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Seasonal worker visa hits snag

Returning foreign employee exemption expires.

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WASHINGTON Businesses that complain they cannot fill their needs for workers came up against another obstacle this week when a little-known provision of immigration law expired, making it more difficult for seasonal workers to return to the United States.

Until Monday, the H-2B visa, which is used by companies to bring in non-skilled seasonal employees, had a loophole in it that allowed people who had been coming back to the United States to work year after year to return and not be counted against the annual cap of 66,000 H-2B visas. That exemption expired and congressional lawmakers who support the provision have so far been unable to get it reinstated.

"I will do everything I can to make sure small businesses do not suffer without this exemption," Sen. Barbara Mikulski said in a statement she made last week before the visa cap exemption lapsed. A spokeswoman for Mikulski said the Maryland Democrat is still negotiating with her colleagues to figure out a way to reinstate the exemption.

Opponents of expanding H-2B visas, such as Sen. Jeff Sessions, R-Ala., say they take jobs away from U. S. workers.

Rep. Zoe Lofgren, who chairs the House immigration subcommittee, said Tuesday that she may favor changes that go beyond just reinstating the returning worker exemption.

"I think we have to make clearer that people in this temporary category have the full protection of the law while they're here," said Lofgren, D-San Jose. "And we need to make sure that the hiring of people in this visa category does not put American workers at a disadvantage."

H-2B visas are used mainly in the hospitality industry as well as in some seasonal businesses like seafood and canneries.

"Once these companies with seasonal needs identify a good worker, for the ski season or the holiday season, they want to use these same workers year in and year out," explained Irvine immigration lawyer Mitchell Wexler. Without the exemption, he said, "that's not going to be possible."

Immigration officials said this week that the cap for seasonal workers for the first half of next year has already been reached. So it's too late for businesses to apply for an H-2B visa for any workers for next year's ski season, for example.

As with many immigration visa categories, businesses have to jump through many bureaucratic hoops in order to get the workers they need, he said. An employer must first advertise for the U.S. worker to do the job. They must pay the foreign worker the same wage they would pay a local employee.

Wexler said there are agencies worldwide that specialize in identifying H-2B workers. When they can find a "returning" worker, he said, "that's the prize" because until the exemption expired, a company could bring that worker into the United States without worrying whether there was a visa available for them.

Mikulski had hoped to get the exemption for the returning workers into the comprehensive immigration bill that failed in the Senate earlier this year. She is still hoping to add the measure into another Senate bill.

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