



# POLICY BRIEF

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## **Adapt and overcome: Washington's COVID farm story**

By Pam Lewison, Director, Initiative on Agriculture

December 2020

### **Key Findings**

1. Washington state grows 58 percent of the apples produced in the United States.
2. Approximately 21,000 workers with an H-2A work visa were hired for the 2020 growing season, approximately 5,000 workers short of the year-over-year average for our state.
3. Washington could become the first state in the country to impose a state-only H-2A program fee. If it does so, our state would become the most expensive place in the U.S. to hire migrant workers.
4. Two separate lawsuits to ban the use of bunkbeds in worker housing failed in 2020. In both cases, the court determined there was no significant increased risk with the use of bunkbeds.
5. Management of public lands resources will provide the best answer to wildfire protection for private landowners throughout Washington state.
6. Illegal importation of apple maggots will continue to pose a problem until next spring when the true consequences of the action will come to light.
7. Washington state's agricultural employers are working hard to keep their employees safe and healthy while also balancing keeping their businesses viable and protecting jobs and good wages.



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## Introduction

During an economic downturn in which Washington state has seen an unprecedented number of unemployment claims<sup>1</sup>, state budget fluctuations<sup>2</sup>, and social upheaval<sup>3</sup>, Washington's farmers and ranchers have continued to produce food for their neighbors, for the country, and for people living around the globe. Farmers and ranchers in our state have reworked budgets, have adapted to changes in farm labor requirements<sup>4</sup>, and have modified their crop planting patterns to meet the problems of a weakened economy and uncertain futures. Meanwhile, lawmakers unfamiliar with the vicissitudes of agriculture or the fragility of its ecosystem continue to impose rules that force the second largest economic driver of the state to languish in uncertainty. The decisions handed down from Olympia and imposed on farmers and ranchers are felt acutely in every facet of the agricultural community, but they are perhaps best highlighted by an examination of the tree fruit industry.

Washington state is the largest producer of apples in the nation, growing 58 percent of the apples in the United States.<sup>5</sup> Tree fruit producers in our state also lead the nation in sweet cherry production and are second in production of pears and grapes. Our tree fruit producers rank second only to California in sales generated by county.

## Optimism replaced with concern

At the beginning of 2020, the agricultural community was marginally more optimistic about the growing season than in the previous year.<sup>6</sup> Many farmers and ranchers had survived 2019 with their businesses intact and were hopeful the new U.S. trade agreements with China, Canada and Mexico would yield positive benefits for the agricultural economy. However, with the onset of the pandemic<sup>7</sup>, much of that early

1 "State unemployment rate drops as economy slowly heals from pandemic." KOMO News. Sept. 16, 2020. Accessed Sept. 23, 2020. <https://komonews.com/news/local/state-unemployment-drops-as-economy-slowly-heals-from-pandemic>.

2 "State revenue growing overall but budget deficit still projected." Jason Mercier. Sept. 23, 2020. Accessed Sept. 23, 2020. <https://www.washingtonpolicy.org/publications/detail/state-revenues-growing-overall-but-budget-deficit-still-projected>.

3 "Recent protests, crime may be taking toll on downtown Seattle businesses." KOMO News. Sept. 22, 2020. Accessed Sept. 23, 2020. <https://komonews.com/news/operation-crime-justice/recent-protests-crime-may-be-taking-toll-on-downtown-seattle-businesses>.

4 COVID-19 (Novel Coronavirus Disease) Information. Washington State Department of Agriculture. Accessed Sept. 23, 2020. <https://agr.wa.gov/about-wsda/news-and-media-relations/covid-19>.

5 Apples in Washington State. Washington State University Extension. Accessed Sept. 23, 2020. [https://extension.wsu.edu/chelan-douglas/agriculture/treefruit/horticulture/tree\\_fruit\\_overview/](https://extension.wsu.edu/chelan-douglas/agriculture/treefruit/horticulture/tree_fruit_overview/).

6 "2020 outlook projects principal crops rebound." American Farm Bureau Federation. Feb. 25, 2020. Accessed Sept. 23, 2020. <https://www.fb.org/market-intel/2020-outlook-projects-principal-crops-rebound>.

7 "Impact of COVID-19 on Agriculture." American Farm Bureau Federation. Accessed Sept. 23, 2020. <https://www.fb.org/land/impact-covid19-on-ag>.

optimism in the overall agricultural outlook eroded as commodity markets began a free-fall, banks delayed loan approvals, and workforce problems emerged.

