



Migrant Seasonal Farm Workers, Foreign Labor, and the Agricultural Recruitment System

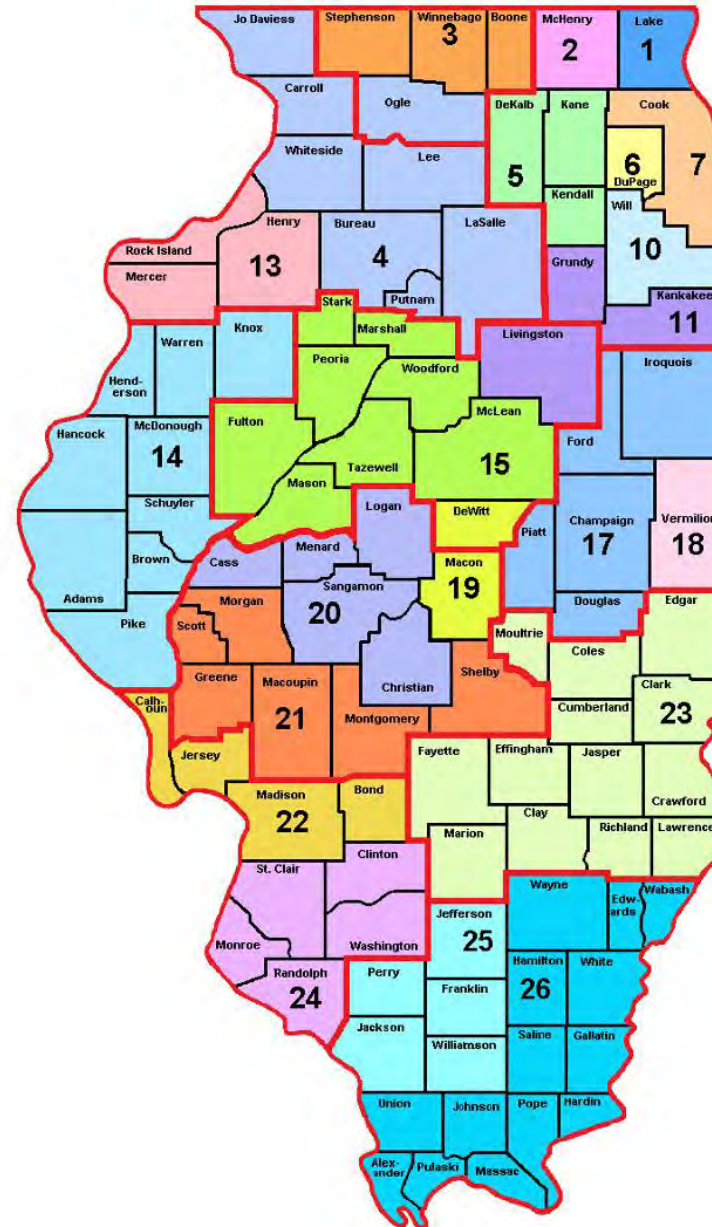
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Where is Your Local Area?



Which partner do you best represent?





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Migrant Seasonal Farmworkers, Foreign Labor Program, & ARS

-Partner Training-



Topics

- Terminology
- History
- State Monitor Advocate System
- Migrant Seasonal Farm Workers (MSFWs)
- Foreign Labor Program (H-2A & H-2B)
- Agricultural Recruitment System



Terms to Know

- State Monitor Advocate (SMA)
- State Workforce Agency (SWA)
 - This refers to Employment Services in cooperation with Department of Labor
- National Farmworker Jobs Program (NFJP) Partner
 - For Illinois it is United Migrant Opportunity Services (UMOS)
- Agricultural Recruitment System (ARS)
- Migrant Seasonal Farm Workers (MSFWs)
- Foreign Labor Program / Foreign Labor Certification or Federal Labor Coordinator (FLC)
 - H-2A Job Orders
 - H-2B Job Orders

History of Migrant Seasonal Farm Workers

- In 1971, 16 organizations and 398 individuals petitioned U.S. Secretary of Labor Peter J. Brennan with accusations of **exploitation of farm workers by state employment offices across the United States.**

The petition cited **12 primary complaints** and alleged collusion between the employment services and farm employers that violated federal regulations.

