

# H-2B

# WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

[www.h2bworkforcecoalition.com](http://www.h2bworkforcecoalition.com)

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National Association of Landscape  
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Outdoor Amusement Business  
Association

Seasonal Employment Alliance

U.S. Chamber of Commerce

March 9, 2020

The Honorable Chad F. Wolf  
Acting Secretary of Homeland Security  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Acting Secretary Wolf:

As representatives of small and seasonal employers throughout the country, the H-2B Workforce Coalition urges you to promptly release a temporary final rule to implement the 35,000 supplemental H-2B visas that were announced on March 5. We would also like to request some proposed refinements related to visa availability.

While the coalition and our members appreciate that 35,000 visas marks the highest number of supplemental visas that the Administration has chosen to release over the past few years, the number still fell far short of the actual economic need for temporary seasonal workers.

It is our understanding that the Department of Homeland Security is currently drafting the temporary final rule and is attaching several new conditions on employers for obtaining these additional H-2B visas. Some of the new provisions under the Department's consideration would add redundant reviews by the Department of Labor that will drain already limited government resources, while others would unnecessarily delay visa availability and limit eligibility only to targeted groups.

Our coalition is very concerned that these provisions will inflict significant harm upon seasonal businesses that are looking to DHS for leadership and assistance through thoughtful and impactful cap relief. We implore the Department to seriously consider the technical refinements offered below, which we collectively believe would provide seasonal employers with much-needed certainty regarding the release of these visas, while maintaining the framework that the Department outlined in its March 5 announcement.

Seasonal businesses work hard to recruit American workers, but with the national unemployment rate at historically low levels, many job openings for seasonal positions remain unfilled and these employers turn to the H-2B program to meet their workforce needs. The program is expensive and requires

employers to undertake extensive recruitment of American workers, offer employment to any qualified American worker, gain approval from four government agencies, and pay a premium wage. H-2B workers help support many upstream and downstream jobs; it is estimated that every H-2B worker helps create and sustain 4.64 American jobs.

On March 6, the Department of Labor (DOL) announced that February's unemployment rate was 3.5%. As of March 3, the Labor Department certified that seasonal employers across the country needed 122,070 H-2B workers to meet their workforce needs for Fiscal Year 2020, with tens of thousands more H-2B workers still pending certification. It is critically important that seasonal businesses across a host of industries are able to meet their seasonal workforce needs in a timely manner.

As part of the March 5 announcement, the Department of Homeland Security announced its intent to require matching start dates on an H-2B petition and the employer's start date of need. This requirement would, in our view, require several employers to begin the H-2B labor certification process over again and designate a new date of need, even though their existing Department of Labor-approved temporary labor certifications are valid. Such a requirement places an additional resource drain on both employers and the Department of Labor. It is also inconsistent with past DHS policy that allowed employers to submit a petition to DHS using a valid Department of Labor temporary labor certification.

The Department has also reported that it will make the supplemental H-2B visas available in two tranches; 20,000 for companies with a date of need of April 1st and 15,000 for companies with a date of need after May 15th. Half of the visas allocated during the first tranche will be earmarked for nationals of Guatemala, El Salvador and Honduras, countries whose workers have not traditionally participated in the H-2B program, while the other half in the first tranche will be limited to returning workers.

While we appreciate the Department's laudable goal to broaden the exposure of the H-2B program to Guatemala, Honduras and El Salvador, these three nations suffer from significant political problems that make it very difficult for H-2B employers to meet their workforce needs. Specifically, violence and overall structural issues create an environment that makes it difficult for companies to recruit H-2B workers. We believe that a concerted, long-term effort to remedy these deficiencies is in the best interest of our nation's security, the security of these Northern Triangle countries, and the overall health of the H-2B program.

Carving out 10,000 visas specifically for nationals of the three aforementioned countries in the April 1<sup>st</sup> tranche does not provide adequate time to recruit workers and address the concerns outlined above. These three nations have historically low participation in the H-2B program and when they do participate, the lag time to have H-2B participants can range from six to eight weeks. Placing this requirement into the April 1 tranche would significantly inhibit the ability of H-2B employers to meet their workforce needs in a timely manner, as many of the visas reserved for nationals of these countries will

either be delayed in their issuance, or at worst, go unissued. We urge the Department to consider the following options to address our concerns:

- Option #1 – Add the 10,000 visas that are reserved for workers from Guatemala, Honduras and El Salvador to the proposed 35,000, raising the supplemental cap to the 45,000 number that had been previously reported. These H-2B visas should be available in either tranche.
- Option # 2 - Reduce the number of visas reserved from 10,000 to 5,000 and move these visas to the second tranche, making the initial 20,000 visas available to workers from all H-2B approved countries.
- Option # 3 -- Move the carve out for visas from these countries to the May 15<sup>th</sup> tranche, therefore maximizing 20,000 for the April 1<sup>st</sup> for returning workers from all eligible H-2B nations.

DHS has also reported that the second tranche of 15,000 visas will be limited to employers whose date of need is after May 15, even though the majority of seasonal employers have an April 1 date of need. As mentioned above, the new restriction related would require employers to begin the H-2B labor certification process over again and designate a new date of need, even though their existing Department of Labor-approved temporary labor certifications continue to be valid for post-April 1 work. This requirement is a resource drain on both employers and the Department of Labor and is inconsistent with past DHS policy. To address these concerns, we recommend the following suggestions, which will allow late season employers to access supplemental visas in a manner that best conserves government and industry resources:

- Option #1 – Make all the second tranche visas available to all employers with a valid temporary labor certification, regardless of the date of need indicated on the certification.
- Option #2 – Allow employers with a date of need on May 15 or later to petition DHS for the second tranche visas one week before employers with an earlier date of need may submit their petitions.

We hope that the Department incorporates the much-needed clarifications we have suggested above to its forthcoming temporary final rule. To that end, we request that the Department issues its rule as expeditiously as possible; doing so will provide seasonal employers with the certainty they need to meet their workforce needs in a timely manner. Finally, we ask that you work with Congress to quickly to update a cap that was enacted in 1990 and that does not reflect the demand for seasonal workers in today's economy.

Sincerely,

The H-2B Workforce Coalition

Cc: Secretary Eugene Scalia  
Secretary Mike Pompeo



