

## Employer Appeals for Temporary Worker Visas Meet Union Pushback

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As the Biden administration pursues the expansion of temporary work visas to meet employer demands during ongoing labor shortages, it's facing pushback from key allies in organized labor who say those programs harm both American and foreign workers.

Employers and business groups have clamored for the administration to expand availability of temporary worker visas, while organized labor—a major base of support for President Joe Biden—has raised alarms that those programs will undermine U.S.-born workers. The administration, meanwhile, has signaled repeatedly that it views temporary work programs as part of the solution to migration from Central America and the Caribbean that has fueled a surge of border entries.

The Department of Homeland Security last month said it would issue 20,000 additional H-2B temporary nonagricultural visas for businesses to add workers before March 31—the first time the federal government has expanded the number of visas in the first half of the fiscal year. Unions blasted the announcement, but the administration also promised a separate rulemaking process to “modernize and reform” the program.

The government hasn't issued new regulations on H-2B visas since 2015, when efforts by the Obama administration sparked a backlash from businesses and lawyers. But tightening rules on the program could help the Biden administration weather criticism over expanding the number of visas for foreign workers, said David Bier, a research fellow at the Cato Institute, a libertarian think tank.

“It gives them cover to go to the unions and say, ‘Look, we’re expanding it but we’re putting in more safeguards for workers,’” Bier said.

Homeland Security's focus should be on boosting those safeguards for all seasonal workers, said Enrique Fernández, vice president of immigration, diversity, and civil rights at UNITE HERE.

“To create strong workplace protections for immigrant workers, we need to fix the deeply flawed H-2B visa program rather than expand it,” he said in a statement.

Demand for Workers

H-2B visas allow foreign workers to come to the U.S. for a maximum of three years. The visas don't require a bachelor's degree and are most commonly used in industries such as landscaping, amusement parks and resorts, forestry, and seafood processing.

Congress in recent years has authorized Homeland Security to add to the annual cap of 66,000 visas, although critics—especially in organized labor—have raised doubts about the lack of availability of U.S. workers who could fill jobs in primary H-2B industries.

Businesses desperate to fill jobs are eagerly awaiting the release of a temporary final rule for the additional 20,000 H-2B visas, said Jon Baselice, vice president of immigration policy at the U.S. Chamber of Commerce. The Chamber has called for doubling the number of legal immigrants admitted to address inflation and worker shortages. Baselice said the wait to implement the new visas, weeks after the announcement, “is a little bit concerning.”

“There are a lot of companies that need workers right now,” he said.

That immediate need has fueled new interest in temporary workers from businesses that have never used H-2B visas before, said Loan Huynh, an attorney at Fredrikson & Byron, PA.

“I have never received so many calls, not only from employers but also immigration colleagues who have never filed H-2B petitions before, asking for guidance,” she said. “That’s because they cannot find U.S. workers to fill their positions.”

The release of additional visas for the first half of the fiscal year indicates the Biden administration is paying attention to those employer demands, Huynh said.

A spokesman for U.S. Citizenship and Immigration Services, the Homeland Security unit that administers the H-2B program, referred to the December announcement when asked how soon additional visas could be released.

‘Fix the Systems’

The Obama administration sought to raise prevailing wages and tighten labor certification rules in separate 2015 regulations. The impact of those rules was blunted, however, by congressional appropriations riders that blocked funding, for example, for the U.S. Department of Labor to enforce regulations requiring H-2B workers be paid the same wages as U.S. workers performing the same work.

Organized labor has slammed subsequent decisions to expand the number of available H-2B visas. Top union officials said Homeland Security Secretary Alejandro Mayorkas must go further to add protections for all seasonal workers.

Liz Shuler, president of AFL-CIO, said in a statement that employers have misused the H-2B program to lower wages, discriminate against and exploit both U.S. and foreign workers.

“To steer our country towards a just economic recovery, we need to fix the systems that are failing workers, rather than expanding failed models,” she said.

‘Wrong Solution’?

Homeland Security will reserve 6,500 of the additional H-2B visas for nationals of Haiti and the “Northern Triangle” countries of Central America: Honduras, Guatemala, and El Salvador. Those visas will expand lawful pathways for immigrants to come to the U.S., Mayorkas said in a statement accompanying the announcement.

The U.S. has encouraged the private sector to invest in those Central American countries and launched new agricultural aid programs as part of a broad strategy spearheaded by Vice President Kamala Harris to address the root causes of migration to the U.S.

But a more appropriate response would address family-based migration rights rather than temporary work options, said Rachel Micah-Jones, executive director of Centro de los Derechos del Migrante, an organization that provides legal assistance to foreign workers.

“It’s the wrong solution for the wrong problem,” she said.