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NELP Applauds New Labor Department Rules Curbing Abuse of H-2B Guestworker Program

New Rules Will Preserve Jobs, Protect Both U.S. and Foreign Workers

New York—The U.S. Department of Labor released comprehensive new regulations today to reform the H-2B guestworker program—changes that significantly improve protections for both U.S. and foreign workers and seek to curb employer fraud and abuse of the program. The new regulations came after numerous studies, cases, and media reports exposed deeply troubling abuses of the H-2B program.

“These regulations will go a long way toward stemming employer abuse and manipulation of the H-2B program, which has led to U.S. workers being passed over for available jobs, and exploitative working conditions for guestworkers,” said **Christine Owens, executive director of the National Employment Law Project**. “These rules will help restore opportunity to U.S. workers and fairness for U.S. and foreign workers alike.”

Created in 1987, the H-2B visa program allows employers to hire temporary non-agricultural workers to meet seasonal demands. However, employers must first show that no local U.S. workers are available for the jobs, and that hiring H-2B workers will not negatively affect the wages and working conditions of similarly employed workers in the United States.

Some key aspects of the new regulations include:

- Requiring employers to keep records of their U.S. worker recruitment activities; demonstrate a truly “temporary” need for workers before they can apply for H-2B certification; put job postings online; accept referrals from state workforce agencies; and contact former employees and community organizations with these job opportunities.
- Stronger worker protections for U.S. and foreign workers by requiring employers to provide U.S. workers at least the same wages and benefits provided to H-2B workers.
- Requiring employers to provide the Labor Department with copies of all agreements with recruiters; contractually forbid recruiters from charging illegal fees; pay or reimburse workers for visa, border crossing, and other related costs; and provide workers with all tools, supplies, and safety equipment required for the work.
- Penalties for employers and their agents who violate program rules. These include assessments of back pay, debarment from the program and assessment of civil penalties of up to \$10,000 per violation.

Numerous [studies](#), [reports](#), and [court cases](#) have shown that the H-2B program is frequently manipulated and abused. Lax application requirements and inadequate program oversight have allowed employers to easily evade their legal obligations to recruit U.S. workers. A 2010 [Government Accountability Office Report](#) found

H-2B recruiters readily advised undercover investigators on “good excuses” that could help “weed out” prospective U.S. workers. The Labor Department’s rules proposal said that a [Department audit](#) found that barely half of employers who had attested that they had complied with H-2B program obligations were actually in compliance.

Failed oversight, insufficient workplace protections, and inadequate enforcement have also contributed to recruitment abuse and exploitative working conditions for guestworkers. Impoverished foreign workers have been forced to pay up to \$20,000 in “recruitment” fees for travel, visa, and other processing costs, lured by false promises of lucrative jobs and permanent U.S. residency. Upon arrival into the United States, workers have been placed in low-wage jobs where illegal deductions from their wages and obligations to pay back their inflated recruitment expenses have left them in debt peonage. In recent years, dozens of criminal and civil prosecutions have been launched for wage-and-hour violations, involuntary servitude, and human trafficking under the H-2B program.

“The Labor Department’s regulations are common-sense reforms that will require employers to make a real attempt to recruit U.S. workers, and will address some of the weaknesses of the H-2B program that make it ripe for forced labor,” said Owens.

A related Labor Department rule would strengthen the “prevailing” wage rate employers must pay guestworkers under the H-2B program so that it accurately reflects the market wage paid to local U.S. workers doing similar work. The purpose of this prevailing wage requirement is to ensure that the H-2B program does not drive down wages in local labor markets, but issuance of this rule has been delayed by a group of lawmakers led by Senator Barbara Mikulski (D-Maryland), at the bidding of that state’s seafood industry.

For more background on the H-2B program and the new Labor Department Regulations, please see [NELP’s Fact Sheet](#) and the [U.S. Department of Labor’s website](#).

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers.

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