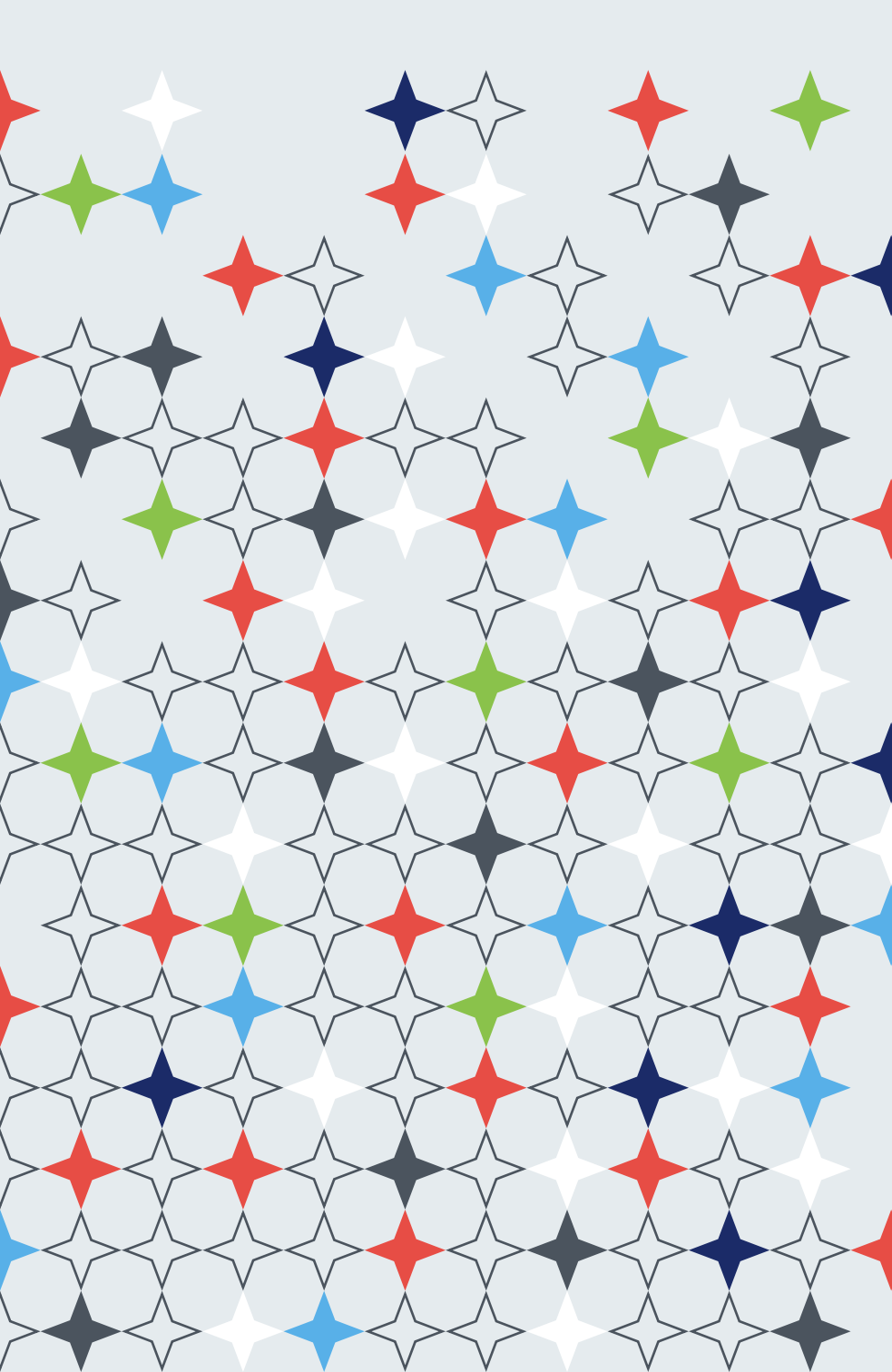


LABOR TRAFFICKING AND H-2A VISAS

Employer essentials



✦
Polaris



About Polaris

*Named after the **North Star**, an historical symbol of **freedom**, Polaris works to **reshape the systems that make sex and labor trafficking possible and profitable in North America**. For more than a decade, Polaris has assisted thousands of victims and survivors through the **US National Human Trafficking Hotline** and built the largest known US data set on the crime. With the guidance of survivors, and working with public and private-sector partners, we use that data to **understand and improve the way trafficking is identified**, how victims and survivors are assisted, and how we can **prevent this abuse** at the scale of the problem — **25 million people worldwide** robbed of the basic right to choose how they live and work.*