When the governor’s “Stay Home, Stay Healthy” order was imposed in March and he declared agriculture an “essential service,”<sup>8</sup> Washington’s agricultural community celebrated the recognition it felt was long deserved. However, the glow of praise was short-lived as food shortages<sup>9</sup>, meat processing slowdowns<sup>10</sup>, and labor restrictions<sup>11</sup> began to pile on to farmers and ranchers around the state and country. In addition to concerns about keeping their businesses operational, our state’s growers now faced worry for the health and safety of their workers, families, and neighbors.

## H-2A and the bid for farmworkers

Much of Washington’s cash crops are labor-intensive and require highly skilled workers to tend them by hand. Tree fruit growers in particular rely on a seasonal, migrant labor force to be successful in their production of our state’s premier products. Washington ranks in the top five in the country in the number of workers hired under the federal H-2A jobs program.<sup>12</sup>

The H-2A program is a federal work visa program, providing a means by which migrant workers can legally enter the United States to provide much-needed labor to farms across the country. In our state, the popularity of program has grown by nearly 1,000 percent in the last decade.

Congress designed the program to help growers fill unmet labor needs on their farms. In 2019, farmers in Washington hired about 26,000 H-2A workers to fill open positions that were not met by local labor pools.<sup>13</sup> Local labor advocates claim there is no need to hire H-2A workers and that they take jobs away from local workers. However, neither claim is accurate. If local workers were readily available, the H-2A program would not be used at the level of 26,000 workers annually.

Farmers who use the H-2A program may only do so if no other workers are available. They must first advertise for a minimum of 60 days in local publications or at the local Unemployment Security office, whichever provides the highest likelihood of reaching the local labor pool.<sup>14</sup> Whatever labor needs farmers still have after hiring from the local resources, can then be hired through the H-2A program. However, even local applicants who apply late must be given preference over H-2A applicants.

Finally, to ensure H-2A workers are hired as a last resort, farmers must pay them a premium wage above what a local worker would be paid. The wage H-2A workers

8 “Here are the jobs and businesses Washington state considers essential.” *The Olympian*. March 23, 2020. Updated April 1, 2020. Accessed Sept. 23, 2020. <https://www.theolympian.com/news/coronavirus/article241452516.html>.

9 “From flour to canned soup, coronavirus surge pressures food supplies.” *The Wall Street Journal*. July 12, 2020. Accessed Sept. 23, 2020. <https://www.wsj.com/articles/coronavirus-surge-challenges-struggling-food-supply-chains-11594546200>.

10 “Pandemic will hinder meat production for months, JBS US head warns.” *Food Dive*. May 18, 2020. Accessed Sept. 23, 2020. <https://www.fooddive.com/news/pandemic-will-hinder-meat-production-for-months-jbs-us-head-warns/578085/>.

11 “Agricultural COVID-19 Requirements: General Provisions for All Work Sites and All Work-Related Functions.” Washington State Governor’s Office. Aug. 19, 2020. Accessed Sept. 24, 2020. <https://www.governor.wa.gov/sites/default/files/COVID19AgriculturalSafetyPlan.pdf>.

12 “The H-2A Program in 2020.” *Rural Migration News*. May 19, 2020. Accessed Sept. 24, 2020. <https://migration.ucdavis.edu/rmn/blog/post/?id=2429>.

13 “H-2A Temporary Agricultural Labor Certification Program – Selected Statistics, FY 2019.” U.S. Department of Labor Employment and Training Administration. Sept. 30, 2019. Access Sept. 25, 2020. [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A\\_Selected\\_Statistics\\_FY2019\\_Q4.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2019_Q4.pdf)

14 “Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA).” U.S. Department of Labor Wage and Hour Division. February 2010. Accessed Sept. 25, 2020. <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>.

receive is called the Adverse Effect Wage Rate (AEWR) and is a variable wage set individually for each state. The 2020 AEWR for Washington state is \$15.83, the highest in the United States this year along with Oregon.<sup>15</sup>

As restrictions related to the coronavirus spread around the country, news of the curtailment of H-2A visas was announced and contested in Washington because of the vital importance of the farmworkers to our state's overall economy. In addition to providing a critical service to farms throughout our state, H-2A visas provide migrant workers with income to see their families through a year's worth of living expenses in 10 months or less of work. The mutually beneficial arrangement appeared to be stymied by the onset of the coronavirus and would have crippled the fruit production industry in our state had the federal limitations not been removed in late spring.