The Department of Labor investigated the allegations, and in April 1972, the Secretary of Labor attempted to correct the alleged abuses through internal changes to service delivery. However, the **changes were voluntary** and, unfortunately, had very little impact on the way services were delivered.

Complaints Received

- Denial of the full range of employment services
 - Racial, National Origin, Sex, and Age Discrimination in Recruiting and Referring Applicants for Employment
 - Substandard day-haul placement services and facilities
 - Job Orders that allowed employers to pre-designate MSFWs by race, national origin, sex, and age
 - Referrals to employers who violated minimum wage and child labor laws, and failed to make social security payments to worker accounts
 - Referrals to jobs where living and working conditions were unlawful; and
 - State Workforce Agency unresponsiveness to worker complaints.
- Additionally, when MSFWs visited local employment offices, they may have encountered:
 - Separate offices or separate applications
 - Separate menu of services
 - Limited exposure to non-agricultural job referrals
 - Civil Rights Violations
 - No support services

History of Migrant Seasonal Farm Workers

- In October of 1972, a formal complaint was filed in the U.S. District Court in Washington D.C. by the National Association for the Advancement of Colored People (NAACP). The lawsuit was filed on behalf of 17 organizations and 88 Farm workers. In the suit the NAACP alleged 15 separate and detailed violations, claiming various discriminatory actions, including **inequitable treatment and services** to Migrant and Seasonal Farmworkers (MSFW).
- In 1974, the Judge Richey Court Order mandated that the Department of Labor institutionalize a system to ensure that MSFWs receive services on a basis that is qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs.



**Establishment of the
State Monitor Advocate
(SMA) System**



State Monitor Advocate System

- Established in response to the 1974 Judge Richey Court Order
- Federal Purpose is to ensure compliance with applicable program regulations, administrative requirements, cost principles, ETA directives, and evaluate the project's ability to meet required outcomes.
- Monitor Advocates at the National, Regional, and State levels help to ensure that the services provided to Migrant Seasonal Farm Workers (MSFWs) are “qualitatively equivalent and quantitatively proportionate” to the services provided to other jobseekers.
- Administered by Illinois Department of Employment Security (IDES).
- Complete system information may be found on the USDOL webpage at <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/>



State Monitor Advocate System

- Manages the Employment Service and Employment related Law Complaint System.
- Facilitates the agricultural job order clearance process sustaining the monitor advocate system, i.e., ensuring that services provided are in accordance with federal regulations (20 C.F.R. 651-654 and 658) and the Workforce Innovation and Opportunity Act (WIOA).
- Conducts an ongoing review of the service delivery and protections which the state agency and local office afford to MSFWs under Wagner-Peyser regulations.
- Serves as an advocate to improve services for MSFWs within Wagner-Peyser.
- Serves as a liaison with NFJP partner and other organizations serving farmworkers while implementing and sustaining farmworker outreach.
- Reviews, compiles, and reports statistical data to the Department of Labor for compliance.

Check Your Knowledge

- What is the year that the Judge Richey Court Order mandated a system to ensure that MSFWs receive services on a basis that is qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs?
 - A. 1971
 - B. 1972
 - C. 1974

Check Your Knowledge

- What is the name of the system established to ensure services to Migrant Seasonal Farm Workers?
 - A. Wagner-Peyser
 - B. Unemployment Insurance
 - C. State Monitor Advocate
 - D. State Workforce Agency



Migrant Seasonal Farm Workers (MSFWs)



Who are Migrant and Seasonal Farm Workers?

- **Seasonal Farmworker** - is a person who during the preceding 12 months worked at least 25 or more days in farm work and earned at least half of their income from farm work and was not employed in farm work year-round by the same employer.
- **Migrant Farmworker** - is a seasonal farmworker who had to travel to do the farm work so that he/she was unable to return to his/her permanent residence within the same date.
- **Migrant Food Processing Worker** - means a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing, earned at least half of his/her earned income from processing work and was not employed in food processing year-round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.

The above definitions were taken from 20 CFR Part 500 Reg. 651

Farm Work

- Cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities.
- Includes raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
- It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.
- Any service identified through official Department guidance such as a Training and Employment Guidance Letter.

