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Following the law, companies wind up in a bind

By DIANE STAFFORD
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If your landscape contractor doesn't mulch your plantings this spring ...

If your favorite campground's facilities remain closed at the beginning of the summer ...

If your building's exterior painting contractor can't give you a date to begin work ...

You may be coming to grips with a little-known, little-understood guest worker program that this year is imperiling some small businesses and the services they provide.

From the lobster industry in Maine to landscape companies in Kansas City to carnival exhibitors in Southern California, thousands of U.S. business operators are sweating out their ability to keep their customers because of a limit placed by the federal government on H-2B visas.

H-2Bs are permission slips that allow manual laborers to work — temporarily and legally — in the United States for employers who sponsor their visa applications.

For this fiscal year, U.S. businesses are allowed only about half the number of H-2B seasonal workers that were hired last year.

After the cap on applications for the second half of the fiscal year was reached this month, several dozen Kansas City companies learned their applications didn't make the cut.

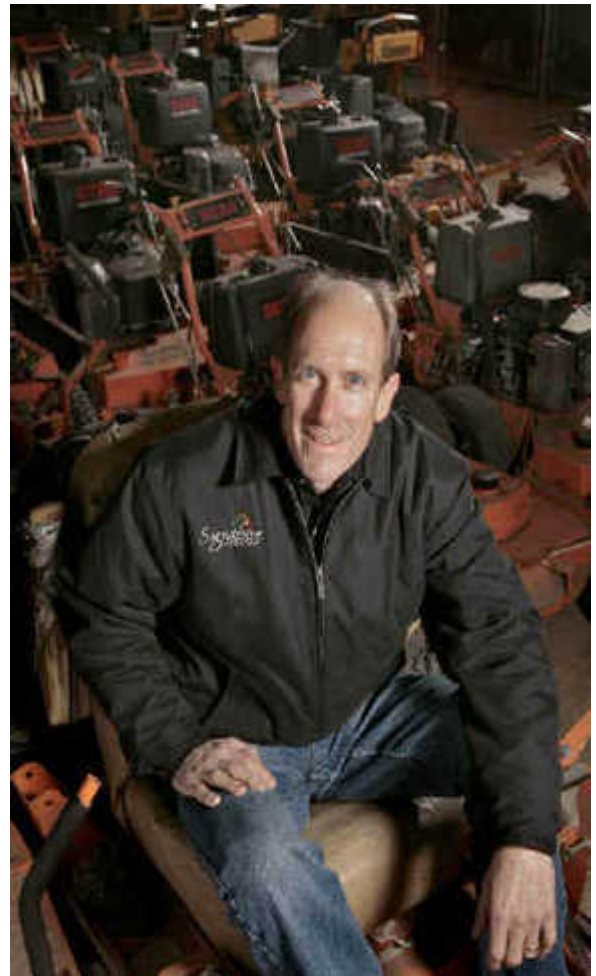
And, because of the way H-2Bs are allocated, even those companies that won approval won't be getting their seasonal workers until April. That late arrival date is putting many area landscape companies in a hiring and scheduling pinch.

In the Kansas City area, no industry counts more on H-2B workers than the landscaping and yard care trade. By May, one landscape company owner said, it should be clear to customers which companies received their H-2B visa workers and which didn't.

To understand why H-2B workers are sought, consider the experience of Lance Schelhammer Jr., owner of **Grass-Roots Inc.**, based in Olathe. His company employs 20 to 30 U.S. workers year-round. But, when its outdoor business kicks up in March, it needs about 50 more workers for the growing season.

Last year, Schelhammer's H-2B authorizations did not come through until mid-May, so he tried to hire locally.

"It was a nightmare. It was absolutely terrible," he said. "We went to temp agencies, to day-labor agencies all over town. We ran ads all the time.



As owner of Signature Landscape, Bill Gordon was lucky enough to get in under the visa cap this year but won't have enough people to run all of his machines until April. He augments his staff each growing season with about 100 guest workers. And as he notes, "H-2Bs are legal workers."

