



Migration that Works

April 29, 2020

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader, U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader, U. S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader, U.S. Senate
Washington, DC 20510

RE: Temporary Visa Workers & COVID-19

Dear Speaker Pelosi, Leader McConnell, Leader Schumer, and Leader McCarthy:

Migration that Works (MTW)¹ is the first coordinated effort to strategically address abuses in international labor recruitment across visa categories. Formed in 2011, MTW is comprised of organizations and academics working in many different industries and with internationally recruited workers from various visa categories. **We write this letter seeking protections for the more than one and a half million workers who are employed in in the United States through a multitude of temporary visas, and asking that you consider them in any future legislation related to the impacts of the COVID-19 pandemic and national emergency, including relief packages and economic stimulus.** We also would like to express our solidarity with the immigrant community, and our gratitude for the work being done by all workers in critical and essential occupations, many of whom are immigrants—some lacking an immigration status or only possessing the precarious status afforded by a temporary visa. During a national crisis we must all pull together and ensure that every resident is safe and healthy and has the freedom to take the appropriate measures necessary to physically distance themselves from others. Immigration status should not be a determinant of who can access relief measures like access to testing, unemployment insurance, and paid leave.

Temporary visa workers perform jobs that are essential to the U.S. economy—at all times, but especially now during the coronavirus pandemic. They can be found in agriculture and food processing, landscaping, restaurants, healthcare, and information technology. All workers employed in the numerous temporary work visa programs like H-2A, H-2B, H-1B, and J-1, are incredibly vulnerable to COVID-19 infection if adequate measures are not implemented to keep them safe. Historically, these programs have been rife with abuse, under-regulated, and workers are terrified to complain about workplace abuses, including the lack of adequate safety equipment—a reality that has only been exacerbated by the coronavirus. “Carla,” a former H-2A worker, when reflecting over the pandemic, shared her feelings of frustration with us because she saw first-hand how workers who fall ill are neglected and not given proper medical care and attention.

¹ The group was formerly known as the International Labor Recruitment Working Group (ILRWG).

The critical work that temporary visa workers are doing to keep our healthcare system running and put food on our tables has made it possible for millions of us to perform our jobs from home. It is critical that lawmakers take this into consideration and propose and enact measures that will protect and provide resources for this essential workforce during the current pandemic.

We urge Congress to act quickly to support the passage of an additional COVID-19 relief package that includes the following provisions for workers holding a temporary work visa:

Extensions of Work Authorization and Visa Status

- Migrant workers with temporary visas and employment authorization documents (EADs) are at risk of losing their status as a result of the slowdowns, shutdowns, and layoffs caused by the coronavirus pandemic, and as a result may be unable to work— leaving them at risk of becoming deportable—as well as stranded in the United States as a result of travel restrictions in their countries of origin. As a result, United States Citizenship and Immigration Services should automatically extend all EADs and visa statuses until well after the national emergency has ended—as multiple pieces of legislation have already proposed—to ensure migrant workers do not suffer negative immigration consequences through no fault of their own.
- Under most regulatory schemes for temporary work visas, workers cannot change employers or jobs because their visa is tied to a single employer. As has been demonstrated time and time again by members of the MTW coalition, as well as media and government reports, this is problematic because it leads to abuse and exploitation. In the midst of a global pandemic, the problem is exacerbated because workers have even fewer options to escape abuse if they are unable to return to their home country because of travel restrictions. As a result, temporary visa workers should be allowed to change employers with their existing visa status if an employer has a demonstrated need—this should always be the case—but especially now. (The Departments Agriculture, Homeland Security, Labor, and State have recently taken measures to connect H-2A and H-2B workers who are already in the United States with employers that have approved labor certifications with start dates beginning after the H-2A/H-2B worker's current employment ends, and Homeland Security has announced increased flexibility in terms of renewing visas for H-2A workers. But workers with other temporary visas statuses are also vulnerable, and even H-2A and H-2B workers are vulnerable if they suddenly lose their job before finding another employer.)
- With respect to temporary visa workers outside of H-2A and H-2B, Congress should allow those workers, if they are laid off, to have an opportunity to seek other employment that is permitted within their same visa classification. Under existing DHS regulations, workers in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN classifications are allowed a 60-day grace period to seek employment in another nonimmigrant classification or in the same classification with a new employer. As long as the national emergency is in effect, the grace period should be extended to 90 days and available to all nonimmigrant visa classifications that authorize employment. In the event that a worker with a temporary visa cannot secure other employment within the grace period, their employer should take the appropriate steps in coordination with relevant federal agencies to ensure that the worker can safely return to their home country.

