

H-2B & RWE ACT 2021 TALKING POINTS

INTERNAL

FOR INTERNAL USE ONLY

- The COVID-19 pandemic has had an unprecedented impact on every fabric of our nation. As a representative of the landscape industry, the largest user of the program, we respectfully request that you protect the H-2B program, it is vital to my business and will play an integral role in a robust economic recovery in 2021.
- As an “essential” industry the landscape industry took aggressive steps to recruit those potential employees in other industries that were not able to work to provide temporary employment needs. Unfortunately, due to factors such as the seasonality of the work, the nature of the work, and the location of the job, there are many instances where supplemental H-2B workers are still needed.
- During Fiscal 2020, DOL certified the need for 160,557 H-2B 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. In January DOL received 96,641 certification requests (nearly triple the cap). As expected the 33,000 second-half cap was met on February 12, 2021.
- On May 25, USCIS began accepting H-2B petitions under a temporary final rule that increased the fiscal year (FY) 2021 cap by up to 22,000 additional H-2B nonimmigrant visas. Of the 22,000 additional visas, 16,000 were available only to returning workers who previously held H-2B status. The remaining 6,000 visas are initially set aside for nationals from the Northern Triangle countries, who do not need to meet the returning worker requirement.
- In the first five business days of filing, USCIS received petitions for more beneficiaries than the additional 16,000 visas made available for H-2B returning workers. The agency randomly selected petitions to meet the 16,000 returning worker limit, considering all returning worker petitions received by the agency between May 25 and June 1. USCIS will reject any cap-subject petitions for H-2B returning workers (not including those filed under the Northern Triangle allotment) received after June 1.
- USCIS continues to accept H-2B nonimmigrant petitions for the additional 6,000 visas allotted for nationals of Northern Triangle countries (Honduras, Guatemala and El Salvador) regardless of whether they previously held H-2B status.
- The U.S economy added 559,000 jobs in May and unemployment fell to 5.8% as COVID cases fell, more states are reopening.
- Every H-2B worker supports 4.64 American jobs and as the unemployment rate continues to drop near historic averages it is important to note that H-2B workers are not taking domestic jobs they are in fact creating more opportunities for seasonal employers to expand their operations and hire additional domestic workers to support a growing seasonal company.
- The H-2B program will serve to assist in a full economic recovery during the 2021 spring and summer season as we emerge from COVID-19 and return to traditional summer economic and travel activities which place tremendous strains on seasonal labor.
- The number, known as the labor force participation rate, is down from 63.3 percent before the pandemic and reflects the largest 12-month drop the country has seen since Harry Truman was president in 1948. The slow pace of people returning to the workforce could present a major obstacle to President Joe Biden’s plans for an economic recovery. Without improvement, some economists fear the low labor force participation rate could hinder the recovery by contributing to a shortage of workers later this year, if consumer demand picks up faster than people go back to work.
- Under the Department of Labor’s temporary labor certification process, employers resorting to H-2B workers are required to publicize and pay a prevailing wage established by DOL, which is well above the federal minimum wage, and must hire any qualified American applicants.

National Association of Landscape Professionals

12500 Fair Lakes Circle, Suite 200 • Fairfax, Virginia 22033

703-736-9666 • www.landscapeprofessionals.org

H-2B & RWE ACT 2021 TALKING POINTS, *Continued*

- DOL only issues final labor certifications when it concludes that: 1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and 2) The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- This labor market test is not a mere formality. Regulations require employers to advertise the job on DOL's national jobs bank and with their local State Workforce Agencies. Many seasonal employers go above and beyond these requirements, advertising the job through private sector job banks, local radio, and trade journals. Employers only hire H-2B workers if these recruitment efforts are unsuccessful. H-2B is not a matter of convenience; it's a last resort.
- It's rather unfair that the H-1B program is capped at 66,000 and does not have a labor market test through the DOL certification process; while the H-2A program has a similar labor market test to H-2B yet H-2A is an uncapped program; yet H-2B has the both the 66,000 cap **AND** the labor market test to demonstrate there are no U.S. workers willing to fulfill these seasonal non agriculture jobs.
- Employers have turned to the H-2B program in greater numbers since the 1990s because more U.S. workers are looking for permanent, year-round positions with better pay and working conditions. U.S. workers turned down 93 percent of H-2B job offers in 2020
- H-2B wages have grown at twice the pace of all U.S. wages and exceed every state's minimum wage by an average of 60 percent. In 2020, the average wage for H-2B hourly workers was \$14.09 – nearly double the federal minimum wage of \$7.25.
- In a typical example, the Small Business Administration's Office of Advocacy mentions one Maryland landscaper that advertised 25 H-2B jobs: 25 U.S. workers applied, 3 showed up for interviews, and only 2 lasted more than two weeks on the job.
- The landscape industry values our seasonal guest workers, many of which are returning workers that have been returning to the same landscape company for several years. These H-2B workers are celebrated employees and integral members of these organizations each season. NALP supports measures that ensure fair and equitable treatment and harsh penalties for the small number of bad actors in the program including disbarment.

RWE TALKING POINTS

- In early June, Representative Cuellar (D-TX) introduced the Returning Worker Exception Act of 2021. This legislation is set to provide permanent H-2B cap relief through a returning worker exception while also providing integrity measures that protect U.S. workers and foreign seasonal H-2B workers while in the United States.
- The RWE Act of 2021 makes several permanent changes to the H-2B program.
 - Reenacting the returning worker exemption that would exempt returning workers from counting against the 66,000 cap if the H-2B worker is a returning worker in any of the previous three fiscal years.
 - Propose to improve efficiencies with the application process by requiring a single digital platform while also requiring the Department of Labor to maintain a publicly accessible online job registry.
 - The Act would also strengthen program integrity measures and anti-fraud provisions to increase DOL investigations, fines, and even permanent disqualification from the H-2B program for willful violations.
 - The Act would address misconduct by foreign recruiters and strengthen workers safety standards for H-2B employees while in the United States.

National Association of Landscape Professionals

12500 Fair Lakes Circle, Suite 200 • Fairfax, Virginia 22033

703-736-9666 • www.landscapeprofessionals.org