POLICY UPDATE · H-2A · AGRICULTURAL LABOR

Dairy & H-2A: What the New USCIS Memo Really Means for American Farm Businesses

A landmark clarification. A long time coming. And a reminder that the path forward has always required more than just reading the headlines. · USCIS PM-602-0200

THE ANNOUNCEMENT

An Expansion of H-2A Eligibility – Or Reaffirming Existing Rules?

On June 17, 2026, U.S. Citizenship and Immigration Services issued Policy Memorandum PM-602-0200, formally titled *Guidance on Temporary or Seasonal Need for H-2A Petitions for Dairying.* With good reason, the memo arrived with much fanfare from the industry, with many celebrating the administration's efforts to expand H-2A program eligibility to a sector that has historically been left in the cold.

But as always, the devil is in the details; beyond the headlines is a significant amount of nuance that dairy employers – and their agents or attorneys – will have to navigate. In that regard, this week's announcement is less of a groundbreaking policy shift and more of an affirmation of existing rules.

It has always been a misnomer to say that the dairy industry is not eligible for the H-2A program. At másLabor, we often hear this talking point presented as a categorical truth. But the reality is more complicated – the H-2A program requires employers to demonstrate a temporary or seasonal need, and under the current regulatory framework, very few dairies can satisfy the standard.

But "very few" is not "zero." Indeed, over the years másLabor has worked with several dairy operations to successfully secure labor certifications. The strategy we used? The same one outlined in the new USCIS policy memo.

Dairy's Flawed History in the H-2A Program

The exclusion of most dairy operations from the H-2A program can largely be traced to the landmark administrative case, *Matter of: Grandview Dairy*. This is the Board of Alien Labor Certification Appeals (BALCA) decision that affirmed the so-called "10 month rule."

Under this standard, the U.S. Department of Labor (DOL) will reject any H-2A labor need that exceeds 10 months unless the employer provides compelling evidence of extraordinary circumstances that warrant a longer need while remaining within the legal definition of "temporary." This is, unfortunately, a high barrier to clear.

Nevertheless, dairy operations can (and *do*) already qualify for the program if their labor need meets the regulatory standards for a "seasonal" need. This means demonstrating that a particular need on the farm is annually recurring and based on some kind of event or pattern requiring elevated labor levels.

For example, in one case, másLabor was successful on behalf of a Texas-based dairy that moved its cows into an indoor facility during the peak summer to minimize the risk of heat stress. Because the

cows were inside, they had a reduced need for ranch workers to herd the cows between the pasture and the milking facility. The employer was thus able to secure H-2A workers in the non-summer months.

Another long-time másLabor client utilized the “New Zealand” model of dairy farming. Under this model, cows enjoy an approximate two-month “dry-out” period in which no milking activities occur. The H-2A season is therefore built around the 10 months out of the year in which milking duties *do* occur.

In fact, the U.S. Department of Labor (DOL) itself acknowledged the potential eligibility for dairy in the Preamble to the Obama-era regulations issued in 2010, which stated:

> *"The determination of whether a particular dairy operation is eligible for an H-2A certification rests on a finding that the duration of the activity and the need for that activity is temporary or seasonal."*
>
> USDOL/ETA PREAMBLE, 20 CFR 655.103(D), FEBRUARY 2010

This is precisely the interpretation that USCIS, in its policy memo, is now reaffirming. The eligibility of any dairy operation for the H-2A program will depend on its circumstances and whether such circumstances meet the existing regulatory standards.

Distinct Needs and the *Vermillion Ranch* Standard

As noted in the USCIS memo, dairies may be eligible for the H-2A program (including consecutive H-2A contracts that collectively span longer than 10 months) if the employer can demonstrate that the duties being performed at different times of year are materially distinct and thus qualify as separate labor needs.

Again, we note that this is already the law of the land. DOL in particular has long recognized that 10 months is not a categorical limit on H-2A workers, but rather, the maximum period of employment for a particular *need*. But agricultural operations can have multiple needs. For example, a fruit farm may employ field workers in the orchard for 10 months and have a completely separate 10-month season for its packing house workers are truck drivers used to deliver the fruit to market. The reason is because these occupations – and the duties performed – are distinct.

