

H-2B PROGRAM

Summary

Without an adequate number of workers, seasonal businesses cannot operate.

During the peak business periods, seasonal employers must increase their workforces with temporary staff in order to support their full-time staff and provide service to the increased business. These temporary workers are crucial to their ability to operate during peak seasons and retain full-time staff year round.

Without employees to fill temporary positions employers are faced with cutting back on the services and having to lay off full-time staff.

The H-2B program was created to allow short-term international workers to fill temporary jobs when no other workers can be found. In order to qualify for the program, an employer must be approved by four government agencies and must prove that the business has a need for temporary workers, extensive recruitment for workers was unsuccessful, and the position offers no less than the federal prevailing wage.

The number of workers allowed to participate in the program is limited to 66,000, regardless of the actual needs of the economy, and participants are required to return home when their temporary work period expires. In fiscal years 2004 and 2005, the 66,000 cap was reached six months and three months into the years, respectively. Employers who have peak seasons in the spring and summer were effectively prevented from obtaining the labor they needed because employers could not apply for these workers prior to 120 days of their need.

In 2005, Congress recognized the critical role the H-2B program serves and overwhelmingly approved the Save Our Small and Seasonal Businesses Act (SOSSBA). The legislation divided the annual cap of 66,000 in two, with 33,000 reserved for the first half of the fiscal year, and the remaining number available for the second half. SOSSBA also temporarily exempted from the cap prior H-2B workers who have participated in the program in one of the previous three years and successfully complied with all program requirements. Congress renewed the returning exemption once, but it expired on September 30, 2007.

Status

Although the returning worker exemption proved to be highly successful and was approved by Congress twice, the provision expired on September 30, 2007.

Representative Bart Stupak (D-Mich.) has introduced H.R. 1843, which would make the relief permanent while Senator Barbara Mikulski (D-Maryland) has introduced S. 988, which would extend the relief provision for five years.

Both bills enjoy widespread bipartisan support. However, the legislation is being blocked by the Congressional Hispanic Caucus and Speaker of the House Nancy Pelosi (D-Calif.) because they want to use the program's popularity and hold seasonal businesses hostage to leverage support for passage of immigration reform.

Representative Charles Boustany (R-La.) has introduced a "discharge petition" in the House of Representatives to bring H.R. 1843 to the floor for a vote. In order to do this, the petition must be signed by 218 members of the House.

Although participating in the H-2B program is confusing, time consuming, and very expensive, it is the vital last option available to seasonal employers in finding workers to fill temporary positions. While the renewal of the H-2B returning worker exemption remains stalled in Congress, seasonal businesses of all types throughout the United States face the very real possibility of closing their doors due to the lack of workers available for temporary jobs.

Myth – Fact

MYTH: H-2B workers are immigrants.

FACT: Wrong. Every H-2B worker is certified to be a non-immigrant by the U.S. government. During the screening of H-2B workers, U.S. consular officers ensure that the prospective worker has no intent to immigrate to the U.S. and identifies attributes such as a family, house, or other things that would ensure the worker returns home after the work period.

MYTH: H-2B workers dilute wages.

FACT: Absolutely wrong. Employers must pay H-2B workers at least the prevailing wage (which is higher than the minimum wage) as determined by the federal government. Further, H-2B workers cannot make less than American workers. 66,000 workers represent .05% of the American workforce. It is impossible that a miniscule percentage of the workforce could dilute the wages of the American economy even if the pay rates were low, which they are not.

MYTH: College students are available to work seasonal jobs.

FACT: There was a time when college students filled many seasonal jobs. However, that time is long past. School terms have increased further into the summer and begin earlier into the fall, while the peak seasons for hotels and other businesses are beginning earlier in the spring and ending later in the fall. Even if the school terms still did coincide with peak seasons, today's students are choosing to take internships during the summer or travel instead. The *Wall Street Journal* reported that "College students [are] taking internships that would buff their post graduation résumés, or sought jobs they could continue during the school year. High school students signed up for summer courses or exotic travel to build up their college applications." In an article entitled "More than half of teens forgo summer jobs," *USA Today* noted that the U.S. Department of Labor found "only 48.8% of teens ages 16 to 19 were working or looking for work in June" of 2007. "That was down from 51.6% in June 2006 and below the 60.2% in the labor force in June 2000."

MYTH: The positions pay minimum wage and if offered more, U.S. workers would apply.

FACT: Employers are required to pay at least the prevailing wage as determined by the federal government for specific positions. Because of the lack of labor available and the demand for temporary workers during peak business seasons, employers typically pay more than even the prevailing wage. In addition, many employers offer benefits such as subsidized housing, transportation, and meals.

MYTH: Employers want the H-2B workers because they are less expensive and easier to hire than American workers.

FACT: Absolutely wrong. Employers would much rather hire American workers, but they are simply not available for temporary positions. Hiring an H-2B worker is much more difficult and expensive than hiring an American worker. In order to obtain an H-2B worker, an employer must pay various fees and go through four government agencies that require them to typically use an agent to assist with the enormous amount of paperwork involved. In addition, many employers must travel to prospective H-2B workers' countries to interview them, pay for H-2B workers' transportation costs, pay various processing fees, and other things not required for American workers.