

# H-2B employers and their congressional allies are fighting hard to keep wages low for immigrant and American workers

By Daniel Costa | October 6, 2011

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For years, businesses in a number of major industries, including landscaping, food processing, lodging, and construction, have been using the “H-2B” program—a temporary immigrant guestworker program intended to help employers fill labor shortages—in order to keep wages low for workers. These employers are legally allowed to pay H-2B workers lower-than-average wages, which ultimately discourage American workers from applying to these jobs because wages often have been lowered so much that workers can no longer survive on them. In October 2010, the Department of Labor (DOL) proposed a simple new rule that would fix this problem. In the months that followed, the DOL considered hundreds of formal public comments from businesses, unions, and other interested parties and individuals before publishing the final rule in January 2011. The final rule was due to take effect on October 1, 2011, but for now, **the rule’s implementation has been delayed**. And a **lobbying firestorm by businesses** and members of Congress—**led by Senator Barbara Mikulski** from Maryland—has put its survival in doubt.

The DOL’s **final rule** would establish a new wage methodology for determining what H-2B guestworkers should be paid. U.S. law and regulation require that H-2B workers only be authorized to enter and work in the United States “if unemployed persons capable of performing such service or labor cannot be found in this country,” and if the H-2B worker’s employment will not be “displacing qualified United States workers” or “adversely affecting the wages and working conditions of United States workers.” This new rule, if implemented and enforced, is a giant leap forward for workers and will go a long way toward improving the lives of the immigrants and Americans who work in the main industries that hire H-2Bs.

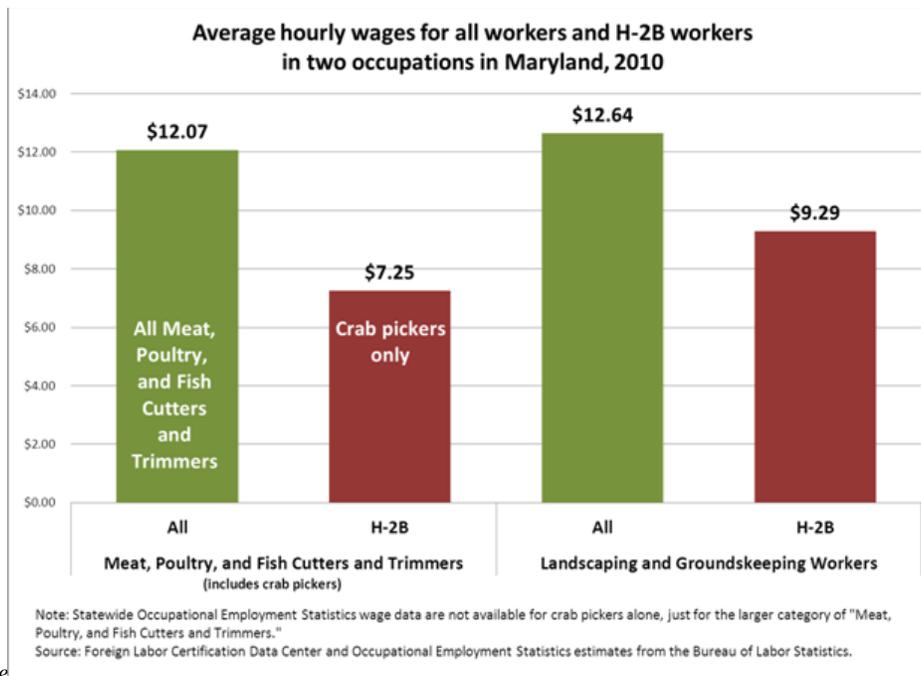
In order to prevent adverse effects on wages and working conditions, employers must first certify that there are no available U.S. workers willing and able to take a position before hiring an H-2B worker. Next, the DOL must use a formula to set and approve the appropriate “prevailing” wage the H-2B worker must be paid. If the prevailing wage is set too low for incoming foreign H-2B workers, it will create downward pressure on the wages of all workers in the same occupation, because local workers will be forced to compete with H-2B workers earning less than the average. In other words, setting wages too low will create an adverse effect on the wages of U.S. workers.

The George W. Bush administration put into place a wage methodology that allows the prevailing wage to be set at a rate lower than the average wage for a specific occupation in a particular region. As **EPI found in 2008**, employers take advantage of this legal loophole—which resulted in almost all H-2B wage certifications being set at a level that was lower than the average wage paid to all workers. Thanks to **the work of some good lawyers** advocating on behalf of immigrant and U.S. workers, a federal court in Pennsylvania found the Bush rule to be invalid, which led to the DOL’s recent creation of the new rule’s improved wage methodology.