SECTION 1: HUMAN TRAFFICKING BASICS

- Human Trafficking
 - Fraud and coercion in labor trafficking
 - Top 10 industries where it happens in the US
-

SECTION 2: H-2A BASICS

- Know your workers
 - Employers landscape
 - Who oversees the H-2A program
-

SECTION 3: HOW LABOR TRAFFICKING OCCURS ON H-2A VISAS

- Recruitment fees and debt bondage
- How threats and tied visas are used to control H-2A workers

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SECTION 4: FIGHT LABOR TRAFFICKING BY PROTECTING YOUR WORKERS' RIGHTS

- The debarment list
- Employer's obligation to prohibit fees
- Joint employment liability
- Provide anonymous and safe reporting mechanisms for workers

FINAL REMARKS AND OTHER RESOURCES

OVERVIEW

The United States is a world leader in agricultural production and home to more than two million farms of various sizes and production volumes (USDA). Yet the domestic supply of agricultural labor remains a persistent challenge for this sector. The **H-2A visa guestworker program** was created in 1986 to address this problem. In the years since, the H-2A program has grown exponentially. In FY 2020, growers across America received the essential labor of more than 275,430 H-2A guestworkers to ensure their harvests made it to market.

On the face of it, the H-2A program looks like a win-win for both workers and employers — and it certainly can be. But if you are hiring workers with H-2A visas for the first time — or even if you are an old hand — it's worth knowing the very real risks associated with the H-2A program — in particular, the risk of human trafficking.

This may sound dramatic and even a little farfetched to business owners whose vision of human trafficking — like most people's — is shaped by popular culture. But data show that labor trafficking is a significant problem in the US agriculture industry.

In the last 5 years the Polaris-operated US National Human Trafficking Hotline identified more than 3,200 H-2A visa holders who were victims of human trafficking. In addition to trafficking, the Trafficking Hotline also identified more than 4,850 victims of

Reported trafficking cases involving H-2A visa holders



other forms of labor exploitation (wage theft, contract violations, discrimination, that don't reach the force, fraud or coercion threshold of trafficking) that were at work-sites utilizing the H-2A program.

The heat map above shows the locations of trafficking cases involving H-2A visa holders reported to the National Human Trafficking Hotline through March 31, 2020.

There are reasons why human trafficking exists within the H-2A guestworker program. The fact that the visa status is controlled by the sponsor, or how debt is used to coerce and control H-2A guestworkers in bondage-like conditions, are issues discussed further in this toolkit.



Purpose

This toolkit provides an overview of the **risks of labor trafficking** inherent in the H-2A visa program and helps you understand **how to protect your workers**. By protecting your workers, you will also protect your business.

Please see the toolkit appendices for checklists and guides to help you implement what you have learned.

Section

01

HUMAN TRAFFICKING BASICS

To understand why the H-2A guestworker program enables labor trafficking, you must first understand how human trafficking really works.

First, **forget what you think you know.**

The Trafficking Victims Protection Act (TVPA) defines labor trafficking as:



The recruitment, harboring, transportation, provision, or obtaining of a **person for labor or services...**



...through the use of **force, fraud, or coercion** for the purposes of...



...subjection to **involuntary servitude, peonage, debt bondage*, or slavery** (22 USC §7102)

*In the context of the TVPA, debt bondage is a form of non-violent coercion.

Labor exploitation and trafficking can happen anywhere along the recruitment and labor continuum



Human trafficking was not officially a federal crime until 2000, when the TVPA defined the term and created the national framework for prevention, prosecution, and victim and survivor support.



Fraud and coercion in labor trafficking

The process whereby a trafficker lures a person into a situation from which they will eventually be unable to leave is fraudulent recruitment. In labor trafficking situations, this part of the process generally appears legitimate.

In most labor trafficking situations, this is where **fraud** comes in.



During recruitment, the worker is promised certain things — wages, benefits, working conditions, etc. But when the work begins, those promises are broken. Maybe the worker is paid substantially less than promised, or the housing they were told they would be provided is unsafe, filthy, or overcrowded.





