety recommendations. Thus there have been numerous significant COVID-19 outbreaks on farms and at processing facilities (Dorning and Skerritt, 2020; Gallagher and Kirkland, 2020; Garcia, 2020; Shoichet, 2020; de la Rosa, 2020). Undocumented agricultural workers are likely the most at risk given their higher rates of communal housing, shared transportation, and lack of access to healthcare.

State and federal government policy has affected agricultural workers’ leave, safety practices, and even

the ability to recruit agricultural workers from other countries. Further, compliance with additional worker safety recommendations from the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Agriculture (USDA) may have significant effects on agricultural employers that are already competing for a limited supply of laborers. These topics and their potential implications are discussed sequentially below.

Essential Workers

On March 19, workers in 14 necessary sectors of the economy were classified as “essential critical infrastructure workers” in guidance from the U.S. Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency. By May 19, these 14 categories had been revised to 17 (DHS, 2020b):

- Healthcare/public health;
- Law enforcement, public safety, and other first responders;
- Food and agriculture;
- Energy;
- Water and wastewater;
- Transportation and logistics;
- Public works and infrastructure support services;
- Communications and information technology;
- Other community- or government-based operations and essential functions;
- Critical manufacturing;
- Hazardous materials;
- Financial services;
- Chemical;
- Defense industrial base;
- Commercial facilities;
- Residential/shelter facilities, housing and real estate, and related services;
- Hygiene products and services.

While there are some nuanced differences in state-level implementation of this guidance, most states mirrored the original 14 categories of essential employees in the directive when constructing their own stay-at-home

orders (National Conference of State Legislatures, 2020).

Food and agriculture essential workers span the entire food supply chain, from farmworkers to restaurant and grocery store employees. The pandemic has highlighted the necessity of these workers to provide food for consumers as COVID-19 outbreaks impacting the food supply chain have caused shortages for some consumer goods. For example, outbreaks in the meatpacking industry due to working conditions conducive to the spread of the virus caused several major meatpacking plants to temporarily close (CDC, 2020; Gallagher and Kirkland, 2020). In response, on April 28, President Trump invoked the Defense Production Act of 1950 via executive order to support meat production during the crisis (President of the United States of America, 2020).

As the pandemic continues, there are growing concerns that disruptions to the food supply chain will continue in other at-risk industries. Peak harvest season for the most labor-intensive crops in the United States is during the summer, and growers of these crops have already been experiencing agricultural labor shortages for years. In fact, the rapid growth of the H-2A Temporary Agricultural Worker Program in the fruit and vegetable industry over the last decade has been attributed to a lack of domestic agricultural workers (Bampasidou and Salassi, 2019; Costa and Martin, 2020; Luckstead and Devadoss, 2019; USDA, 2020b). Already, numerous workforce representatives and news agencies report major COVID-19 outbreaks on farms (Dorning and Skerritt, 2020; Farmworker Justice, 2020; Garcia, 2020; Newman, 2020; Shoichet, 2020; de la Rosa, 2020).

Paid Medical Leave

Safety recommendations from the CDC and U.S. Department of Labor (DOL) state that workers who exhibit COVID-19 symptoms should immediately be separated from others at the workplace to prevent further spreading the disease (CDC, 2020a; CDC, 2020b; DOL, 2020b). The U.S. government is supporting these guidelines by enacting significant legislation supporting public safety. In particular, new paid medical and family leave provisions in the Families First Coronavirus Response Act (FFCRA) may significantly affect the workplace.

The FFCRA was signed into law on March 18, 2020, and became effective April 1 (U.S. Congress, 2020). The Congressional Budget Office (CBO) estimates that the FFCRA will cost approximately \$192 billion (CBO, 2020). The FFCRA responds to the pandemic “by providing paid sick leave, tax credits, and free COVID-19 testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding” (U.S. Congress, 2020).

The paid leave requirements of the FFCRA cover the cost of employees’ leave due to COVID-19 for employers of businesses with 500 or fewer employees. These two weeks of paid leave cover sick leave for COVID-19 related reasons with a maximum payout of \$5,110 per worker. There is also two weeks of medical leave at a rate of two-thirds regular pay, with a maximum payout of \$2,000. This medical leave can be expanded an additional ten weeks to care for children with school closings with a maximum payout of \$10,000. Employers with fewer than 50 employees may be exempt from the long-term family leave requirement if the loss of workers will cause the business to close (U.S. Congress, 2020; DOL, 2020c).