The new rule simply requires that if a **Davis Bacon Act (DBA)** or **Service Contract Act (SCA)** wage exists for the occupation and region, or if a **collective bargaining agreement (CBA)** covers the position, then the wage in those acts or agreements must be used as the prevailing wage. But if none of these exist (which will be true in many cases), then the average wage of all workers in that occupation and local region where the H-2B worker will be employed shall establish the prevailing wage.

It must be noted that the new Obama wage rule is much more worker-friendly and a vast improvement over the Bush rule. Although I have **previously argued** and listed ways the new rule could be strengthened to better protect immigrant and American workers, the DOL and the Obama administration deserve to be praised for adopting it.

The chart below lists the hourly wage data for two occupational categories: “Meat, Poultry, and Fish Cutters and Trimmers,” which includes crab pickers (i.e., workers who literally pick the meat out of a crab, like **this**), and landscape workers. The chart shows the difference between the hourly rate that H-2B crab pickers and landscapers are currently being paid in Maryland under the old (and still current) rule, and the average for all workers in the given occupation, which is what workers should be paid in order to prevent wages from being depressed for U.S. workers. H-2B crab pickers and landscapers are underpaid by \$4.82 and \$3.35 per hour, respectively.



Click figure to enlarge

The chart illustrates that employers have been using the H-2B program as a way to degrade the wages of U.S. workers. They have been getting away with paying the federal minimum wage (\$7.25) to crab pickers in Maryland, when the statewide average in this industry is \$12.07 per hour.

Another way to look at this is that a crab picker earning the state average will earn \$25,106 over the course of a year, which is above the **poverty line** for a family of four (\$22,113). But current H-2B crab pickers only earn \$15,080 a year, which is about \$7,000 below the poverty line. For landscapers in Maryland, the results are similar—in both cases the increase in hourly wage will literally lift the H-2B worker out of poverty.

Employers are essentially saving around \$10,000 per employee, making it clear why an employer would rather hire an H-2B worker from abroad instead of a local U.S. worker. When you add to this the fact that many H-2Bs **arrive to the U.S. deeply in debt** because of travel expenses and fees paid to foreign labor recruiters to secure their job, it also becomes clear that H-2B workers are **unlikely to complain about low wages and dangerous or unsafe working conditions** (for example, see this [report](#) on the crab picking industry); these immigrant workers are **desperate to earn back what they have invested**, and are not allowed to switch jobs if they feel they have been abused or treated unfairly by their employer. They also know that if they are fired, they become instantly deportable.

On the macro level, the employers' strategy to keep wages low in H-2B industries has also been successful. In 2008, research by former EPI economist **Jared Bernstein** showed that between 2000 and 2007, wages in six of seven common H-2B occupations either declined or remained stagnant, and unemployment rates either rose or stayed the same (the sole exception was in "extraction" occupations, due to a boom in mining). Keep in mind, this is *before* the Great Recession began—the situation is likely to have worsened across the board. In any case, the data in the table below are clear indicators that labor shortages do not exist in H-2B occupations, despite the fact that H-2B employers continue to claim that they can't find enough Americans who are willing to pick crab, work in hotels, or mow lawns.

Education	Occupation	2000-2001 (in 2007 dollars)		2006-2007 (in 2007 dollars)	
		Unemployment rate	Hourly wage	Unemployment rate	Hourly wage
All	ALL	6.9%	11.31	7.4%	11.07
	food prep related services	7.3%	8.80	7.7%	8.73
	lodging related services	9.6%	9.97	9.8%	9.64
	construction	6.0%	17.66	6.7%	17.47
	motor freight	4.2%	15.79	4.3%	15.31
	packing and material handling	8.9%	12.17	9.7%	11.87
	extraction occupations	5.8%	17.83	4.0%	19.51
	grounds maintenance workers	8.0%	11.07	9.4%	11.19
High School or less	ALL	7.6%	11.13	8.0%	10.87
	food prep related services	8.1%	8.70	8.3%	8.54
	lodging related services	10.2%	9.80	10.2%	9.29
	construction	4.9%	17.75	8.7%	17.47
	motor freight	4.3%	15.58	4.5%	15.16
	packing and material handling	9.7%	11.73	10.6%	11.35
	extraction occupations	6.4%	17.21	4.3%	19.06
	grounds maintenance workers	8.9%	10.81	9.6%	10.67

Click table to enlarge Source: Current Population Survey, Bureau of Labor Statistics.

If employers truly can't find U.S. workers for these jobs, then there may be a good economic reason. Because employers can pay H-2B workers less than the average in the occupation and region, local workers already in the United States are discouraged from even applying for jobs with employers that hire H-2Bs because they are offered at wages that are far too low, and for jobs that are too difficult to make them worth doing for the wage on offer (and because they know that **employers often discriminate** in favor of hiring H-2B workers). It's not a big surprise that employers can't find enough workers willing to earn the minimum wage to pick crabmeat all day by hand, or to earn less than \$20,000 a year to be outside all day cutting grass and trimming hedges in the extreme heat and humidity of the East Coast. But with a national unemployment rate of 9.1 percent, an underemployment rate of 16.2 percent, and 4.3 workers available for every job opening, if you offered 3-5 dollars more per hour to do these jobs—thereby turning a poverty level job into one that offers a living wage—a lot more local workers would apply.