“We went through 150 workers, and only two of them lasted more than two weeks. The longest tenure out of 150 was the one worker who lasted 1½ months. Not one of the locals we hired stayed the entire season.”

For about \$12 an hour, Schelhammer said, he couldn't find and keep American-born workers in the Kansas City area who would cut grass. Fortunately for his business, he added, his 55 H-2B applications were approved this year and the guest workers are expected to begin work in April.

For companies that didn't win the visa lottery this year — and there are some large area businesses among them — the alternative may be resorting to undocumented workers.

“It puts employers in a position where they almost have to hire undocumented workers,” said immigration attorney Alejandro Solorio. “This is a great hardship on the companies that bring back some of the same seasonal workers year after year.”

Solorio, who helps companies file H-2B applications, said that this year not one of his client companies had their applications approved.

Caught up in the explosive immigration debate, and fanned by election year politics, **Congress** last year declined to raise the cap, which this year allows 66,000 guest workers to work in the United States.

Half of those visas are allocated for the winter season, half for the summer. For work this summer season, the 33,000 cap was reached Jan. 2.

Congress also declined to extend an amendment that last year had exempted from the visa cap returning H-2B workers (those who'd held an H-2B visa in any of the prior three years). The effect was to cut in half the number of guest workers authorized this year compared with last year, making the scramble for seasonal workers this year more difficult than ever.

The Hispanic caucus in Congress, playing political hardball with its immigration wish list, thus far has declined to support an extension of the returning worker exemption. It supports addressing larger immigration issues as a whole rather than tinkering piecemeal with H-2B expansion.

Business owners who rely on temporary guest workers say the furor has grown out of perspective; 66,000 H-2B workers are a pinprick on the labor landscape in a nation that employs about 150 million workers.

Guest worker visas nonetheless have been drawn into immigration politics — though in urban areas, the H-2B visa program has a lower profile than the more controversial H-1B program, which provides temporary work visas for high-skilled or technical workers.

American computer workers, especially, have long fought H-1B visas on the grounds that they've lost their jobs to lower-paid foreigners and that earnings in that profession have been held down as a result.

But area landscape company operators echo complaints from ski resorts, fish hatcheries, foresters, painting companies, and many other industries that require outdoor, physical labor.

They say they try but can't get American workers to accept or stay on the job — partly because it's just seasonal work, and partly because the work is just plain hard labor, generally for \$11 or \$12 an hour. Even college students are shunning outdoor work in favor of office internships and summer school, they said.

Some critics, such as the **Southern Poverty Law Center**, have found instances of exploitation of H-2B workers who, in some cases (particularly in the forestry industry) were found to be “held virtually captive by employers who seize their documents.”

But several area businessmen who use the complex H-2B visa program say that they are legally bound to pay the prevailing market-based wages to their H-2B workers, and that getting guest workers is a time-consuming and expensive process they'd avoid if they could find enough American workers.

Two active participants in the H-2B program in the Kansas City area are Curby Hughes of **Curby's Lawn & Garden**, based in Gardner, and Bill Gordon, of **Signature Landscape**, based in Olathe.

They have joined members of the **Mid America Green Industry Council**, a regional trade group, and members of **Save Small Business**, a national interest group lobbying to expand H-2B visas through a bill that faces tough opposition.

Hughes, Gordon and others have gone to Washington and called on area congressional representatives in an attempt to explain the economic ripples from the H-2B cap.

A survey conducted recently by *Lawn & Landscape* magazine found that about half of the landscape companies polled will not purchase equipment they'd planned to buy this year; about half will try to lure workers from their competitors;

about four in 10 expect to cancel or refuse contracts; and nearly one third admitted they'll probably hire illegal workers to plug their manpower shortages.

The cap on H-2B visas is fueling, rather than helping, the illegal worker problem, said Roger Hiatt, an international law attorney at the Kansas City law firm of **Stinson Morrison Hecker**.