The reduction in workers taking leave due to illness may significantly affect the availability of agricultural labor. Further, symptomatic workers who do not take leave will likely be less productive and potentially infect other workers. There are already numerous observations of agricultural workers contracting COVID-19 and outbreaks on farms (Dorning and Skerritt, 2020; Garcia, 2020; Newman, 2020; Shoichet, 2020; de la Rosa, 2020). Agricultural workers are an especially at-risk group as essential workers. These workers often work in close proximity, share living accommodations and transportation, travel around the country to find seasonal work, and may lack access to high-quality healthcare.

Workplace Safety Precautions

Recommended and mandated workplace safety precautions may significantly reduce agricultural workers’ productivity in order to mitigate the spread of COVID-19. The CDC (2020a; 2020b) and OSHA (DOL, 2020b) recommend social distancing, sanitizing workstations, barriers, and face coverings. These precautions are mandated in some states, counties, cities, and other organizations.¹ Even when these precautions are not required, workers may be hesitant to continue employment with employers that do not follow safety precautions.

These safety precautions can be particularly difficult to implement in agricultural operations. Work crews may not operate as efficiently when workers are separated by a barrier or require a six-foot distance between each other. Face coverings and respirators may impede the efficiency of labor-intensive jobs (Johnson, 2016; Li et al., 2005; Roberge, Kim, and Coca, 2012). Barriers, disinfectants, and face coverings may be expensive to acquire, especially given the surge in demand. Further, there may be additional training, installation, and operational costs. There is ongoing research to fully assess these materials costs and productivity losses, but they are potentially substantial (Vasquez 2020).

¹ State, county, and city orders related to COVID-19 vary substantially both geographically and over time. Many businesses and organizations have also developed supplemental operational guidelines.

It is also the case that agricultural workers often share housing and transportation. It is common for employers of seasonal workers to provide housing and transportation that are regulated by the DOL. Data from the National Agricultural Worker Survey (NAWS) indicate that approximately one-third of U.S. farmworkers live in crowded dwellings (Hernandez and Gabbard, 2018). Symptomatic workers are directed to be separated from others, but federal housing standards only require beds to be spaced three feet apart. This means that many employers of agricultural workers who provide housing as part of the contract must rent additional living spaces for infected workers or risk further infection of their workforce (Newman, 2020). Adhering to social distancing guidelines in transportation may require additional trips to and from lodging and workplace, adding to time and fuel costs.

Employer-provided housing and transportation are key facets of the H-2A Temporary Agricultural Worker Program, which accounts for approximately 10% of the national crop workforce (Costa and Martin, 2020). The DOL Employment and Training Administration's Office of Foreign Labor Certification has recognized the disruptive impacts of the pandemic by allowing employers of these workers to relocate workers temporarily without the normal approvals (DOL, 2020a). Nevertheless, concerns remain whether these workers utilizing employer-provided housing and transportation will be able to adhere to recommended safety practices. There have been numerous claims of employers not adhering to recommended workplace safety precautions, particularly in housing and transportation (Dorning and Skerritt, 2020; Farivar, 2020; Garcia, 2020; Newman, 2020; Shoichet, 2020; Vasquez, 2020; de la Rosa, 2020).

Compounding these worker safety issues is the availability and cost of testing. The CDC notes that, "Although supplies of tests are increasing, it may still be difficult to find a place to get tested" (CDC, 2020c). It can be particularly difficult for farmworkers in the United States to get tested when exhibiting symptoms. These workers are often located far away from the nearest testing center or hospital and may not have health insurance (Vasquez, 2020). It can also be more difficult for undocumented agricultural workers to acquire these services. Data from the NAWS estimate that unauthorized workers account for approximately half of the U.S. agricultural workforce; only 47% of all farmworkers reported having some form of health insurance (Hernandez and Gabbard, 2018; USDA, 2020b).

Travel Restrictions

Travel restrictions implemented as a result of the COVID-19 pandemic have raised concerns with U.S. agricultural employers. Over 200,000 temporary agricultural workers each year travel from Mexico to the United States as part of the H-2A Temporary Agricultural Workers Program. These seasonal workers account for

approximately 10% of the national crop workforce, and that proportion has grown rapidly in recent years (Costa and Martin, 2020). Further, many other U.S. agricultural workers regularly migrate within and across national borders. Simply put, the agricultural workforce is quite mobile.

