December 2, 2022

Washington House of Representatives
Labor & Workplace Standards Committee
PO Box 40600
Olympia, WA 98501-0600

RE: Committee Work Session on Agricultural Workforce Issues

Dear Honorable Members of the House Labor & Workplace Standards Committee,

Thank you for holding a work session on the ever-important topic of the agricultural workforce and for allowing us to provide comments.

Wafla is a non-profit 501(c)(6) membership organization comprised of nearly 800 agricultural and seasonal employers. Wafla was formed to make labor stability a reality for all agricultural employers and for farmers and farmworkers to be treated with dignity and respect. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards.

In 2021, wafla filed H-2A applications for more than 200 member employers who collectively employed more than 16,000 individual H-2A workers. In addition, wafla employer members employed more than 20,000 U.S. workers. We assist farmers with their workers' housing needs and offer human resource training and advice.

We have seen interest and participation in the H-2A visa program grow over the past decade because our members, agricultural employers, have found it increasingly hard to fill agricultural jobs. Their only option to help remedy this labor shortage under current law is the H-2A program.

Agricultural employers find the H-2A visa program to be cumbersome, complicated, and inefficient. Multiple federal laws and agencies, when also combined with a host of state laws and agencies, form a bureaucratic labyrinth that serves to make the program inaccessible to farmers unless they have assistance from agents and consultants. Wage rates mandated by the program are much higher than market wages. Housing for H-2A workers is a necessity, but housing costs are often prohibitively high. Housing requires advanced planning and significant upfront capital costs. These costs cannot currently be covered, even in part, by H-2A workers, and workers deserve to have housing that is licensed and inspected. These factors combine to make use of the H-2A program extremely expensive for growers – and much more expensive than the previous model of employing migrant workers from within the United States.

However, without the H-2A program, farmers of labor-intensive commodities would not currently be able to grow those crops, which are vital components in our national food security system. Our country needs a robust food supply and needs farmers and farmworkers to produce that food. As such, it is imperative that the H-2A guestworker program in Washington state work efficiently and without artificial barriers.

Three issues come to mind regarding the agricultural workforce in Washington as we enter 2023. The first is the Adverse Effect Wage Rate (AEWR), the second is the implementation of agricultural overtime rates of pay, and the third is the implementation of pertinent exemptions to the WA Cares program.

1. **Adverse Effect Wage Rate:** Farmers have seen a dramatic increase in the AEWR, which is essentially the minimum hourly wage paid to workers by participants in the H-2A program. In 2000, the AEWR in Washington was $7.64. By 2019, the rate was $15.03. The AEWR currently stands at $17.41 and is estimated to increase to $17.97 per hour in 2023. These rates are obviously higher than the federal and state minimum wages, and they continue to outpace those wage rates. The AEWR benefits not only H-2A workers but also U.S. workers in corresponding employment, who, according to federal regulations, must receive the same wage rate as their H-2A coworkers. Agricultural employers must pay this seemingly ever-increasing wage rate and have extremely limited ability to recoup those costs. So farmers must engineer solutions to stay in business with higher input costs, little to no additional funds from sales since they are price takers, a shrinking domestic workforce, and a highly regulated guestworker option. Additionally, we have seen the effect of inflation dramatically increase other input costs during 2022.

2. **Ag Overtime:** These costs play into our second topic – the effect of lower overtime thresholds for agriculture. Growers made some adjustments in 2022, when the threshold for 1.5x overtime pay for agriculture (except dairy) was 55 hours per week. But those adjustments are minimal compared to the adjustments that will need to be made for the 48-hour threshold in 2023.

   Growers are currently trying to figure out what to do with hours and pay rates in 2023. While it is too early for us to give any hard data or even estimates on how employers will manage these costs, the best we can say at this point this that employers are considering their options. Because of market conditions and expenses, employers may have to cap employee hours across the board — for all agricultural workers (both domestic and H-2A workers). If this happens, employers will need to create more job positions to meet the work production needed to maintain food production needs. Employers are already having a hard time finding enough domestic workers to fill existing positions. With more positions available and a chronic domestic labor shortage, employers may need to turn to visa programs such as H-2A to supplement the current workforce and find enough workers to sustain our food production system.

   Taking these first two topics together, growers are expecting higher hourly rates of pay due to the increased AEWR. This rate, when combined with a lower overtime threshold and thus higher overall pay for overtime hours accrued, provides a distinct incentive for employers to cap the number of overtime hours available to employees – both H-2A and domestic workers.

   When we talk to farmworkers, capping hours is not what they prefer because it cuts into overall earnings. Yet employers have been put in a difficult position. They want to provide jobs and hours to workers, but they need to do so in an economically feasible way that allows them to stay in business.

3. **Long-Term Care Exemptions:** Last session, the Legislature passed ESHB 1733, which provided nonimmigrant visa holders an exemption from the state Long-Term Services and Supports Trust (WA Cares) Program. Nonimmigrant visa holders include H-2A and more than a dozen other federal visa programs. We believe the Legislature was appropriate and fair in granting these exemptions to workers.

Employees who cannot benefit from WA Cares because they are not permanent residents of Washington state should not be forced to pay premiums into a program they cannot use.

However, the rules adopted by the Employment Security Department require each individual worker to apply for an exemption from the program, even if specifically exempted by the Legislature. This individualized requirement is cumbersome and inefficient, requiring each of approximately 30,000 H-2A workers (plus many other nonimmigrant workers) to apply. In addition, these workers must pay the WA Cares premiums until an exemption is granted, and the exemption goes into effect at the beginning of the following quarter. The result is nonimmigrant visa holders will need to apply for their own exemptions and be forced to pay into a system they will not be able to use as nonimmigrants.

We believe this situation is unfair to workers and is not in keeping with what the Legislature intended in ESHB 1733 in 2022. We ask that you remedy this issue by passing a bill in 2023 to allow nonimmigrant visa holders to be categorically exempt from the WA Cares program beginning on their date of hire.

Thank you again for the opportunity to present these comments. We hope our input assists the committee with understanding the current challenges for agricultural employment in Washington. If you would like additional information and perspectives on agricultural labor, we stand ready to assist. Please feel free to contact us at any time.

Sincerely,

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