



DHS Plans to Increase H-2B Visas This Summer

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Additional 22,000 seasonal guest workers will be admitted over the annual cap

The Department of Homeland Security (DHS) announced April 20 that an additional 22,000 H-2B visas will be available for employers seeking seasonal foreign guest workers this summer.

Six thousand of the visas will be reserved for workers from El Salvador, Guatemala and Honduras, in support of President Joe Biden's efforts to address an unauthorized migration surge from the Northern Triangle countries in Central America.

The H-2B guest worker program, capped annually at 66,000 visas split evenly between the fall/winter and spring/summer seasons, is relied upon by the landscaping, hospitality, seafood and construction industries, among others.

The fiscal year 2021 H-2B cap was reached in February when the Department of Labor (DOL) received applications for a total of 98,000 workers vying for one of the coveted 33,000 spring/summer slots. Since then, employers and a bipartisan group of lawmakers have been calling on the Biden administration to extend additional seasonal visas for the current fiscal year ending in October.

This marks the fifth year in a row that DHS has released additional H-2B visas in response to pressure from seasonal employers and lawmakers. The Trump administration released an extra 15,000 visas in both 2017 and 2018, 30,000 additional visas in 2019, and 35,000 visas in 2020 before the pandemic upended business operations.

DHS is expected to publish a temporary final rule setting forth filing procedures for the additional visas. Petitioners are expected to be required to submit Form I-129, a valid temporary labor certification approved by the DOL and an attestation that their business is at risk of irreparable harm without the additional workers.

As with prior increases, employers seeking H-2B workers must first test the U.S. labor market and certify in their petitions that there are not enough U.S. workers who are able, willing and available for the offered positions, and that employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Employers will also be able to hire workers who are already present in the United States in H-2B status without waiting for approval of the new petition.

Demand for Labor

DHS said the seasonal summer businesses it has spoken with report critical workforce shortages.

"Employers expressed an immediate need for supplemental, temporary guest workers for this fiscal year," according to the agency. "Businesses across the country, despite attempts at recruitment and hiring of U.S. workers, report critical vacancies."

Gray Delany, executive director of the Seasonal Employment Alliance, an H-2B advocacy group based in Washington, D.C., said, "Although this does not meet the demand of over 60,000 open positions, beneficiaries of the additional visa release will be able to expand service, retain American workers and meet production demand—that is, if they are lucky enough to win the second lottery. Unfortunately, due to only 22,000 visas being released, the majority of capped-out seasonal employers will have to cancel contracts, reduce room inventory, lay off American workers and, in some cases, permanently downsize."

Reforms Needed

Jon Baselice, executive director of immigration policy at the U.S. Chamber of Commerce in Washington, D.C., said seasonal employers are thankful for the additional H-2B visas but legislative reform is needed to better reflect economic reality, including raising the annual quota on the visas.

David Bier, a research fellow with a focus on immigration at the Cato Institute in Washington, D.C., said H-2B regulations should be amended to create a permanent process for supplemental H-2B cap increases, instead of the ad hoc method employed over the last five years in which "temporary rules have imposed unnecessary uncertainty on businesses seeking to hire workers legally and forced them to keep jobs unfilled."

He said the process of issuing random, temporary adjustments suffers from numerous flaws, such as not having a consistent schedule and not adopting a consistent methodology for deciding the amount of the visa increases.

"To resolve these issues, [DHS] should propose a permanent rule governing supplemental cap increases so that employers have certainty and can plan ahead," Bier said. "The permanent rule should simply authorize H-2B status grants up to the maximum allowable under the congressional authorization as long as DOL certifies the positions as unfilled."

Those opposed to raising the H-2B cap are calling for a different kind of reform, arguing that the program is susceptible to abuse and leads to displacement of U.S. workers.

A coalition of unions appealed to the Biden administration not to raise the cap. "With millions of unemployed workers in top H-2B occupations, increasing the cap would undermine efforts to get workers of all status back on their feet," said the group, which included North America's Building Trades Unions, United Food and Commercial Workers, UNITE HERE, and more than a

half-dozen other unions. "It would also expose more H-2B workers to the egregious abuses that pervade the program," the group's statement read.

The unions called on the White House to revamp the H-2B program instead and provide more U.S. worker protections, such as denying H-2B visas in industries with an unemployment rate higher than 6 percent and penalizing more employers who violate wage and safety laws for guest workers.