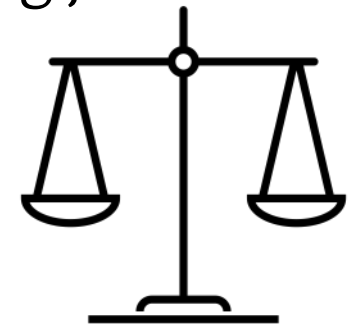
The above definition is taken from 20 CFR Part 500 Reg. 651

Migrant Seasonal Farm Workers

Service Delivery

Migrant Seasonal Farm Workers Service Delivery

- MSFWs must receive **qualitatively equivalent and quantitatively proportionate** services.
- IDES & Partners must determine whether participants are MSFWs and provide a list of available career and supportive services in their native language, when requested.
- Once determined a participant is an MSFW, we must refer and register them for the full range of career and supportive services, including job and training referrals.
- Job order information must be readily available.



Migrant Seasonal Farm Workers Service Delivery

- IDES must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas and ensure that the State Monitor Advocate and outreach workers coordinate their outreach efforts with NFJP 167 grantees as well as private community services agencies and MSFW groups.
- **Vitally important** that partners maintain a relationship with IDES in order to serve this population.
- **Service Delivery is measured through:**
 - **Meeting Equity Indicators:** Individuals referred to a job, receiving job development, and referred to supportive or career services.
 - **Meeting Minimum Levels of Service:** Individuals placed in a job, individuals placed long-term (150+ days) in a non-agricultural job, a review of significant MSFW ES offices, field checks conducted, outreach contacts per week, and processing of complaints.



Migrant Seasonal Farm Workers Significant States & Significant Local Offices

- **Significant States** - are states that have the highest number of Migrant Seasonal Farmworkers (MSFW) applicants that utilize services available under the Wagner- Peyser Act and the WIA of 1998. The Employment and Training Administration designates annually the top twenty states with the highest MSFW activity based on data received from state and local offices.
- **Significant Local Offices** - are designated annually by ETA and include those local offices where MSFWS account for 10% or more of annual applicants. In addition, those local offices that are located in an area with a large number of MSFWs can be designated as significant even if MSFWs do not account for 10% of applications.
- **Significant bilingual Local Offices** - are also designated annually by ETA and include those significant MSFW offices where 10% or more of MSFW applicants require service provisions in Spanish (or other language).

Migrant Seasonal Farm Workers

IDES Outreach Staff

Migrant and Seasonal Farm Workers Outreach Staff

- Program Manager: Cynthia E. Jones
- State Monitor Advocate: Vacant
- Northern IL: Rosa Flores – Chicago
- Northern IL: Apolonio Garcia – North Aurora
- Northwest IL: Vacant, - Peoria
- Central IL: Edgar Revuelta – Champaign
- Southern IL: Fatima Gonzalez – Belleville

Team Contact:

DES.ILSWA@Illinois.gov



Migrant Seasonal Farm Workers Outreach Staff Responsibilities

- Locate and contact MSFWs who are not being reached by normal intake activities.
- Provide basic services & promote job opportunities where MSFW's work, live, or gather for recreational purpose.
- Inform MSFWs of services available including: career counseling, job search, referral, and placement, resume preparation, workshops, on the job training, assessments, referrals to supportive services, complaint system education, basic farm worker rights, and language support when needed.
- Encourage MSFWs to visit the One-Stop Centers

Check Your Knowledge

- Which things are considered **farm work**?
 - A. Tilling soil, growing, and harvesting of crops
 - B. Raising cattle
 - C. Forestry & lumber operations
 - D. Packing crops for market
 - E. All of the above

Check Your Knowledge

- What constitutes a **seasonal farm worker**?
 - A. A person who worked at least 1 day in the last 12 months in farm work and earned at least half of their income while working for the same employer year-round.
 - B. A person who worked at least 1 day in the last 12 months in farm work and earned all their income while working for different employers.
 - C. A person who worked at least 1 day in the last 12 months in farm work and earned all their income from farm work while working for the same employer year-round.
 - D. A person who worked at least 25 days in the last 12 months in farm work and earned at least half of their income while working for different employers.
 - E. A person who worked at least 25 days in the last 12 months in farm work and earned all their income while working for different employers.
 - F. A person who worked at least 25 days in the last 12 months in farm work and earned all their income while working for the same employer.