Certain labor situations lend themselves to certain forms of Force, Fraud and Coercion. The H-2A visa structure enables fraudulent and coercive methods of trafficking

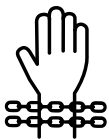


Coercion is what happens next — the answer to the question “Why don’t they just quit, or leave, or file a complaint?”

Coercion is the way in which a trafficker controls a victim and keeps them working in unsafe conditions, or without the pay they were promised.



The form coercion takes depends on the situation, but there are general categories and patterns in various industries.



Common types of labor trafficking situations include:

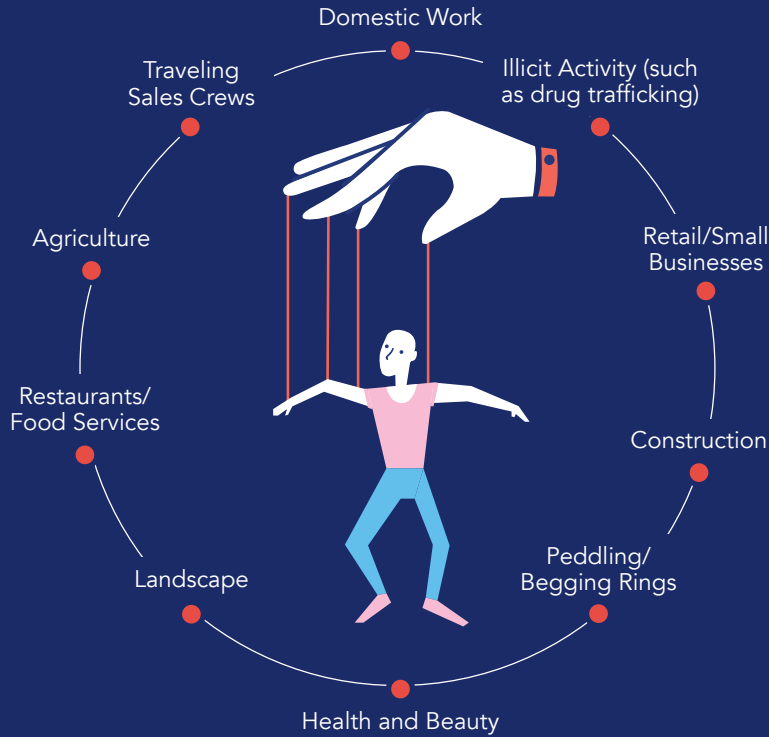
- Threats of deportation/immigration consequences
- Moving workers from job site to job site so they do not form connections that allow them to seek help
- Threats of violence against the worker or a worker's family
- Control of documents, such as passports
- Financial control, such as confiscating earnings, keeping victims in debt, or threatening to keep them from obtaining jobs in the future

Little known facts

1. Labor trafficking does not only happen in illicit or underground businesses.
2. Labor trafficking rarely begins with kidnapping or other forms of violence. Most labor trafficking victims choose to take the jobs in which they are later exploited.
3. Labor trafficking is at least as widespread as sex trafficking in the United States.



The **top 10 venues for labor trafficking** reported to the National Human Trafficking Hotline include the following industries:



Most **labor trafficking** situations we know about in the United States **involve** victims who are **recent immigrants, both documented and undocumented.**

Section

02

H-2A BASICS

Know your workers:

To understand how labor trafficking happens to workers on H-2A visas, it's important to recognize the vulnerabilities that many of the workers bring with them when they join the program. Most of the workers in the H-2A program come from impoverished circumstances and many have low literacy. Some are from indigenous communities that have long faced discrimination and marginalization.

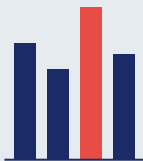
With little opportunity available to them in their home communities, many gambled on the promise of a job in the United States. They borrowed money, or sold something valuable, putting themselves and their loved ones in debt to pay the illegal fees unscrupulous recruiters charge them for the jobs.

Once in the United States, these workers are more or less at the mercy of their employers because of obstacles that prevent empowerment including language barriers and limited access to transportation. Few know anything about the rights to which they are entitled in the United States, or how to safely seek help if those rights are violated.

That leaves it up to you — the employer — to make sure these workers are getting a fair share — the wages they were promised and the living and working conditions any human being deserves. That is a significant responsibility and one we hope everyone takes seriously to really prevent exploitation and trafficking.

