

DHS Allows One-Time Increase in H-2B Guest Worker Visas for Fiscal Year 2017

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On July 19, 2017, the U.S. Department of Homeland Security (DHS) and Department of Labor (DOL) increased the numerical limit (or “cap”) on H-2B visas by up to 15,000 additional visas through the end of fiscal year (FY) 2017. The H-2B non-agricultural temporary worker program allows employers to bring foreign nationals (i.e., “guest workers”) to the United States to fill certain jobs of a temporary nature, such as those that are seasonal, peakload, intermittent, or one-time need. This announcement is a result of a federal government funding bill passed by Congress in early May, which included a provision for limited H-2B cap relief.

Currently, Congress has set the H-2B cap at 66,000 per fiscal year, with 33,000 reserved for workers beginning employment in the first half of the fiscal year (October 1 – March 31), and 33,000 for workers who begin employment in the second half of the fiscal year (April 1 – September 30). U.S. companies seeking to employ H-2B guest workers are required to follow a multi-step, multi-agency process with

both the DOL and the DHS, including testing the local labor market and coordinating with state workforce agencies to source U.S. labor first.

The H-2B system has gone through several transitions and hurdles in recent years, including litigation relating to the DOL's wage requirements for H-2B visa holders, as well as the expiration of the "returning worker" exemption, a program that allowed guest workers from prior seasons to be exempt from the quota in fiscal year 2016. The H-2B quota for FY 2017 was reached on March 13, 2017, leaving many U.S. businesses unexpectedly unable to staff adequately for their summer seasonal work.

The DHS indicates that this is a one-time increase that will expire on September 30, 2017, and does not affect the H-2B program in future fiscal years. This allowance is open only to "American businesses that are likely to experience irreparable harm (permanent and severe financial loss) without the ability to employ all of the H-2B workers that they request." Companies are not required to retest the labor market, but the DHS must approve the H-2B petition before guest workers may visit U.S. consulates in their home countries to apply for the visa travel document that allows them to enter the United States, as is standard protocol.

H-2B visa proponents argue that the program is fundamental for staffing key seasonal industries, including tourism and fishing, due to the lack of available U.S. workers. Detractors of the guest worker program argue that U.S. companies should focus on increasing wages and hiring U.S. workers to fill their open positions.

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