Check Your Knowledge

- What constitutes a **migrant seasonal farm worker**?
 - A. A seasonal farm worker who must travel to do farm work so that he/she is unable to return to his/her permanent residence within the same day.
 - B. A seasonal farm worker who travels to do farm work and returns to his/her permanent residence within the same day.
 - C. A person who during the preceding 12 months worked at least 25 or more days in farm work and earned at least half of their income from farm work and was not employed in farm work year- round by the same employer.

End of MSFW Section



Foreign Labor

H-2A & H-2B

H-2A Temporary Agricultural Labor

Purpose & Scope

- The H-2A guest worker program allows agricultural employers to hire workers from other countries on temporary work permits for agricultural jobs that last ten months or less. To bring in H-2A guest workers, employers must first show that they have tried and are unable to find sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal agricultural employment.
- They must also show that the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the U.S. who are similarly employed.

H-2A Foreign Labor

- Employers must try to fill jobs with domestic workers first
- Must adhere to strict regulations when bringing foreign workers
- Department of Labor works in conjunction with the State Workforce Agency (IDES) to approve employer applications for Foreign Labor
- State Workforce Agencies must
 - Conduct housing inspections
 - Conduct field visits
 - Conduct field checks



H-2B Temporary Non-Agricultural Labor

Purpose & Scope

- The H-2B **visa** nonimmigrant **program** permits employers to hire foreign workers to come temporarily to the United States and perform temporary nonagricultural services or labor on a one-time, seasonal, peak load or intermittent basis.
- Openings include **Types of H2B Visa Jobs / H2B Work includes:** Hospitality workers, hotels/motels, chefs, resorts and theme parks, ticket sales, cruise ships, construction workers, maintenance, janitorial, ski resorts, landscaping, golf courses, water parks, security, ride operators, restaurants and bars, warehouse, and retail stores.

H-2B Foreign Labor

- Employers must try to fill jobs with domestic workers first
- Must adhere to strict regulations when bringing foreign workers
- Department of Labor is the main entity in charge of approving employer applications for H-2B Foreign Labor.





Check Your Knowledge

- What type of worker primarily works with planting and harvesting of crops?
 - H-2A Foreign Labor Worker
- What type of worker primarily works with landscaping?
 - H-2B Foreign Labor Worker
- What type of worker primarily works with motels and hotels?
 - H-2B Foreign Labor Worker
- What type of worker primarily works with packing and transporting produce?
 - H-2A Foreign Labor Worker



End of Foreign Labor Section





Agricultural Recruitment System

The ARS in the State of Illinois is Illinois Job Link, administered by the Illinois Department of Employment Security.