Employer Landscape

While some employers are the growers or farm owners themselves, an entire industry has grown up in the United States and other countries, including Mexico, around the H-2A visa program. The most significant of these are H-2A Labor Contractors (H-2ALCs) businesses that have sprung up to profit off the H-2A system specifically. These businesses have no fixed sites of employment. They exist to provide a service to farm owners, recruiting and essentially renting out workers they have brought to the United States on temporary visas specifically for this purpose. In many cases, the H-2ALCs actually oversee or manage the workers on the jobs.



THE LATINO FACE OF HUMAN TRAFFICKING AND EXPLOITATION IN THE U.S.

[Review some stats](#) in our publication

The number of H-2ALCs increased from 660 in FY 2014 to more than 9,391 in FY 2021



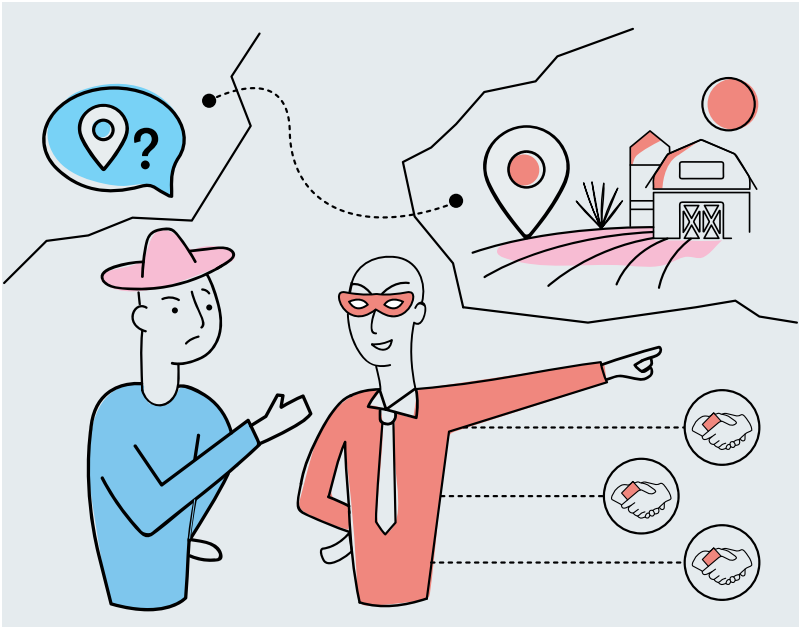
Who else is involved in the H-2A program:

Growers and/or H-2ALCs may also employ recruiters in local communities, recruitment agencies, visa processors and other middlemen to seek out workers, process paperwork, provide transportation and otherwise facilitate the cross-border process.

Understanding H-2ALCs

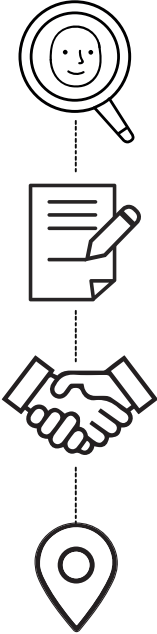
An H-2ALC is a contractor that meets the definition of an “employer” under the H-2A program and does not otherwise qualify as a fixed-site employer or an agricultural association.¹ H-2ALCs can recruit, solicit, hire, employ, house, and transport H-2A guestworkers. The nature of their work is such that they are required to post Surety Bonds to cover any liabilities incurred during the term of the work contract period listed on their H-2A application. Other employers in the H-2A program do not have to post Surety Bonds.

¹ [Fact Sheet #26: Section H-2A of the Immigration and Nationality Act \(INA\)](#)



H-2ALCs provide growers and agricultural businesses with H-2A guestworkers. This means H-2A guestworkers are constantly moving to different worksites, sometimes in different states and regions. It is a profitable business model that is growing and expanding across the country. In the last five years, the H-2ALC marketplace has increased more than fourteen times over, from 660 (FY 2014) to 9,391 (as of January 1, 2021).

If you are an H-2ALC trying to operate legally, those H-2ALCs that engage in labor trafficking practices hurt your competitiveness and can damage your professional reputation through association.



Who oversees the H-2A program

The H-2A guestworker program is governed by a patchwork of federal agencies including the Departments of Labor, Homeland Security, State, and Agriculture.

