



FACT SHEET: H-2B Forest Workers

On January 18, 2009, the outgoing Bush administration put into effect new regulations governing the H-2B temporary worker program. Workers are routinely abused in the H-2B program. They are cheated out of wages, placed in substandard housing, subjected to verbal abuse, expected to meet impossible work targets, transported in unsafe vehicles and denied health care for work-related injuries. The new regulations only increase the chances for worker exploitation. Here is a brief overview of the H-2B worker program and the changes made by the new regulations.

Two types of programs for bringing temporary, foreign workers into the United States

- H2-A program
- for agricultural workers only
- offers significant legal protections to workers, yet these are often ignored
- H-2B program
- for non-agricultural workers including forest workers
- no legal protections for workers
- Abuse is rife under both programs

Increasing use of H-2B workers in the Pacific Northwest

- Historically, forest workers have made up about 7 percent of total H-2B admissions, and the majority of these have worked as tree planters in the Southeast.
- From 1996 to 2008 the number of forest contractors in Oregon requesting H-2B workers tripled.
- Contractors in Oregon are requesting hundreds more H-2B visas than in previous years.

Three aspects of guestworker programs make the workers virtual captives

- Guestworkers may work only for the employer who originally applied for their visa. If workers experience abuse, their options are strictly limited.
- Many workers take out high interest loans (sometimes thousands of dollars) and sign over the deeds to their houses or cars to cover their travel fees to the U.S.
- Employers often confiscate identity papers (passports, social security cards) so workers cannot leave before the end of the contract period.

Problems with the Current System

- When applying for visas, employers must show that no U.S. workers are available, but the procedures for doing so virtually guarantee that no U.S. workers will be found. Employers are required to advertise a job for 120 days in advance of its start date in local newspapers and a local job order. Most U.S. workers, especially low-income workers, can't wait 120 days before starting work. It is unlikely that those who do see the ads will even apply.
- Employers must pay the prevailing wage rate to their H-2B workers. The system for determining prevailing wages is deeply flawed because the Department of Labor (DOL) allows the employer to establish the prevailing wage. Common sense suggests that employers will try to come up with the lowest prevailing wage possible. Yet, workers and organizations that advocate for them have no way to challenge the wage information employers provide the DOL.

- Employers also drive down pay by deducting housing, transportation and equipment from workers' paychecks. Although they are legally required to make up the difference between the prevailing wage and piece work (getting paid by the number of trees planted, for example), they rarely do.
- Employers discriminate on the basis of age, nationality, gender and race. Some won't hire anyone over the age of 40. Some pay different wages to workers depending on what country they are from. Women have been placed in H-2B jobs while men were placed in H-2A jobs because H-2B workers get lower pay and fewer benefits. In addition, the incidence of sexual harassment of women workers is very high.
- There is little government enforcement of workers' rights. Government enforcement of labor protections for all American workers has decreased since the 1970s, and the DOL has been ineffective in enforcing the rights of H-2B workers. Officials claim not to know where H-2B workers are actually working (so they don't know where to go to conduct inspections), and claim that prior to 2009, the law did not give them any enforcement authority over the H-2B program. Few workers are informed of their rights, and even if they are, they face blacklisting by employers and retaliation against themselves or their families if they take legal action. Moreover, H-2B workers are ineligible for federally funded legal services.

Making a Bad System Worse

The Bush administration's new regulations further degrade worker's conditions. Although the DOL claims to now have the enforcement authority it lacked before, the new regulations provide no new protections for workers, and weaken the program's provisions for ensuring at least some minimum level of job quality. Here's how:

- ***The new regulations remove state oversight*** – Formerly, state workforce agencies approved applications after the employer proved it tried to recruit U.S. workers and will pay the prevailing wage. Under the new regulations, a centralized office in Chicago approves applications as long as employers promise to attempt to recruit U.S. workers and pay prevailing wages. Enforcement comes in the form of audits after-the-fact.
- ***Changed definition of full time*** – A chronic problem for guestworkers is that they are not given the full number of weeks of work specified in their contracts and earn less than they are promised. The new regulations threaten to compound this problem further. The definition of full time work has now changed from 40 to 30 or more hours per week and is further weakened by loosening the requirement that employers provide a certain number of hours.
- ***Definition of Job Contractor and Employer*** – The new regulations define job contractor in a way that allows labor brokers to apply for H-2B visas as employers. This enables employers to claim they have no responsibility for workers since they were not the ones who actually applied to DOL for H-2B workers. Job contractors are notorious for fraudulently obtaining H-2B visas and mistreating those workers.
- ***Changed Definition of Temporary*** – The new regulations allow employers to bring in H-2B workers for up to three years on a one-time-only basis. This makes fewer temporary jobs eligible for H2-B workers, crowds out employers with more seasonal needs and displaces U.S. workers from longer term jobs.
- ***Vague Criteria for Accepting/Rejecting Employer Wage Data*** – Under the new regulations, employers are only required to provide “enough information” about their methods for determining the prevailing wage to show that their estimates are accurate. The regulations do not define “enough information,” making it difficult to determine the accuracy of estimates. For example, employers are not required to include their year-round employees who perform the same work or work that requires the same skill level. If an industry is already dominated by H-2B workers, employers are not required to find comparable jobs of U.S. workers and use those wages instead.

More information: www.alliancefwh.com; Bauer, Mary. 2007. Close to Slavery: Guestworker Programs in the United States. Montgomery, AL: Southern Poverty Law Center; Knudson, Tom, and Hector Amezcua. 2005. The Pineros: Men of the Pines. *The Sacramento Bee*, November 13-15. Available from <http://dwb.sacbee.com/content/news/projects/pineros>.