

The H-2B Guestworker Program: New Labor Department Rules Protect U.S. and Foreign Workers

The U.S. Department of Labor (DOL) has issued final regulations to reform the H-2B guestworker program. These regulations are designed to preserve jobs and protect both U.S. and foreign workers. The DOL's new rules are available [here](#).

What is the H-2B program?

The H-2B visa program allows employers to hire temporary non-agricultural foreign workers to meet seasonal demands, provided that employers show (1) that no U.S. workers are available for the work, and (2) that hiring H-2B workers will not negatively affect the wages and working conditions of U.S. workers doing similar work.

The most common industries in which H-2B workers are employed are landscaping, tourism and hospitality, forestry and conservation, food processing, and construction.

There are more than 115,000 H-2B workers on the job in the United States at any given time, with the largest numbers of H-2B workers coming to Texas, Florida, Maryland, Virginia, Colorado, New York, Louisiana, New York, Pennsylvania, and North Carolina.

Why did the DOL issue these regulations?

The DOL issued these regulations in response to documented widespread misuse of the H-2B program by employers seeking to hire temporary foreign workers at the cheapest possible cost. A 2010 U.S. Government Accountability Office (GAO) investigation found “demonstrate[d] fraud and abuse committed by recruiters and employers.” A DOL audit found that almost half of employers who had attested that they had complied with H-2B program obligations were in fact not in compliance.

In addition, numerous [recent cases](#) have brought national attention to abuses in the H-2B program, with dozens of criminal and civil prosecutions launched to address fraud, wage-and-hour abuse, involuntary servitude, and human trafficking.

How has the H-2B program harmed U.S. workers?

The H-2B program requires employers to show that no local U.S. workers are available for employment before they hire temporary foreign workers. However, employers in industries that are unable to easily outsource jobs have used the H-2B program as a way of bypassing available U.S. workers in order to “insource” vulnerable foreign workers. While employers are required to first recruit U.S. workers for the jobs they offer,

lax rules and inadequate oversight have allowed some to easily evade this requirement. This has been done by the use of bogus advertisements in media designed to discourage U.S. workers, outright refusals to hire qualified workers, or simple lack of follow-up with qualified U.S. workers. In [one case](#) from Kansas, an enterprise scheduled interviews for U.S. workers at 6 p.m. on Christmas Eve.

How has the H-2B program harmed foreign workers?

Key aspects of the program have long led to wage-and-hour abuses, and human rights violations including debt peonage and labor trafficking. Lured with false promises of lucrative jobs and U.S. permanent residency, H-2B workers have signed over property deeds, dissolved life savings, and fallen into debt to pay up to \$20,000 in “recruitment” fees—only to be placed in shocking working and living conditions when they arrive in this country.

Worker organizing and litigation, including by the [National Guestworker Alliance](#), [Centro de los Derechos Migrante](#), and the [Southern Poverty Law Center](#), have brought national attention to the way in which employers use the H-2B program to obtain dirt-cheap labor by a vulnerable and exploitable workforce.

How do the new DOL rules preserve jobs and protect workers?

Key provisions of DOL’s new regulations include: (1) requiring employers to make a real effort to hire U.S. workers, (2) stronger workplace protections for U.S. and H-2B workers alike, (3) stemming recruitment abuse by requiring disclosure of foreign recruiters to the DOL and outlawing charges for transportation, subsistence, border crossing, visas, and other fees; (4) outlawing deductions from weekly paychecks for things like tools and/or protective equipment, which frequently bring workers’ wages below the minimum wage; and (5) a guarantee of a minimum number hours of work to avoid the practice of “benching” workers—keeping them idle for weeks after they arrive in the United States ready to work.

Whom can I contact for more information?

NELP: Rebecca Smith, rsmith@nelp.org, 206-324-4000 or 360-970-4979; or Tsedeye Gebreselassie, tsedeye@nelp.org, 212-285-3025 x 314.

For information on how these new regulations protect guestworkers from exploitation while helping secure the wages and job security of U.S. workers, contact the National Guestworker Alliance: Jacob Horwitz, jhorwitz@guestworkeralliance.org, 504-452-9159; or Stephen Boykewich, stephen@guestworkeralliance.org, 718-791-9162.

For information about the program's impact on workers and the U.S. labor market, contact the Economic Policy Institute: Daniel Costa, dcosta@epi.org, 202-775-8810.

For information about abuses migrant workers suffer in the H-2B program and how the new regulations will address those abuses, contact Centro de los Derechos del Migrante, Inc. (Center for Migrant Rights): Rachel Micah-Jones, rachel@cdmigrante.org; Megan Horn, megan@cdmigrante.org, 646-319-5715; or Kristin Greer Love, kristin@cdmigrante.org, 309-212-6720.

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