The US Department of Labor (DOL) Wage and Hour Division administers and enforces labor standards protections in the H-2A program.^{2,3} That means ensuring workers have safe working conditions, decent housing and are not forced to pay recruitment fees.

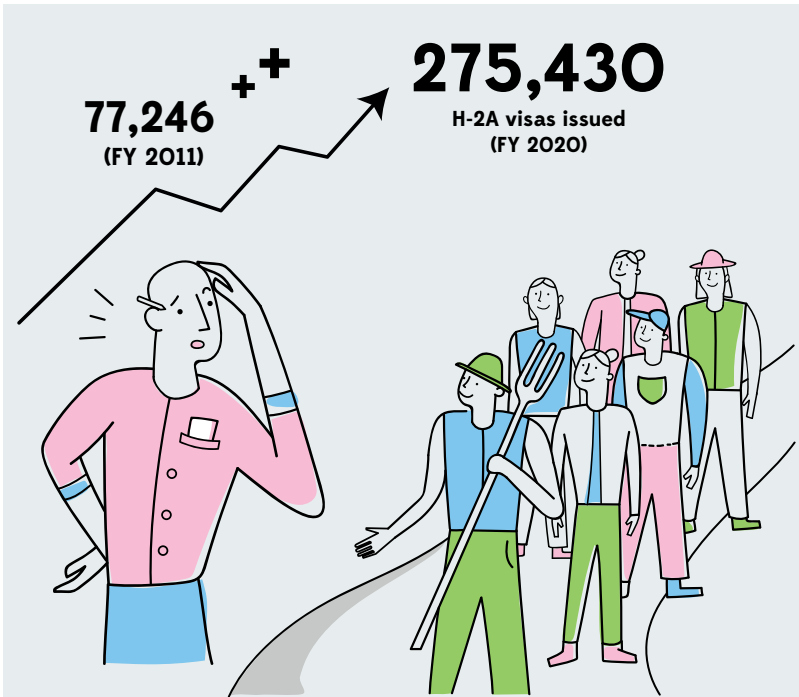
Unfortunately, the resources available to this agency to enforce labor standards protections have not kept pace with the explosion of H-2A visas.

Over the course of the last decade, the H-2A program has increased exponentially in size from 77,246 certified visas (FY 2011) to 275,430 (FY 2020).

State-level labor enforcement authorities also intersect with the H-2A program at different points and sites. Still, every state has its own

2 [Admission of Temporary H2A Workers](#)

3 [Major Laws Administered/Enforced](#)



governance regime for the program, as well as its own inspection priorities depending on industry. For many, their ability to properly identify labor trafficking situations is limited due to lack of training, knowledge of federal anti-trafficking laws, and resources.

Oversight of the program is even more difficult because H-2A labor contractors have no fixed site of employment, much of the illegal activity begins in Mexico and/or is perpetrated by people who are only informally employed and subject to little or no oversight.

Section

03

HOW LABOR TRAFFICKING OCCURS ON H-2A VISAS

While every situation is unique, labor trafficking of workers on H-2A visas tends to follow a pattern. This pattern stems from the very structure of the visa program, which makes it far too easy for traffickers to exploit workers.

Recruitment fees and debt bondage

With limited exceptions, it is illegal under the H-2A program for workers to be asked to pay fees for the privilege of acquiring a visa and working in the United States. But enforcement of this is virtually nonexistent.

In addition to paying unlawful recruitment fees to unscrupulous recruiters, many H-2A workers borrow money to travel for employment. As a result, they arrive in the United States already heavily in debt, believing that the money they will earn here will make the debt worthwhile and short-lived. Sometimes the debt is to loan sharks in their home countries, and sometimes to unscrupulous labor recruiters.



Debt bondage is a form of trafficking under US law



Abusive employers know that this debt holds the workers firmly in place. Employers force workers to work in dangerous conditions, for little or no pay, or otherwise exploit their labor. This is debt bondage and it is a form of labor trafficking under US law.

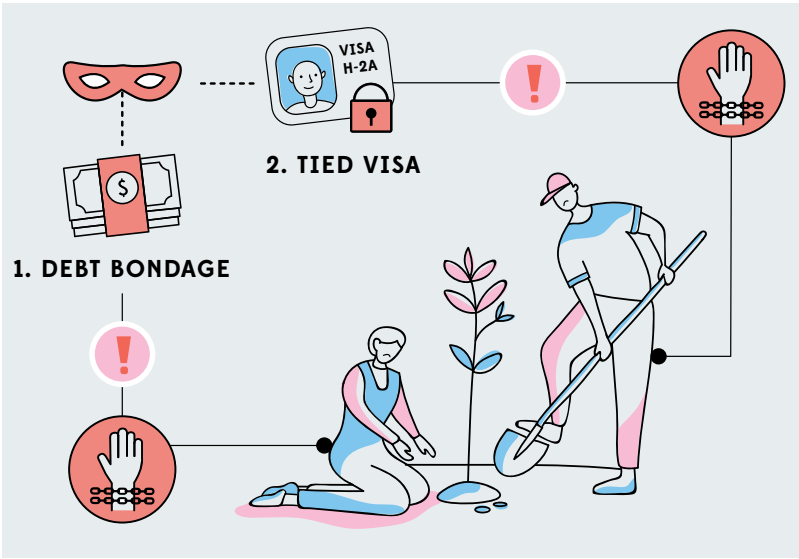
Abusive employers/recruiters will instruct H-2A workers to not disclose debt incurred during the recruitment when asked by consular officials or other authorities.



DEBT BONDAGE

Is codified into US law in the TVPA as “the condition of a debtor arising from a pledge by the debtor of their personal services as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt.” (22 USC § 7102).

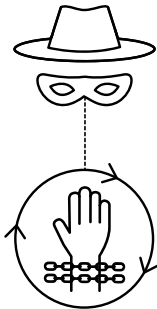
Debt bondage remains one of the most prevalent forms of coercion in modern slavery in all regions of the world.



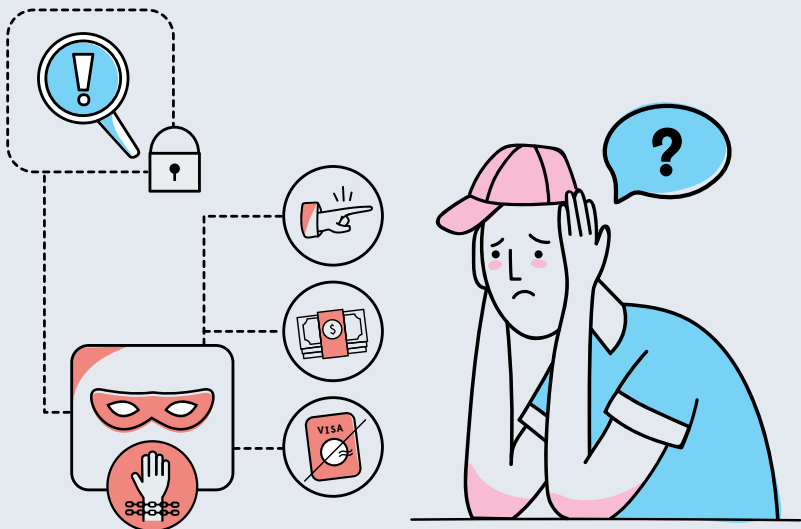
Threats and tied visas and how this is used to control H-2A workers

Under the H-2A regulations, guestworkers can only work for a single employer while they are in the United States.

That single employer can be a labor contractor (H-2ALC) or the grower who actually owns the farm.



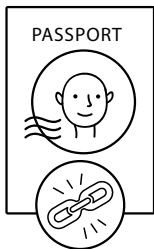
At first this seems reasonable and a fair economic model, but too often it is not. Traffickers have figured out that this system gives them a relatively free hand to exploit workers with little or no consequence because the worker is only legally in the United States for as long as they are employed by the labor contractor who sponsored the visa.



Guestworkers who complain about abusive conditions or broken promises can lose both their job and their legal right to remain in this country. If a worker is deported once, that worker is extremely unlikely to be allowed into the country again the next year. That means many workers stay in abusive situations out of fear that leaving will mean they cannot come back to the United States to work in the future. For many, that is too great a risk to take because these jobs are the only means available to support themselves and their families.



The fix is to “untie” the visas, allowing guestworkers to seek and work for a new employer that is also H-2A certified without fear of being “out of status,” and potentially subject to deportation.



This is already a feature of some other US visa guestworker programs outside of the agriculture sector. Making this change would mean a guestworker who is in an abusive situation has the freedom to leave and work for an employer who treats their guestworkers better.

Passport confiscation

Another common method of control used against guestworkers on H-2A visas is the illegal confiscation of passports.

A guestworker cannot return to their home country without their passport. If a labor situation becomes exploitative, a guestworker who has had their passport confiscated may not be free to leave their situation due to their inability to cross national borders legally.

To make matters worse, traffickers will confiscate passports and personal documents to exert further control over their victims, using threats of deportation to coerce their victims into providing labor.

Traffickers who know and understand the tied visa elements of the H-2A program are quick to use threats of deportation against their victims.

Section

04

Fight Labor Trafficking in your business

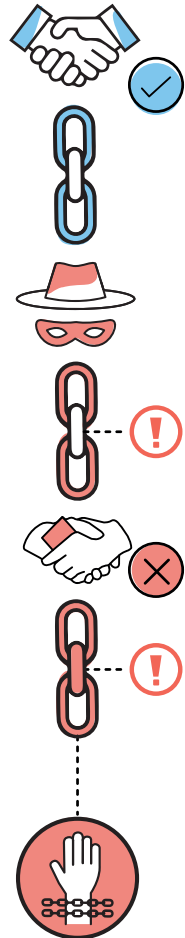
BY PROTECTING YOUR WORKERS' RIGHTS

The use of unethical labor contractors, rather than verifying the ethical recruitment conditions or hiring the workers directly, is particularly problematic for a number of reasons.

When H-2A guestworkers are hired through recruiters, the conditions of their recruitment and hiring are no longer under the control of employers. This risk is further magnified when labor recruiters use sub-recruiters or subcontractors — sometimes in foreign countries — further complicating the legal relationships between parties.

The longer the “chain” between worker and employer the higher the likelihood that abuse may occur.

There are some government tools to help choose reputable contractors, but they have severe limitations and rogue actors have become extremely adept at getting around them.



The Debarment List

The Labor Department's Office of Foreign Labor Certification (OFLC) maintains a list of employers debarred or disqualified from participating in the H-2A Program. The list is updated regularly with new employers and entities who violate labor protections in the program.

While the debarment list is a good tool to prevent unscrupulous actors from entering the H-2A program, debarment can be easily sidestepped, especially for rogue H-2ALCs. We have seen, for example, H-2ALCs changing their business name or registering their business under a different alias in order to avoid detection. Others have used the names and addresses of relatives or associates to side-step a debarment.

Other US Department of Labor lists to check include:

- US government maintains an updated list of employers and labor contractors banned from the H-2A program for all types of abuses. You can access the page [here](#)
- To protect against recruitment fraud, check if an employer (or labor contractor) and job order is real by visiting this US government website [here](#)



DEBARMENT LIST

You can access the H-2A Program Debarment List [here](#)

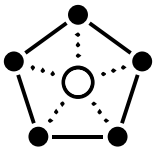
In January 2020, the US Department of Labor announced a new rule and interpretation of “joint employer” status under the Fair Labor Standards Act (FLSA). The rule went into effect in March 2020



Know the Law

H-2A “PROHIBITED FEES” AND EMPLOYER’S OBLIGATION TO PROHIBIT FEES

The regulation at 20 C.F.R. § 655.135(j) provides that employers are prohibited from shifting costs of any kind for any activity related to obtaining the labor certification, such as “the employer’s attorneys’ fees, application fees, or recruitment costs.” **20 C.F.R. § 655.135(j)**. The preamble to the February 12, 2010, Final Rule similarly clarifies that government-mandated costs, such as visa application, border crossing and visa fees are included within this prohibition.



JOINT EMPLOYMENT LIABILITY

Most employers want to do the right thing just because it’s the right thing. But recent regulatory changes and some court rulings are also starting to move toward expanding employer accountability for labor practices.

Under the Joint Liability Standard, joint employers are responsible to employees for compliance with worker protection laws



What is the joint employer liability standard?

Today, the rule on joint employer liability standard says that “when two or more businesses co-determine or share control over a worker’s terms of employment (such as pay, schedules, and job duties), then both businesses may be considered to be employers of that worker, or ‘joint employers.’”



WHY YOU SHOULD CARE

The joint employer liability rule puts more skin in the game for employers who use contracted labor from labor contractors or staffing agencies. In the agricultural context, a watermelon grower in Missouri who contracts 100 H-2A workers from an H-2ALC, is accountable under the FLSA as a “joint-employer” for any abuses that H-2ALC conducts on their guestworkers.