"If more visa slots were available, we wouldn't have the numbers trying to get into the country illegally," Hiatt said. "The market signals that these workers are needed, but the system we have actually keeps the legals out."

Hiatt said the crimp in the seasonal visa system places undue stress on businesses that employ American workers year-round.

"These business owners don't know from year to year if they can keep those support people working for them. It's a very difficult way to run a business," Hiatt said.

Part of the trouble is that employers wanting to hire H-2B workers aren't legally allowed to begin the application process until 120 days before the date the workers are needed. Then there are layers of government approvals to wade through, causing some to give up midstream and turn to undocumented workers instead.

"H-2Bs are legal workers," Gordon emphasized. Gordon, who said he employs about 45 U.S. workers year-round, augments his staff each growing season with about 100 guest workers.

"This is a small-business issue, not an illegal immigration issue," said Gordon, who repeatedly travels to Mexico to handle necessary paperwork. "We go through an extensive, four-part approval with the state and federal government to bring in H-2Bs. They are background checked before they get a visa, and they go home when their visa runs out."

Also, Hughes noted, the visiting workers pay into the **Social Security** and income tax systems money that they're never likely to see a return on.

"I'd use American workers and students if I could," said Hughes, who employs about 30 workers, including 15 H-2B guest workers. "But (local workers) are not available when we need them because they're in school, or they don't want to do that kind of work. Something has changed in the last 10 years. Americans don't want these jobs."

Swimming pool maintenance companies, trash haulers, parks and recreation departments, construction and roofing companies in the area thus are competing for the limited supply of workers willing to do outdoor, physical jobs.

"We're all dealing with the same labor pool," Hughes said. "There aren't enough locals willing to do the work that our customers want to pay for."

Critics of guest worker programs argue that guest workers push wage rates artificially low. Employers who use them argue otherwise.

They note that the H-2B application process requires that they advertise locally for the jobs and that they pay the prevailing wage rate for those jobs, as determined by the state and federal departments of labor.

"Could I pay \$20 an hour instead of \$15?" Hughes asked. "Sure, but I'd have to push that cost down to the customer. What are they willing to pay to have their lawns cared for? Would they choose to pay my higher prices? What would my competitors who might use undocumented workers do? And, even at \$20 an hour, could I find enough people to do the work when I need them?"

In some cases there simply aren't Americans who can do the work, some business operators note.

That's the case at Lenexa-based **Challenger Sports**, the enterprise that runs **British Soccer Camps**. Vice President Derek Shoare said the annual wait to see whether the company gets its applications approved under the visa cap "really causes us headaches. It's a broken system."

Shoare said the soccer program sells a "British soccer" experience. For that, the company has received 104 visa approvals for British coaches to work temporarily in the United States.

"Most Americans don't understand about the H-2B program," Shoare said. "It really doesn't impact U.S. workers. It helps ski resorts, lawn care companies and us provide services — at the prevailing American wages — that Americans want."

What are H-2Bs?

An H-2B is one of about two dozen kinds of temporary visas for nonimmigrant workers, administered by U.S. Citizenship and Immigration Services. Oversight also is by the U.S. Department of Labor, by labor or work-force departments in the states, and by U.S. diplomatic offices abroad.

For an employer to obtain H-2B guest workers, it must

- Pass a prevailing wage test through the state labor or work-force department.
- Get approval from the state commerce or economic development department to apply for the requested number of visas.
- Register with state job boards and employment agencies to advertise the jobs to U.S. workers.
- Interview any U.S. worker who applies.
- Get applications certified by a U.S. Department of Labor regional office.
- Get applications approved by U.S. Citizenship and Immigration Services.
- Learn that their prospective guest workers passed background checks by the U.S. diplomatic offices in the workers' home countries.

Critics of H-2B visas say

- Unscrupulous employers may confiscate workers' documents, creating "indentured servitude."
- Language barriers prevent workers from knowing their rights or how to complain.
- Injured workers may not get workers' compensation coverage.
- In most cases, workers are on their own for housing, transportation and food.