

H-2B GUEST WORKER VISA PROGRAM: LACK OF ACCOUNTABILITY LEADS TO EXPLOITATION OF WORKERS

The H-2B guest worker visa program permits U.S. employers to employ foreign workers for nonagricultural “temporary” work when no qualified U.S. workers are available, particularly in niche seasonal industries. The program’s lax requirements enable employers to largely bypass the U.S. hiring process. There is widespread exploitation of immigrant workers, and U.S. workers are deprived of job opportunities; all workers are subject to lower wages because of the program. The annual cap is set at 66,000 visas, but riders included in the recent appropriations laws have amounted to a massive expansion of the program. In FY 17, 83,600 H-2B visas were granted, but the returning worker exemption pushed that number over 100,000. Congress must act now to reform this abusive program.

H-2B lowers wages and standards for all workers.

- Companies use the H-2B guest worker visa program to import foreign workers and bypass workers available to work in the U.S. in various industries: construction, landscaping, seafood, forestry, hospitality, retail, restaurants, amusement and recreation, among others.
- Every year more and more jobs are in-sourced through exploitable foreign labor, leading to depressed wages and lowered safety standards for all workers—including those already in the U.S.¹ In the top H-2B occupation, Landscaping and Groundskeeping, employers pay workers on average between \$2.59 and \$3.37 LESS per hour by hiring an H-2B worker instead of a worker already in the U.S. earning the national average wage for the occupation.²
- Guest workers are at the mercy of their employers and have little recourse against abuse because they are not free to change employers. There have been many documented cases of abuse of H-2B employees,³ including human trafficking.⁴
- DOL is taking a tougher stand on oversight of employers and recruiters abusing the program, but more needs to be done.⁵

Some employers falsely claim that they need the H-2B program because their small businesses can’t find workers already in the U.S. to fill available jobs.

- This is simply not true in the construction and landscaping industry where workers are still seeking work after the huge job losses of the Great Recession.
- Some employers have justified the supposed need for H-2B workers by making it virtually impossible for U.S. job applicants to find and apply to job advertisements—for example, making applicants fax their resume after only posting the ad for a few days in a small print newspaper.
- Many employers seeking H-2B workers receive hundreds of visas annually, shutting out small employers who may need these seasonal workers for legitimate purposes to fill actual job shortages.

Instead of reforming the H-2B program to protect workers, Congress expanded it without transparency in recent appropriations acts.

- A set of riders slipped into the FY 2017 omnibus spending bill allowed for an expansion of the program, reintroduced the use of private wage surveys, added a returning worker exemption, and limited funding for Department of Labor oversight.

- In the past 3 fiscal years, these riders were replaced with a provision authorizing the Secretaries of Homeland Security and Labor to grant additional visas up to double the cap at their discretion and to include the returning worker exemption. It is estimated that the amount of H-2B visas could rise as high as 114,000 in FY 2018.⁶

There is no justification for using H-2B labor in the construction and landscaping industries.

- Construction and landscaping are two of the top ten H-2B industries. H-2B visa use in these industries has increased dramatically in recent years.
- LIUNA has members trained and ready to work in these industries.
- Congress should amend the program to make companies in these sectors ineligible for H-2B visas.

FY	Construction	Landscaping
2014	2,910	34,845
2015	3,619	42,104
2016	5,237	44,981
2017	4,499	53,938
2018	3,796	67,112

Employers continue to receive H-2B visas year after year even after engaging in illegal activity.
See LIUNA Case Studies.

Congress must do what is right for all workers in this country by strengthening labor protections for the H-2B visa program. Specifically, LIUNA calls on Congress to:

1. Bar employers who have violated state or Federal laws from getting H-2B visas.
2. Cap the number of H-2B visas that an employer may request at 100 per year.
3. Require employers seeking H-2B visas to demonstrate that they followed Federal advertising regulations to first try to hire U.S. workers.
4. Allow a path to permanent residency for H-2B workers who have worked in the U.S. for three consecutive years or more.
5. Strengthen oversight into the H-2B visa program by overturning language from recent appropriations acts barring DOL from enforcing regulations requiring H-2B employers to provide at least the same wages and working conditions to foreign workers as they do to workers already in the U.S. performing substantially the same work.
6. Codify provisions in the 2013 prevailing wage rule to require employers to pay the local average wage unless a collective bargaining agreement is applicable.
7. Bar H-2B visas in industries that cannot document a labor shortage, defined as showing real wages relative to other occupations, faster-than-average employment growth, and relatively low and declining unemployment rates.
8. Audit H-2B recruiters to prevent fraud and ensure they are following the law for workers and employers regarding advertising, processing, and transportation; create a registry of H-2B recruiters on the DOL website.
9. End the returning worker exemption.
10. Exempt construction and landscape from the H-2B program.

Endnotes

1 Costa, Daniel (2016). "The H-2B temporary foreign worker program." Economic Policy Institute.

2 *Id.*

3 Garrison, Jessica; Ken Bensinger; and Jeremy Singer-Vine. 2015. "The New American Slavery: Invited To The U.S., Foreign Workers Find A Nightmare." BuzzFeed News. https://www.buzzfeed.com/jessicagarrison/the-new-american-slavery-invited-to-the-us-foreign-workers-f?utm_term=.sxx3rAjJq#.ysRGPAr8Y

4 Polaris Project. 2015) "Labor Trafficking in the U.S.: A Closer Look at Temporary Work Visas." https://polarisproject.org/sites/default/files/Temp%20Visa_v5%20%281%29.pdf

5 Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment (2018)

6 Costa, Daniel (2018). "Congress is trying to use appropriations expand the H-2B temporary worker program—where migrants are exploitable and have few rights—by 73 percent." Economic Policy Institute.