



Restaurateurs and processors brace for a potential labor shortage; employers urge lawmakers to lift or raise the annual cap on foreign seasonal workers – May 1, 2004

By Steven Hedlund

Cooks, dishwashers, crab pickers, oyster shuckers and roe technicians are among the thousands of seasonal jobs U.S. employers may be unable to fill this summer unless they're allowed to hire foreign workers.

On March 10, the federal government stopped accepting petitions for the temporary visas issued to non-agricultural foreign workers, known as H2B visas. By then, it already had received enough petitions to meet the 66,000-visa cap for fiscal 2004, which ends Sept. 30.

Summer employers are at a particular disadvantage because, while the fiscal year begins Oct. 1, they can't submit petitions more than 120 days before H-2B workers are due to arrive. This year, fall, winter and spring businesses gobbled up all the H-2B visas before summer employers could apply.

The early cap on visas rattled summer-dependent seafood restaurateurs and processors who rely on H-2B workers to take jobs Americans pass up. They fear they'll lose business and, ultimately, be forced to lay off year-round U.S. employees if they can't hire H-2B workers to handle the increased seasonal workload.

For the past 14 seasons, Phillips Seafood Restaurants has hired about 150 Mexicans, many of whom return year after year, to work at its three Ocean City, Md., locations. The chain filed its petition in January to receive H-2B workers this month.

But the cap had been reached before the Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, considered its petition.

"We're very dependent on H-2B workers," says John Knorr, director of operations for Phillips, which runs seven full-service restaurants in Maryland, Washington, D.C., and Myrtle Beach, S.C. "They're part of our Family. They're very efficient workers, and they're dedicated to us. We can't find enough people [in the Ocean City area] to fill these jobs."

As required by law, Phillips first searched extensively for local workers. When few replied, the chain submitted an H2-B petition. Now Phillips must take out more help-wanted ads and attend more job fairs to find more American workers. Hiring foreign students with J-1 visas, which last four months, is also a possibility.

"We will somehow fill these jobs," says Knorr. "But it will drive up our costs over time."

"A great deal of fishing vessels and seafood processors will be affected by [the early cap on H-2B visas]," says Justin LeBlanc, VP of government relations for the National Fisheries Institute in Arlington, Va. "It's created a lot of concern."

In response, Congress in late March introduced four bills to either to lift or raise the congressionally mandated cap for fiscal 2004, but none had passed by the Easter-Passover break.

A bill sponsored by Sen. Orrin Hatch, R-Utah, would permit employers to hire the same H-2B workers from the previous two years without counting toward the cap, while a bill sponsored by Ted Kennedy, D-Mass., would boost the cap by 40,000 visas, to 106,000. Identical bills were introduced in the House.

The bills require a unanimous vote to pass quickly. At press time, Sens. Jeff Sessions, R-Ala., and Jon Kyl, R-Ariz., were holding up the bills, citing the 5.7 percent national unemployment rate. Both the Senate and House reconvened April 19. Even if one of the bills passes, time is running out for summer employers, because it usually takes weeks for the CIS to process H-2B petitions.

Plus, the bills are only temporary fixes. In fiscal 2005, employers will urge Congress to lift or raise the cap permanently, because demand for H2-B workers is clearly rising. The number of H2-B visas issued each fiscal year has increased steadily from less than 12,000 in 1995 to more than 62,000 in 2002 to nearly 79,000 in 2003, according to the Bureau of Consular Affairs.

However, this is the first time in the H-2B program's 14-year history that the CIS has stopped issuing visas. The agency didn't realize that the cap for 2003 had been exceeded by about 13,000 visas until after Sept. 30, due to the delayed process of counting visas, say sources familiar with the program. In 2004, the process was sped up and the cap hit without warning.

The CIS has no way of determining whether the cap will be met until it has received and counted the requisite number of petitions, says

Chris Bentley, the agency's spokesman.

Fortunately for Phillips Foods, the petition it filed in December to staff its two eastern Maryland processing plants during the Chesapeake's bluecrab fishery, which opened April 1, was granted.

Graham & Rollins in Hampton, Va., wasn't so lucky. The cap was reached before the CIS considered its petition.

The blue-crab processor, which usually hires 70 to 80 Mexican pickers each season, petitioned for 100 H-2B workers this year in anticipation of a bumper harvest. Graham & Rollins also planned to open its second picking house for the first time in seven years.

"The rug's been pulled out from underneath us," says John Graham III, the company's VP. "Sooner or later we're going to start losing business. If something isn't done by mid-June, we're in trouble."

A few North Carolina blue-crab processors also missed the cutoff, says Jerry Schill, president of the North Carolina Fisheries Association. The state's blue-crab catch is the country's largest.

"If something isn't done soon, we're in trouble," he concurs.

The same goes for New England. Several Maine lobster and shellfish packers missed the cutoff, says Vaughn LeBlanc, foreign labor specialist for the Maine Department of Labor.

So did many restaurateurs, adds Dick Grotton, president of the Maine Restaurant Association. Approximately 20 percent of the state's restaurants employ H-2B workers. In all, Maine businesses employed 3,528 H-2B workers in fiscal 2003.

"This will have a huge impact on the state's economy," says LeBlanc.

Tourism is a \$13.9 billion industry in Maine. So for every 1 percent drop in tourism sales, the state's businesses lose \$139 million in revenue and the state loses \$5.5 million in tax revenue, explains Grotton.

"The trickle-down effect is enormous," he says.

Alaska salmon processors are in a fix because they can't hire Japanese roe technicians, and local workers don't have the skills to properly grade and pack roe for the Japanese market.

Many of the 500 or so jobs members of the Pacific Seafood Processors Association petitioned for were roe technicians, says Glenn Reed, president of the Seattle-based group, which represents 10 processors.

"There's no Plan B that I'm aware of," says Reed.

Hillman Shrimp & Oyster Co. in Dickinson, Texas, is one of the lucky seafood processors. The state's oyster fishery opens Nov. 1, near the beginning of the fiscal year, and runs through May. So Hillman received all 235 Mexican shuckers it petitioned for, says Steve Taylor, the company's general manager.

"I don't know what we'd do without them," he says.

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