Premium Pay for Essential Workers

- All essential workers, regardless of their immigration status, should receive premium pay during the national emergency. Many essential occupations like working on farms, and in grocery stores and warehouses, pay very low wages and offer few fringe benefits like sick pay. Yet essential employees are expected to risk their health and safety for the benefit of their fellow U.S. residents. Thus, we believe their contributions merit additional compensation that reflects our appreciation for this critical and dangerous work.
- Minimum wage rates for workers in the H-2A, H-2B, and H-1B visa programs are set by regulation; in order to be meaningful, premium pay must be in addition to the pay that is required by regulation. The “prevailing” or “adverse effect” wage rates in these programs are intended to establish a wage that is the bare minimum relevant to an occupation and local area—therefore premium pay should reflect the additional value provided by workers during the national emergency.
- While legislative text has not yet been introduced that codifies the Heroes Fund proposal shared by the Senate Democrats, we encourage Congress to ensure that temporary visa workers and undocumented immigrant workers—who together make up 6% of the U.S. labor force—are not exempted from such legislative efforts, and receive the same protections as other essential workers. In addition, it is important that jobs critical to U.S. infrastructure and the food supply chain, such as food processing and farm work—where a high percentage of migrant workers are employed—not be excluded from the definition of essential workers.

Adequate Health and Safety Measures and Protections

- Employers using any of the temporary visa programs should be required to develop a written plan that follows Center for Disease Control recommendations to help prevent transmission of COVID-19 in the workplace, during work-related travel, and at home—especially in cases where the employer provides or arranges housing and/or transportation for workers. This should include appropriate social distancing measures, providing adequate soap and handwashing facilities and sanitizers, training for workers and their supervisors, and the posting of information in appropriate languages where workers will routinely see the information. The plan also should include emergency plans and step-by-step procedures to take if workers show symptoms of, or contract the virus.
- Ensure free access to COVID-19 medical tests and treatment to all workers holding a temporary work visa.
- Ensure that workers’ compensation laws cover workers holding temporary visas in the event they fall ill to COVID-19.
- The second relief bill passed by Congress, the Families First Coronavirus Response Act (FFCRA) requires employers with fewer than 500 employees to provide paid sick days and paid family and medical leave for workers if they have been impacted by the coronavirus, but the law includes an easy exemption for smaller employers with fewer than 50 employees, many of which are likely to exempt themselves. As a result, Congress should pass legislation that allows the workers who were excluded to access paid leave—namely, at establishments with fewer than 50 or more than 500 employees.

This would ensure that all workers, including temporary visa workers, are able to quarantine themselves or care for family members if they are exposed to COVID-19, without losing their jobs.

Measures to Ensure Economic Security

- All workers employed with a temporary work visa should be paid on time for all hours promised in their job contract, regardless of existing regulations that may require less.
- Employers should not be exempted from paying the existing minimum or prevailing wage rates required by temporary visa programs during the national emergency.
- Ensure that temporary visa workers can access unemployment benefits while they seek another job within their visa classification.
- In the event a worker is laid off or cannot return to their home country because of border closures, employers using the temporary visa program should provide temporary housing and a daily subsistence allowance until the employer is able to make arrangements (at the employer's expense) to facilitate the worker's return to their home country or assist them in seeking alternative employment. We have received many stories of temporary visa workers finding themselves stranded because they have been laid off, with return to their home country being made impossible as the result of border closures.

Measures to Ensure that Whistleblowers in Temporary Work Visa Programs are Protected

- