



End the Exploitation:

15 Steps the US Government Can do to Improve the Guestworker Program NOW

The United States H-2 guestworker program brings approximately 180,000 workers to the United States every year to work in non-professional temporary jobs. Due to structural flaws and lack of oversight, many foreign workers end up in jobs very different from what they were promised when they were recruited in their home countries. Although a complete overhaul of the program is necessary there are simple, low-cost measures that can be immediately implemented without additional congressional action. Global Workers asks the United States government to make the following changes in order to protect workers in the H-2A (agriculture) and H-2B (non-agriculture) programs NOW.

1. Stop Fraudulent Misrepresentation by Brokers

Problem: Often H-2 workers are victims of fraud when the H-2 jobs they are offered actually do not exist when they arrive in the USA. An important contributing factor is that non-end-beneficiary employers, i.e. brokers, sub contractors or recruiting agents, are permitted to petition for H-2 visas. Since those entities do not actually offer employment, they cannot guarantee that a job actually exists when the H-2 workers arrive.

Solution: Permit only end-beneficiary employers, i.e. the entities that are in the position to offer direct employment, to be H-2 petitioners. This process will prevent sub-contractors and recruiters from obtaining H-2 visas for jobs they actually do not have.

2. Prohibit the Practice of H-2 Workers Being Forced to Pay the Fees and Costs of the Program

Problem: H-2 workers are often charged excessive fees and inflated costs to acquire H-2 employment. No US administrative laws regulate this. In order to pay these sums, which can be as high as \$20,000 for Asian workers or \$2,000 for Mexican workers, the H-2 applicants mortgage their futures. Sometimes paying up to 20% per month of interest, these workers are highly vulnerable to exploitation because they are hostage to their debt.

Solution: H-2 employers must be responsible upfront for paying all costs and fees associated with recruiting and transporting the H-2 workers to the US. Prohibiting H-2 workers from paying these costs and fees is an important anti-trafficking measure.

3. Recruitment Transparency

Problem: In the sending countries it is practically impossible to know who are the legitimate local recruiters hired by the H-2 Petitioners. For this reason, fraud, in the form of false offers of H-2 employment are rampant causing great hardship for the victims and an impossible situation for the sending-country authorities.

Solution: The names of local recruiters must be made available to the public, or at least to a sending-country government agency, which can then prevent and combat the fraud.

4. Compliance with Sending Country Laws

Problem: Many sending countries have laws that regulate the recruitment of their citizens to work abroad. The US employers and local recruiting agents routinely violate these laws, often knowingly. The flagrant violation of substantive protections for sending country workers makes them vulnerable to human trafficking and negatively affects diplomatic relations.

Solution: H-2 regulations must expressly state that H-2 Petitioners must comply with the laws of the sending countries where they recruit H-2 workers. To ensure compliance, U.S. employers should be held accountable in US courts for violating foreign laws while recruiting workers.

5. Pre-departure Education

Problem: Currently, guest workers receive no information as to their rights under their contracts or other US laws or where to seek assistance in the USA before they depart their home countries. This results in vulnerable workers who are easily exploited.

Solution: Mandatory pre-departure education programs coordinated between the US consulates, appropriate home country government entities, and local human rights organizations will empower H-2 workers. These trainings should include written know your rights materials.

6. Copies of H-2 Contract

Problem: Unlike H-2A workers, H-2B workers have no right to a copy of their contract. Unfortunately, more often than not, the verbal promises of the recruiting agents do not match the H-2B petitioner's promises to the US government. This has resulted in workers being defrauded and sometimes even trafficked through the H-2B program.

Solution: Require H2 Petitioners and/or the US government to provide each H-2B worker a copy of the ETA 750 (the form Department of Labor approves which states the salary and working conditions), before departing for the US so they will know the actual terms and conditions of employment. If the terms are different than the verbal or written promises of the local recruiter, than the H-2B petitioner employer shall be liable. Liability will encourage H-2 petitioners to hire reliable and honest recruiters.

7. Federal Right of Action for H-2 Contract Violations

Problem: A violation of the H-2 contract does not confer federal jurisdiction despite the fact that the H-2 program is federally regulated. H-2 workers wanting to challenge their employer for failing to comply with the contracts, which have been carefully crafted to not adversely affect American workers, must go to state court. More often than not, state courts have been unfair venues for foreign workers exercising their rights against local, and often, powerful local employers.

Solution: Allow federal jurisdiction over H-2 contract claims to give H-2 workers a fairer venue to challenge their employer for abuses of the H-2 program.

8. Expressly Authorize Department of Labor to enforce H-2b Contracts

Problem: The US Department of Labor has taken the position that it is not authorized to enforce H-2B contracts. Having the only federal entity empowered to enforce labor laws opt out of enforcing the contract rights of H-2B workers is unacceptable. It leaves H-2 workers virtually defenseless. This also indirectly affects American workers because there is no mechanism of assurance that the promises made, that is to offer conditions that will not adversely affect American workers, are being kept.

Solution: Mandate the Department of Labor to issue regulations so it shall enforce the terms and conditions of the H-2B contracts.

9. Federal-funded Legal Services Must be Available to H-2B Workers

Problem: Federally funded legal services for the poor are prohibited from providing legal services to most H-2B workers. Denying H-2B workers access to the most commonly available form of free legal assistance is effectively denying them justice. Without a means to challenge violations of their rights, H-2B workers are extremely vulnerable to exploitation.

Solution: Allow federally funded legal services to provide services to H-2B workers. These programs already provide legal services to H-2A workers and H-2B forestry workers. There is no apparent reason to deny these protective services to H-2B workers.

10. H-2 Petitioner Transparency

Problem: The H-2 program is premised on the provable fact that there is a labor shortage. The Department of Labor does not publicly divulge the identities of the H-2 employers until years after the certification has been approved. Without knowledge of which employers are using H-2 workers, it is impossible for advocates to outreach to the workers to ensure that the employer is complying with applicable laws with regard to the H-2 workers' employment.

Solution: Require the Department of Labor to publish relevant information on the H-2 Petitioners within one month of temporary labor certificate approval.

11. Exempt H-2 Workers from Federal, State, and Local Taxes

Problem: Although H-2b workers contribute to the social security and medicare systems through deductions, they are not legally entitled to those benefits. Furthermore, income taxes are withheld. Most H-2b workers have returned to their home countries before W-2s are issued and, more often than not, employers make no meaningful attempt to send the W-2s to the H-2b workers so that they can file their taxes. Not only does this mean that the H-2b workers cannot recoup their income taxes, they are risking the possibility of adjusting their immigration status in the future due to tax delinquency.

Solution: Exempt H-2b workers from tax deductions and withholdings. Unless there is a system to ensure that they can file their taxes each year and have portable pensions through an agreement with the sending-country governments, it is patently unfair to levy these taxes. Through direct taxes, the H-2 workers already contribute to the local economies where they work.

12. Visa Portability

Problem: The H-2 program ties the H-2 worker to a particular employer. The worker cannot switch employers to leave an abusive work situation on the same visa. The only real choice within their control is to return home. Because most workers are deeply in debt, leaving the US is not an option.

Solution: Allow H-2 workers to transfer to other H-2 employers for any reason. The Department of Labor must provide the workers, or their advocates, with assistance to locate a new employer. Visa portability will remove workers' vulnerability by allowing them to leave exploitative work environments.

13. Visas to Remain in the US While Challenging Labor Abuses

Problem: When an H-2 worker faces labor abuses or work-related injuries, their H-2 visas will expire well before the legal challenge or medical issue has been resolved. The result is that many workers give up their rights due to the challenges of pressing their cases from their home countries.

Solution: Temporary work permits or visas that allow H-2 workers to work, where they choose, or receive medical care while their non-frivolous legal challenges work toward resolution. This will encourage workers to stand up for their rights, ensuring that labor minimum standards are met.

14. Visas to Return to the US to Challenge Exploitation

Problem: When H-2 workers need to travel back to the US as part of a non-frivolous claim for labor abuses, it is very difficult to obtain a visa to do so. Most H-2 workers have few assets and are not eligible for tourist visas per the US government requirements. For this reason, many workers are forced to abandon their rights because they cannot comply with court requirements to return to the US. Moreover, some H-2 employers will cause their employees to be deported to avoid liability.

Solution: The H-2 program must guarantee H-2 workers the right to return temporarily to the US in the pursuance of legal claims. This possibility will send a message to H-2 employers that deporting workers will not result in a green light to continue abusing H-2 employees.

15. Portable Justice

Problem: When a worker cannot return to the US to pursue a claim against an abusive H-2 employer it usually results in claims being abandoned and unlawful employers being rewarded for bad behavior. Unfortunately, courts often are not amenable to allowing

alternative testimony to ensure that an absentee plaintiff can pursue the claim without returning to the US.

Solution: The H-2 program should strongly encourage courts and administrative bodies to allow for alternative participation such as video or telephonic testimonies. Since the H-2 program is premised on the fact that the workers are in the US for temporary contracts, it is only just to ensure portable justice, that is the right and ability to access justice even after they have left the US.

Global Workers Justice Alliance (“Global Workers”) combats worker exploitation by promoting portable justice for transnational migrants through a cross-border network of advocates and resources. Global Workers believes that the concept of portable justice, the right and ability of transnational migrants to access justice in the host country even after they have departed, is a key, under addressed element to achieving justice for today’s global migrants. To realize this goal, Global Workers trains and supports a Defender Network, comprised of trained human rights advocates in the migrant sending countries, to facilitate employment law cases for migrant workers in partnership with advocates in the countries of employment. Through this network, returned migrants who have suffered exploitation in the host countries must no longer abandon their legal rights simply because they want to go home. Education and advocacy campaigns are also important components of the work.

For more information go to the website www.globalworkers.org

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