## **H-2A woes do not end with the harvest**

Workers with H-2A visas and their employers are not through with the complex H-2A visa process once this growing season ends. Workers and employers were originally concerned about the ability to hire workers this spring. Currently, both groups await the findings of a panel assembled by 2020 legislation to determine whether Washington state should be allowed to become the first state in the nation to assess a state-only fee to administer the H-2A program.

The Washington State Department of Employment Security cited the exponential growth of the H-2A program as the reason for the need to assess an additional fee for the program. Agricultural employers, however, note they are already under an extraordinary cost burden during the H-2A application process, with nearly \$1,500 per worker application in fees to complete the federal process, in addition to the costs for worker travel, housing development, and the AEWR.

Rather than make a unilateral legislative decision during the legislative session to impose an additional fee for H-2A administration, H-2A workers and farm employers are awaiting the decision of a panel that includes four members of the agricultural community, four members from the farmworker community, and a non-voting member from the Employment Security Department. The panel was convened by legislation to explore the need for an additional fee as well as what that cost might be. A report is due to the governor in October 2020.<sup>16</sup>

## **Worker housing under attack**

The use of the H-2A visa program also requires farmers to become housing developers and managers. Among the requirements for agricultural employers using the H-2A visa program, are worker housing units for all visa-holding employees.<sup>17</sup>

The majority of those housing units are furnished with bunk beds to accommodate the necessary number of temporary workers in residence during the growing season.

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<sup>15</sup> Adverse Effect Wage Rates. U.S. Department of Labor Employment and Training Administration. Dec. 19, 2019. Accessed Sept. 25, 2020. <https://www.dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates>.

<sup>16</sup> "ESD Establishes Agricultural and Seasonal Workforce Services Advisory Committee, announces first meeting Aug. 26." Washington State Employment Security Department. Aug. 20, 2019. Accessed Sept. 28, 2020. <https://esd.wa.gov/newsroom/ESD-Ag-Committee>.

<sup>17</sup> Temporary Worker and Migrant Farmworker Housing. Washington State Department of Health. Accessed Sept. 28, 2020. <https://www.doh.wa.gov/LicensesPermitsandCertificates/FacilitiesNewReneworUpdate/TemporaryWorkerHousing>.

Twice during the course of this growing season, labor advocates have sued the state to ban the use of bunkbeds in temporary worker housing units.<sup>18 19</sup> Both lawsuits failed.

According to a dissenting affidavit filed by United Farm Workers, the reason for the lawsuits was to end the hiring of H-2A workers in Washington state, not to improve health and safety for farmworkers. The affidavit argued that Families Unidas Por Las Justicia's "repeated state goal is to end the federal H2A program in Washington and believes that a ban on bunkbeds will achieve that goal. However, despite our wish for better protections for farmworkers and a long held desire that the H2A program become unnecessary, the reality is that the H2A program is not going to be eliminated, but is going to continue to grow," wrote Erik Nicholson, National Vice President for the United Farm Workers of America.<sup>20</sup>

During the mediation of the first suit, farm labor advocates sent a list of demands to a Washington farmer that included ping-pong and pool tables as well as unlimited cable channels or internet access for all residents of the temporary worker housing in exchange for dropping the bunk bed suit.<sup>21</sup> In rural communities, cable and internet access are often not available in all areas or are limited. The crux of the problem with such demands is not the lack of availability for these comforts but rather the appearance of hypocrisy that comes with them. If labor advocates were invested in the health of farmworkers, a trade for entertainment would not be a sufficient offset for purportedly "dangerous" bunk beds.

While banning the use of bunk beds failed to gain any traction, Washington's worker housing has been retrofitted with plastic barriers between bathroom and kitchen fixtures and appliances; spacing between beds – both single and bunk; additional ventilation systems; and allowances for social distancing during off-work hours.<sup>22</sup> All these measures are part of the state's updated policies for agricultural workers and are being enforced by various state agencies, particularly the departments of Labor & Industries and Health.

## **Assigned working groups cause interpersonal problems**

In an effort to contain the potential spread of the coronavirus, agricultural employers have been required to assign their employees to work groups of 15-or-fewer people who must commute, work, and live together for the duration of their visa contracts. These work groups are called cohorts. The cohort requirement has posed a number of problems for employers, particularly when personal disputes have arisen between individuals assigned to a working group.

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18 "Proposed rules to protect farmworkers from coronavirus could halve harvest, jobs." Simone Del, Q13 Fox. April 24, 2020. Accessed Sept. 28, 2020. <https://www.q13fox.com/news/proposed-rules-to-protect-farmworkers-from-coronavirus-could-halve-harvest-jobs>.