Dairies are no exception. Indeed, there may be many circumstances in which dairies can demonstrate a need for workers to perform a particular function during part of the year and perform wholly independent functions during other parts. For example, an employer could employ workers temporarily to assist with the calving season and a separate set of workers during a different seasonal cycle. As long as the employer can demonstrate that these needs are independent, they will each qualify for the H-2A program.

The most employer-favorable BALCA ruling on this point is the case *Matter of: Vermillion Ranch*, which held that winter cattle operations were fundamentally distinct from work performed in the warm weather months. Accordingly, herders and ranch hands may be employed on consecutive contracts during all months of the year, provided that the duties being performed on each contract is distinguishable.

WHAT THE MEMO ACTUALLY SAYS

Three Pathways - *With Eyes Open*

The 2026 memo identifies several factual scenarios under which a dairy employer may be able to establish the temporary or seasonal need required for H-2A eligibility. Our team has reviewed the full

text carefully, and we want to be straightforward with our clients and prospects about what each pathway offers in practice.

01

THE CALVING CYCLE PETITION

For dairies that implement distinct breeding seasons, the natural 10-month lactation cycle followed by a two-month dry period before calving, can create a documentable H-2A window tied to a specific biological event or pattern. Employers may file separate petitions for each calving season, each covering the period of heightened labor need. This is a clean, recurring structure where it describes how the operation runs.

Applies to: Seasonally managed herds with defined calving windows

02

SEASONAL DUTY DIFFERENTIATION

Even dairies without defined calving seasons may qualify if they can demonstrate that workers perform materially different duties in different seasons, spring and summer herd management versus fall and winter preparation, for instance, even if some tasks, like milking, remain constant year-round. The memo draws on prior litigation standards and codifies a framework that is more favorable to employers than DOL's prior more rigid approach, though it requires careful documentation of how duties shift across seasons.

Applies to: Most conventional dairy operations with the right documentation strategy

03

EXTRAORDINARY CIRCUMSTANCES

For a need that exceeds one year, or that cannot be neatly tied to a seasonal pattern, an employer may still qualify by demonstrating extraordinary circumstances, a key employee departure, a significant herd expansion, a facility transition. This pathway exists within the existing regulatory framework and is not new. It is, however, genuinely narrow. Most dairies will not qualify under this scenario without unusual facts, and we would be doing you a disservice to suggest otherwise.

Applies to: One-time operational disruptions with clear, documented evidence

A NOTE OF CANDOR

Most dairy operations in the United States run year-round, continuous milking schedules. The 2026 memo **does not** change that underlying reality. What it does is create a more structured framework for the subset of dairy employers who genuinely have a temporary or seasonal need, and a more defensible basis on which to document and petition. We will be watching closely to see how DOL responds to and interprets the memo in its own certification process. Employers who rush to file without understanding how USCIS will weigh consecutive filings risk denials that could limit future access to the program. **Experience and precision matter here more than enthusiasm**.

THE BIG PICTURE

Saving American Businesses - That's *Always* Been the Mission

At másLabor, we've spent years doing the work that doesn't make headlines: sitting in on federal comment periods, monitoring court decisions from the D.C. Circuit, tracking every revision to the AEWR framework, building relationships with the associations that represent the farms, nurseries, golf courses, hotels, and orchards that keep American communities running. We did that work not because there was an announcement to celebrate, but because our clients need partners who understand the system, not just today's news about it.

The June 2026 USCIS memo is a step forward for agricultural employers who have been locked out of a program they legally belong in. We will help our clients navigate it honestly and carefully. And we will continue to advocate through NCAE, through SEA, through every platform available to us for an H-2A and H-2B system that works for the American businesses that depend on it.

That's the work we've been doing since before most people knew dairying had anything to do with H-2A! Mission, Vision, Value – that’s the team at másLabor.