Recent media reports have referenced two studies conducted on the economic impacts of H-2B workers in Maryland and Virginia, and statements from those opposed to the new wage rule have pointed to them in order to support their claims that H-2B workers are vital to local industries (for example, see **here**, **here** and **here**). The Maryland study was conducted by the **Maryland Sea Grant Extension Program** at the University of Maryland, and the Virginia study is from the **Virginia Institute of Marine Science** (the latter is unavailable online). The **Maryland study** estimates that the crab industry would lose \$9.5 million in revenues and that “the loss of approximately 376 H-2B visa workers in Maryland’s crabmeat processing industry would lead to the loss of 955 domestic jobs throughout the Maryland economy.” The other study estimates that “Virginia would experience a \$176.8 million reduction in economic activity in the processing and wholesaling sector,” and that “the loss of the H-2B workers in this sector is estimated to create an overall loss of domestic employment in Virginia of 2,672.”

That is scary data, indeed. Nobody wants to lose any jobs or economic productivity in these states, but there is a fatal flaw inherent in both these studies that render the final estimates unreliable. The Maryland study assumes for their analysis that “H-2B workers cannot be replaced by domestic workers,” and the Virginia study also assumes “that the loss of these temporary [H-2B] workers will not be mitigated by replacement from the domestic labor pool.” In other words, these studies assume that employers will not be able to attract any local workers to fill the jobs normally held by H-2B workers. Perhaps they make this assumption because wages for H-2B workers are able to be set so low. Again, if wages were to be increased to the market rate—in other words, the average paid to all workers in these industries in local areas in Maryland or Virginia—then U.S. workers would surely vie for these jobs. Are these jobs so unattractive that workers in Dorchester and Somerset counties in Maryland (where the 2010 unemployment rate was 10.7 and 10.4 percent, respectively) would not be willing to do them for 9, 10 or 12 dollars an hour? H-2B employers don't want to try offering their jobs to unemployed Americans at these wages, though, because they have gotten accustomed to underpaying their foreign workers.

Unsurprisingly, employers who enjoy the benefits of paying less than average wages and having workers indentured to them are fuming about the wage increase, and claiming that they **cannot afford to pay a few more dollars an hour** for those they hire. As a result, the crab/seafood processing, forestry, amusement, hotel, sugar cane, and landscaping industries are doing everything they can to kill the rule by starting up a “**defense fund**,” appealing to Senators and Representatives on both sides of the aisle, and by filing similar complaints in federal courts in **Florida** and **Louisiana**.

Because of the ongoing cases, the DOL has been **forced to postpone** the rule for 60 days. But where are the voices speaking up to defend this rule, and advocating for immigrant workers and unemployed Americans? Perhaps among Democrats?

Sadly, no. In fact, quite the opposite. Senator Mikulski, normally a labor-friendly Democrat, has been on a **rampage** against the DOL's new H-2B wage rule, **claiming that raising wages** for H-2B and American workers will destroy the crab industry in her state. She circulated a **sign-on letter among members of Congress**, addressed to Labor Secretary Hilda Solis, asking her to “rescind and revise” the wage rule. Mikulski then teamed up with Democratic **Senator Mary Landrieu** from Louisiana, co-sponsoring an **amendment** to an appropriations bill that would prohibit the use of any funds to enforce the rule (the amendment passed, but due to usual gridlock in Congress, the future of the main bill is uncertain). Democrats in Virginia have also joined the fight to keep wages low for workers: Senator Mark Warner and former governor Tim Kaine (who is currently running for the U.S. Senate) **have both spoken out against the rule**, claiming the required wage increases will lead to a loss of jobs in their state.

These Senators are accepting at face value the claims from businesses that they cannot afford to pay a living wage to either the H-2B workers they solicit from abroad or the unemployed American workers who live near them. H-2B employers insist on paying poverty level wages for jobs which, although they may not require any formal education or more than a week's worth of training, are nevertheless difficult, grueling and dangerous—and often don't come with health benefits. The Labor Department's new wage rule for H-2B workers would simply require businesses to play fair, by paying wages similar to what other employers are already paying (i.e., the current market rate), instead of allowing them to use immigration policy as a way to import poverty to the United States while increasing profits for themselves. All of this comes at the expense of wages and living standards for immigrant and American workers. The Democratic Senators should reconsider their position, and defend the Labor Department's H-2B wage rule and the American and immigrant workers it seeks to protect.

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