The number of temporary visas issued through the H-2A program increased from 60,112 in 2009 to 204,801 in 2019 and is on a trajectory to keep growing (Costa and Martin, 2020, DOL, 2020). See Table 1 for the growth of H-2A visas issued in the last decade. These legal, temporary workers are an essential component of U.S. agricultural production. The program is designed so that these foreign workers are only hired when agricultural employers can provide evidence of a shortage of domestic workers. H-2A workers are most commonly employed in labor-intensive agricultural operations such as fruit and vegetable production (Luckstead and Devadoss, 2019).

Table 1. H-2A Temporary Agricultural Worker Visas Issues by Year (2009-2019)

Year	H-2A Visas
2009	60,112
2010	55,921
2011	55,384
2012	65,345
2013	74,192
2014	89,274
2015	108,144
2016	134,368
2017	161,583
2018	196,409
2019	204,801

Source: Costa and Martin (2020) analysis of U.S. Department of State Nonimmigrant Visa Statistics (2020).

Recent travel restrictions may negatively impact the mobility of the U.S. agricultural workforce, especially H-2A workers. On March 18, the U.S. Embassy in Mexico City and all U.S. consulates in Mexico suspended routine consular and visa services (U.S. Embassy and Consulates in Mexico, 2020). This action prompted immediate concern by agricultural producers in the United States, who require these visa services to hire H-2A workers. On March 26, Secretary of State Mike Pompeo, in consultation with the DHS, responded to these concerns by authorizing consular offices to continue processing H-2A visa applications (U.S. Department of State, 2020). Further, on April 20, the DHS amended certain H-2A requirements to facilitate the hiring of H-2A workers (USDA, 2020; DHS, 2020a). These amendments include interview waivers for certain applicants, allowing H-2A workers to transfer contracts without returning to their home country, and extending

the three-year maximum cumulative stay for H-2A workers.

Despite the combined actions of the U.S. Departments of Homeland Security, Labor, Agriculture, and State, the number of H-2A workers and the broader agricultural workforce may decline this year. Interviews are still required for some H-2A visas and this process remains halted for the time being. Varied other travel restrictions such as travel bans also remain in place, potentially disrupting the arrival of agricultural workers. Even without these restrictions, some agricultural workers may choose not to participate in the industry due to safety concerns.

Discussion

As the COVID-19 pandemic continues, there are growing concerns in the United States about the health, availability, efficiency, and overall productivity of essential agricultural workers. Policies in response to the pandemic have tried to balance the safety of these workers and the ability for agribusinesses to operate efficiently. These policies include classifying agricultural workers as essential, paid medical leave provisions, voluntary and mandatory workplace safety precautions, and travel restrictions. Despite these policies, the U.S. agricultural workforce continues to be a major source of infections.

Continued and potentially increasing COVID-19 outbreaks on U.S. farms could further disrupt the food supply chain, thus increasing costs and causing additional shortages or higher prices for some agricultural products. Further, these disruptions and

adjustments to the production process may have significant negative effects on the well-being and continued profitability of U.S. agribusinesses. As we approach peak harvest season in the summer, we will observe more fully the impact of the pandemic on U.S. farms and the broader food supply chain.

Further into the future, there are concerns that workplace safety violations during the pandemic may result in lawsuits against government agencies and employers, particularly those involved in agriculture. Already, the United Farm Workers and other groups sued Washington State this April over the lack of appropriate health precautions in place for agricultural workers. Smithfield Foods was also sued over working conditions in its Missouri facilities (Farivar 2020).

Overall, the pandemic may bring into clearer view the treatment of this essential workforce. Undocumented agricultural workers still account for approximately half of farm employment according to recent estimates (Hernandez and Gabbard, 2018). These at-risk workers may be hesitant to seek medical attention or stop working due to fear of retribution, whether by deportation or firing. The H-2A Temporary Agricultural Workers Program, once relatively unknown to much of the public, is now becoming a focal point in discussions of immigration reform. Employers seeking increasingly scarce agricultural workers may be forced into offering higher wages and more amenities. This global event has caused society to rethink many of its institutions and industries. Agriculture in the United States could be on the precipice of dramatic changes, particularly regarding the employment of farm workers.

For More Information

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