19 "Farm workers union sues Washington over virus housing rules." AP News. June 8, 2020. Accessed Sept. 28, 2020. <https://apnews.com/article/527f405e867c85794adfcfe1ec0fd285>.

20 *Familias Unidas Por Las Justicia AFL-CIO v. Washington State Department of Labor & Industries and Washington State Department of Health*, Superior Court of Washington for Thurston County, No. 20-2-01556-34. Declaration of Erik Nicholson. Filed July 16, 2020, 10:38 a.m.

21 "UFW Proposal: Worksite, housing, and transportation, May 4, 2020." May 4, 2020. Accessed Sept. 28, 2020. <https://wafila.org/resources/Documents/UFW%20Proposal.pdf>

22 Washington Administrative Code 296-307-16102: Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. Accessed Sept. 28, 2020. <https://www.lni.wa.gov/rulemaking-activity/AO20-09/2009CR103EAdoption.pdf>.

When state officials imposed the cohort requirement, they said it was meant to contain the spread of the coronavirus amongst people working on farms throughout the state. However, officials provided no advice about what farmers should do if two people assigned to a group did not get along. Work contracts for H-2A visas can last up to 12 months; being in the constant presence of another person with whom you do not interact well is bound to produce conflict.

Additionally, forced assigned working groups brought to light an additional question: when are workers no longer working? According to the requirements, employers are to discourage workers from socializing in their off-hours with employees from other cohorts.

Agricultural employers should not be held responsible for how their employees spend their non-working hours, nor should employees be policed by their employers during their leisure time. If agricultural employers are expected to monitor their employees during their leisure time, employers should be compensated for the additional labor associated with that and their workers should be as well.

## **Mask mandate**

Initially, wearing masks was voluntary. As scientific studies vacillated about whether wearing masks, especially outdoors, provides any meaningful protection against the coronavirus, state officials changed course from suggesting employees wear masks to then requiring masks for all agricultural employees.

At that time, however, there were conflicting reports about what worked, and procurement of basic supplies was difficult. Agriculture was not given a special priority in the supply chain. Agriculture associations like the Washington State Farm Bureau stepped in to help by procuring liquid hand sanitizer and cloth face masks to any agricultural employer with employees at no cost.

All told, the Farm Bureau has given away more than 700,000 reusable cloth face masks and more than 53,000 gallons of hand sanitizer to any agricultural employer throughout the state in 2020 who has needed them for their workers. Agricultural employers have also been able to place mask orders if they have been unable to attend a giveaway event.<sup>23</sup>

Yakima County has continued to highlight the concerns of workers and employers as meat and fruit packers had numerous cases of coronavirus reported in their facilities. Several fruit packers have also faced strikes as workers demanded hazard pay for working during the quarantine. Workers, however, were not forced to attend work during the quarantine.

Additionally, hazard pay was not afforded to the thousands of other people who continued to work during the quarantine – farmers, ranchers, truckers, grocery clerks, and others – despite the fact that some of those professions spent considerably more time exposed to the public. Agricultural employers who could manage it, came to agreements with their employees – in some cases offering higher pay for a limited period of time, while others offered overall pay raises.<sup>24</sup>

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<sup>23</sup> Washington State Farm Bureau Employer Resources. Accessed Sept. 28, 2020. <https://wsfb.com/employer-resources/>

<sup>24</sup> “Local activists rally at state capital for hazard pay for farmers.” YakTriNews by Dru Miller. Posted Aug. 24, 2020. Updated

## Apple maggots in Eastern Washington

The continual threat of wildfire and its aftermath cast a long shadow over Eastern Washington again this year.<sup>25</sup> Much of the state's tree fruit is grown in the hills of the northern part the central basin and the Yakima Valley where the soil is fertile but also surrounded by public lands and grassy areas. Many of the 2020 wildfires that swept through Eastern Washington were fed, in part, by poorly managed public lands. Those mismanaged public lands, in turn, led to the destruction of timber, pastures, orchards, and homes on private land. Until state officials solve the public lands management problem and reduce the fire hazard on public lands, orchards, pastures, and homes will continue to fall victim to the annual wildfires that destroy everything in their path.