Background

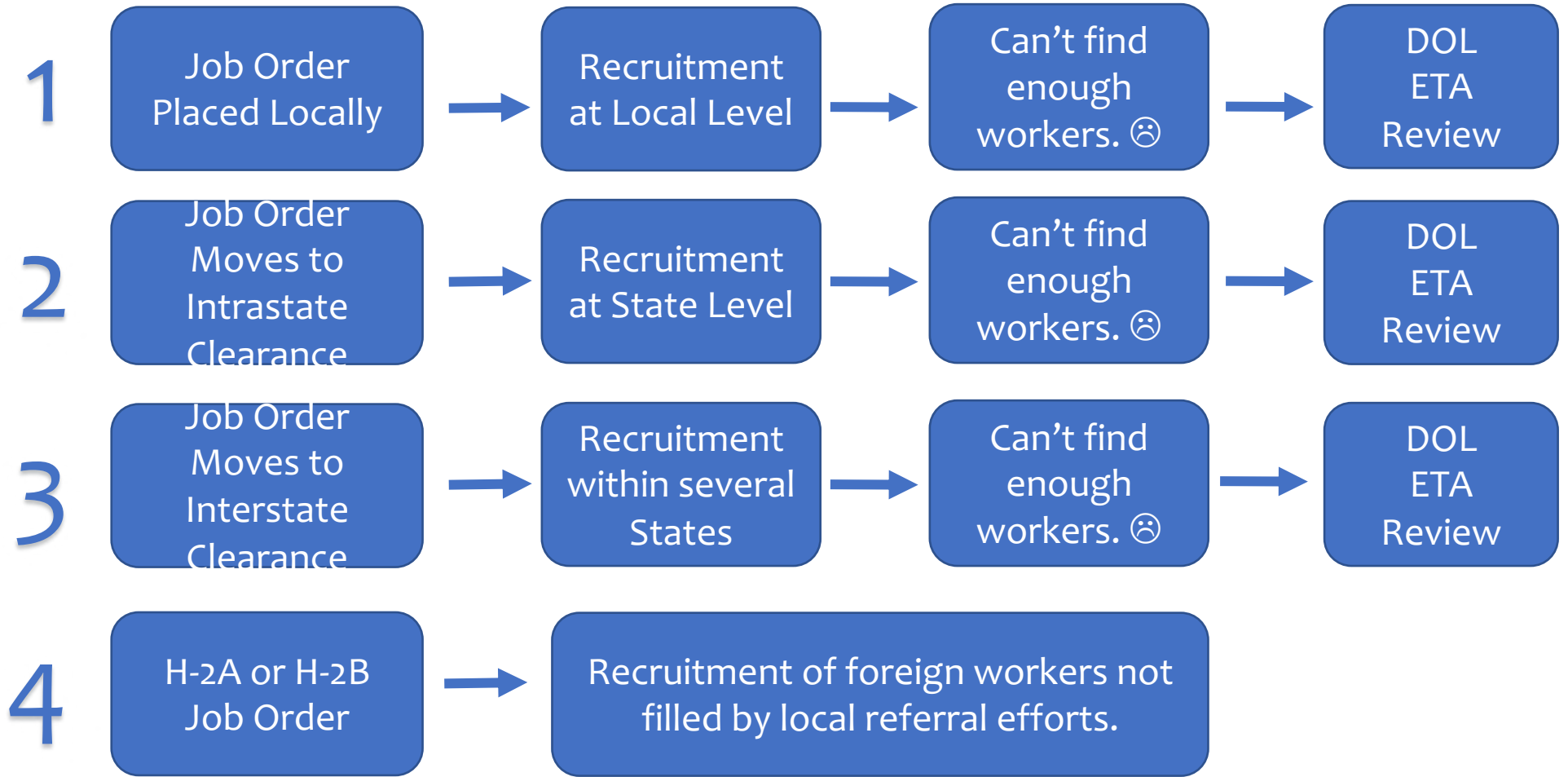
- The Wagner-Peyser Act mandates that U.S. Employment Service maintain a system for the orderly movement of workers within and between states. Operational procedures for the ARS are found in federal regulations at 20 CFR Part 653, Subpart F. These regulations define the process for agricultural clearance orders, which request workers for less than one year of employment. They are based on the DOL's policy of requiring specific assurances and information in agricultural clearance orders. Protections are provided to workers who are not seeking permanent relocation, but rather temporary agricultural employment.
- Both Agricultural Employers and Farm Labor contractors can use the ARS to seek workers.
- No Employment Service office or State Workforce Agency may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless the ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area OR the ES office anticipates a shortage of local workers.

Partners & Referrals

- It's important that Migrant Seasonal Farm Workers are identified by partners and referred to Illinois Department of Employment Security (IDES) in order to make use of the Agricultural Recruitment System (ARS) for job referrals.
- Partners should make every effort to make client referrals to IDES in order to attempt to fill agricultural job orders by domestic workers, lowering the need for H-2A foreign labor workers.
- Partners should make every effort to make client referrals to IDES in order to attempt to fill non-ag job orders by domestic workers, lowering the need for H-2B foreign labor workers.

Agricultural Recruitment System (ARS) - How the Process Works -

I need workers!



End of ARS Section





Thanks for your time!

If you have any questions regarding the Migrant Seasonal Farm Worker or Foreign Labor Certification program, please reach out to the team mailbox:
DES.ILSWA@ILLINOIS.GOV

