

SUBJECT: 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 2022 and 2023 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.

Fewer H-2B visas coincide with fewer jobs for Americans. 2022 research found that a drop in H-2B program admissions in a specific community did not boost labor market opportunities for US workers but rather, if anything, worsened them because opportunities for U.S. workers suffered without having enough H-2B workers to assist with seasonal/temporary labor needs.

The H-2B visa program is pivotal to the success of many landscape companies due to the seasonality and type of the available work. The H-2B visa program allows landscape companies to hire well compensated foreign workers, only when domestic workers are not available for the work. In addition to providing seasonal labor, the H-2B visa program has a very positive impact on hiring more U.S. workers within landscape companies as they can operate at a greater capacity, retain their full-time workers and contribute to their local economies. Statistics indicate that the landscape industry and other seasonal workers help support many upstream and downstream jobs. Every H-2B worker is estimated to create and sustain 4.64 American jobs.

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 back home. These workers are not immigrants. Seasonal workers help support many upstream and downstream 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.

THE NEED FOR WORKERS IS REAL

In January the Department of Labor announced that it received 7,875 H-2B applications requesting 136,555 worker positions for the April 1st second half cap start date. This is a record and is a 41% increase over last year. For the first time ever, the Administration is providing supplemental H-2B visas for the first half cap of FY 22. The rule establishes immediate release of an additional 20,000 H-2B visas for FY 2022 positions with start

REQUESTED ACTIONS

- **PLEASE URGE YOUR PARTY LEADERS TO INCLUDE H-2B CAP RELIEF & REFORM IN ANY FINAL SPENDING PACKAGE FOR FY22 & FY 23.**
- **PLEASE PASS COMPREHENSIVE H-2B CAP RELIEF AS STANDALONE MEASURE OR AS PART OF ANY OTHER RELEVANT LEGISLATION TO PROVIDE A PERMANENT SOLUTION.**
- **ASK YOUR ELECTED OFFICIALS TO SIGN ON AS COSPONSORS TO H.R. 3897, RWE ACT OF 2021.**
- **ASK YOUR ELECTED OFFICIALS TO PRESSURE DHS AND DOL TO RELEASE THE SUPPLEMENTAL VISAS FOR THE SECOND HALF OF FY22 PRIOR TO THE APRIL1ST DAY OF NEED DATE.**



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

dates on or before March 31, 2022. 13,500 visas are allocated for H-2B returning workers (2019, 2020 or 2021) and then 6,500 allocated for Northern Triangle Countries (El Salvador, Guatemala, and Honduras).

In 2021, DHS authorized just 22,000 (6,000 reserved for the guest workers from the Northern Triangle Central) of the 64,716 additional H-2B cap spots Congress created, citing higher-than-normal unemployment rates early that year. DHS released the additional supplemental visas under the discretionary authority provided to it by the Fiscal Year 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.

As the nation struggles through the worst labor crisis in decades seasonal businesses, like the landscape industry, will be decimated without supplementing our domestic workforce with much needed returning guest workers. The landscape industry already faces daunting challenges based on the seasonality and manual nature of our work when trying to recruit domestic workers. These inherent challenges are now only compounded as the nation is mired in an unprecedented labor shortage.

We are urging Congress to implement real reforms to the H-2B process and provide non-discretionary demands on this administration to release additional visas in a timely manner when there is demonstrated need for seasonal workers.

SOLUTION – RETURNING WORKER EXEMPTION ACT OF 2021

The Returning Worker Exemption Act of 2021 was introduced by a group of bi-partisan legislators: Rep. Keating (D-MA), Rep. Joyce (R-OH), Rep. Cuellar (D-TX), Rep. Chabot (R-OH), Rep. Pingree (D-ME), and Rep. Harris (R-MD). This legislation is set to provide permanent H-2B cap relief through reinstating the returning worker exemption which was enacted from 2005-2007 and again in 2017. It aims to reenact 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. It 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 reckless and willful misconduct by H-2B employers. The act would also address misconduct by foreign recruiters and strengthen workers safety standards for H-2B employees while in the United States.

The returning worker exemption is a tried-and-true smart policy. 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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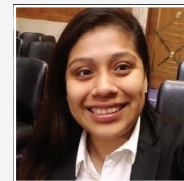
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