

## THE H-2B PROGRAM

### BACKGROUND

The landscape industry is the largest user of the H-2B visa program by a significant margin. A lack of H-2B workers during the past few years has forced landscape businesses to turn away customers, scale back service and cancel planned capital equipment purchases. In some cases, businesses were forced to lay off American workers whose jobs are supported by H-2B workers or shut down their operations entirely. We expect reduced capital expenditures, additional layoffs, and business closures in 2021 and 2022 if Congress does not pass immediate H-2B cap relief, we cannot afford to wait until next year to act, by then it will be too late for the landscape industry. The H-2B visa program is pivotal to the success of many landscape companies due to the seasonality and type of the available work.

Landscape businesses need H-2B workers to supplement their American workforce when domestic workers are not available. The program is expensive and requires employers to undertake extensive recruitment of American workers, offer employment to any qualified American worker, gain approval from four government agencies, and pay a premium wage. The program relies on well-vetted returning workers who come to the U.S. for seasonal employment and then go home. These workers are not immigrants. They provide an opportunity for U.S. businesses to operate at a greater capacity, retain their full-time workers and contribute to their local economies. Seasonal workers help support many upstream and downstream jobs. Every H-2B worker is estimated to create and sustain 4.64 American jobs. The program's congressionally mandated cap of 66,000 visas (arbitrarily determined in 1990) is inadequate to meet the labor needs of seasonal landscape businesses. In fact, the U.S. Department of Labor (DOL) announced repeatedly during the past year that the number of job openings actually exceeds the labor pool.

### THE NEED FOR WORKERS IS REAL

The demand for H-2B seasonal workers continues to increase due to increase of new small business being developed. We have plenty of more small businesses now than we did in the 1990s and the continued challenges in recruiting temporary local workers has become more competitive and harder to achieve. During Fiscal 2020, DOL certified the need for 160,557 workers (10,000 more than in 2019). The FY 21 first-half cap of 33,000 H-2B workers was met on November 16, 2020. The 33,000 second-half cap was met on February 12, 2021, DOL had certified 96,641 petitions demonstrating there was a bona fide need. During the pandemic, families and businesses placed an increased emphasis on activities, further increasing the need for landscape services.

### REQUESTED ACTIONS

#### **SUPPORT The Bipartisan Returning Worker Exception Act of 2021**

- Sign-on as a co-sponsor
- Signal to leadership your support
- Include this legislation in Immigration Reform or other germane legislative vehicles

#### **Support a Returning Worker Exception Provision in FY 22 Appropriations**

## THE H-2B PROGRAM, *Continued*

In the month of April, DHS announced that it will release an additional 22,000 visas (6,000 will be set aside to go exclusively to guest workers from the Northern Triangle countries in Central America) under the discretionary authority provided to it by the Fiscal 2020 Omnibus Appropriations Act, but this number does not meet the actual need of 96,641 workers certified by DOL and was distributed after the designated April 1st date of need when critical business expectations and decisions need to be made.

While we appreciate the Administration's response, we must fix this program permanently and avoid the uncertainty that crippled U.S. businesses and imperiled growth and full-time U.S. workers in seasonal businesses. We cannot continue to rely on the administration to make an annual decision concerning increasing the H-2B cap, we need Congress to fix this now and create certainty and stability in the program to protect U.S. seasonal businesses and their employees.

### SOLUTION – RETURNING WORKER EXEMPTION ACT OF 2021

The bi-partisan Returning Worker Exemption Act of 2021 introduced by Rep. Cuellar (D-TX), Rep. Joyce (R-OH) and Rep. Keating (D-MA) reinstates the returning worker exemption which was enacted from 2005-2007 and again in 2017 and also puts in place provisions to modernize the application process, create additional worker protection measures and strengthen integrity measures by increasing fines and possible disbarment for wanton and willful misconduct by H-2B employers.

The returning worker exemption is a tried and true smart policy. For H-2B returning workers, the program provides well-paying seasonal jobs that allow foreign H-2B workers to provide for their families and still maintain their homes in their native countries. Many H-2B workers choose to return to the same employer year after year because of the positive experience and being treated as integral members of the organization. For H-2B employers the returning worker exemption provides a degree of certainty and a reliability that they will not face a workforce shortage. They also appreciate the option to hire previous workers who have been trained and understand their business, while also providing much needed cap relief. The returning workers exemption also assists in mitigating against the possibility of H-2B workers absconding or H-2B employers mistreating their workers. It is a smart policy that rewards those that are using the program the way it was intended to be used, as a supplement to their American workforce during peak seasons if domestic temporary workers are not available.

### CONTACT US

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