This year also included an additional threat after most of the fires were under control: apple maggots.<sup>26</sup> Several counties in the eastern half of our state enjoy the designation of being free from an infestation of apple maggots – an invasive and virulent fruit fly species that, once present in an orchard, is virtually impossible to eradicate.<sup>27</sup>

All of Western Washington's homegrown apples are under a quarantine for the pests. After the most recent round of fires, the governor illegally brought several boxes of apples from Western Washington to Eastern Washington as part of a media event, placing every community in which they were delivered at risk for infestation.<sup>28</sup>

The real trouble with the importation is, even if all the apples are recovered and destroyed, there can be no confirmation that orchards in Eastern Washington are safe until next year, when the mature fruit flies from the infested apples emerge from their hibernation in orchard soils.

## Farmers doing what they do best

In the midst of the turmoil of 2020, Washington's agricultural community has continued to support its farmworkers, consumers, and each other by carrying on with the vital work of food production. The production of fresh fruit in our state, helps fight disease, contributes to human health and represents \$5 billion in annual value.<sup>29</sup>

Most farms – 96 percent in Washington state – are family-owned operations trying to keep their employees and bills paid while also maintaining ownership of a farm. All businesses, farms included, need to be viewed from a holistic perspective. When farms have to absorb additional inputs and costs imposed by state officials, like retrofitting worker housing or purchasing personal protective equipment not

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Aug. 25, 2020. Accessed Sept. 28, 2020. <https://www.yaktrine.com/local-activists-rally-at-state-capital-for-hazard-pay-for-farmers/>

25 "Pearl Hill Fire 90% contained; Cold Springs Fire 60%." *Wenatchee World* by Pete O'Cain and Bridget Mire. Printed Sept. 14, 2020. Accessed Sept. 28, 2020. [https://www.wenatchee-world.com/paywalloff/pearl-hill-fire-90-contained-cold-springs-fire-60/article\\_2e43101c-f6ed-11ea-9f0b-2717413ae29a.html](https://www.wenatchee-world.com/paywalloff/pearl-hill-fire-90-contained-cold-springs-fire-60/article_2e43101c-f6ed-11ea-9f0b-2717413ae29a.html).

26 Apple Maggot Quarantine. Washington State Department of Agriculture. Accessed Sept. 28, 2020. <https://agr.wa.gov/departments/insects-pests-and-weeds/insects/apple-maggot/quarantine>.

27 Apple Maggot Control Options for WA Apple Growers. By Dr. Jay Brunner, Washington State University Tree Fruit. June 2016. Accessed Sept. 28, 2020. [http://treefruit.wsu.edu/crop-protection/opm/am-control\\_waapple-growers/](http://treefruit.wsu.edu/crop-protection/opm/am-control_waapple-growers/).

28 "Inslee broke law by bringing apples to fire-ravaged areas." *The Seattle Times* by The Associated Press. Published Sept. 17, 2020. Updated Sept. 18, 2020. Accessed Oct. 6, 2020. <https://www.seattletimes.com/seattle-news/inslee-broke-law-by-bringing-apples-to-fire-ravaged-areas/>.

29 "State of the Tree Fruit Industry in Washington State." Washington State Tree Fruit Association. 2017. Accessed Sept. 28, 2020. <http://wafarmersmarkets.org/wp-content/uploads/2017/02/State-of-Tree-Fruit-in-WA-2-2-17.pdf>.



previously budgeted for, those costs have to be covered by cutting from another part of their budget.

Unlike some businesses that can pass on cost increases to their customers, agricultural producers do not have the option to increase the cost of their products. As a wholesale manufacturer of goods, farmers and ranchers sell their products at the price set by the marketplace. The market price translates into agricultural employers weighing the cost of maintaining their workforce against maintaining ownership of their business.

## **Regulated out of business**

Washington state has a unique diversity of crops and livestock production, with more than 300 agricultural products available from around the state. However, state-imposed regulation continues to make agricultural producers vulnerable.

Whether it is an increase in fees imposed on a much-needed jobs program, a difficult interpersonal working group dynamic, or concern over how to balance worker safety and financial viability, governmental intervention into how agricultural operations function has the potential for a catastrophic ripple effect. Agriculture has an individual ecosystem that is no less delicate than that of a riparian zone or grassland. One change imposed by state regulations along the management chain of that system creates a series of harmful consequences.

## **Conclusion**

Washington's farmers and ranchers were rightly designated as "essential" to all Washingtonians for their contributions to the economy, as well as the health and safety of all communities, in early spring.

Like all employers trying to adapt to the ever-changing rules imposed by state leaders, agricultural employers have worked hard to keep their employees safe while maintaining the viability of their businesses and produce food for people. That effort is nowhere more apparent than in the tree fruit orchards throughout our state. The state should work with farmers and their employees to reduce costly regulations to keep people working and honor their status as "essential."

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