This helps to better define liability for any potential abuses, forced labor, or exploitation of those workers under Joint Employer Liability Standard. Joint employers are responsible, both individually and jointly, to employees for compliance with worker protection laws — in this context, the FLSA.





The regulations pertaining to the H-2A program expand the employment relationship with respect to foreign guestworkers. “Employers” under these regulations are required to assist with housing, meals or cooking facilities, and transportation, among other responsibilities.



Despite the H-2A program requirements to supply workers with suitable housing, traffickers subject victims to dirty and run-down living conditions, often denying them even basic necessities such as beds and indoor toilets. Victims are also frequently denied the protective gear to do their jobs safely. Oftentimes, medical care is deliberately delayed or not offered for even the most severe workplace injuries or illnesses. By far the most common method of control in agriculture, as in many other types of labor trafficking, is economic abuse.



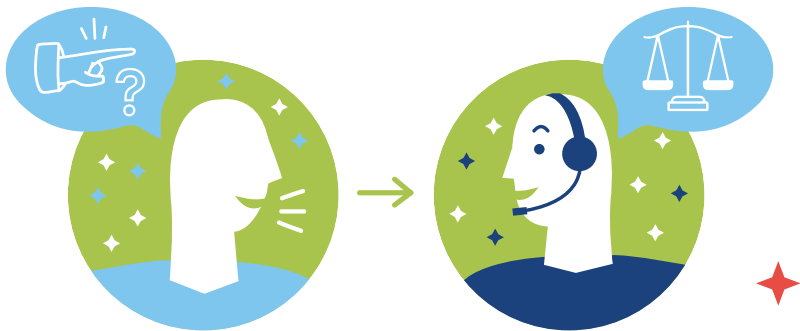
Remember how force, fraud and coercion works! These are some of the most common tactics used by traffickers to retain agricultural workers in exploitative situations:

- Use the lack of visa portability to instill fears about blacklists, deportation or impact on guestworkers' immigration status.
- Use economic abuse like wage theft, denial of wages, taking deductions from wages without adequate reason, not paying workers regularly, not paying workers the amount that was agreed upon in their contract, and payment at piece rates rather than hourly rates.
- Isolate victims in rural parts of the country with little to no means of accessing community support.

The fear of these threats makes it dangerous and difficult to denounce the exploitation. For that reason, the strongest model to protect workers from exploitation and trafficking are those that are designed, monitored, and enforced by empowered workers. Learn about the [Fair Food Program](#) and implement those standards.

Double check that you are paying your workers fairly

Check the Adverse Effect Wage Rates (AEWR) for the state you are in by [clicking here](#)



Coercion and threats make it dangerous and difficult to denounce exploitation

Provide anonymous and safe reporting mechanisms for workers

★ Polaris operates the US National Human Trafficking Hotline, which provides 24/7 support and a variety of options for survivors of human trafficking to get connected to help and stay safe. Through a network of nearly 4,000 partner service providers and trusted law enforcement, trained hotline advocates take tips of suspected human trafficking from community members and help survivors build plans so they can safely leave their situations or get the help they need to rebuild their lives. The National Trafficking Hotline can communicate via phone in more than 200 languages through interpretation services, as well as text, webchat, email, and webform in English and Spanish.



Final remarks and other resources

This toolkit gives you a better understanding of what labor trafficking is as well as where, how and why it exists in the agriculture industry. You should now, as an employer, understand your responsibilities to employees and the potential risks inherent in murky recruitment supply chains. By doing due diligence on your workers' recruitment and protecting their rights, you will protect your business.

For further guidance to ensure due diligence and compliance with labor laws, please see the [following appendices](#):

Appendix A: Checklist to assess current recruitment practices

Appendix B: Reference tools and best practices

Appendix C: Recruitment experience narrative

Appendix D: Case studies

Quick Reference NHTH & LNCTdP
GETTING HELP



In Mexico

Linea Nacional Contra la Trata de Personas

National hotline and Whatsapp Chat

800 55 33 000



In the United States

Call

**1 888
373 7888**

Text

**"Ayuda"
233733**

24/7, free, confidential and in more than 200 languages

**ECONOMIC
ABUSE LIKE
WAGE THEFT
IS THE MOST
COMMON
METHOD OF
CONTROL IN
AGRICULTURE**



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Strategic Initiative on Labor Trafficking



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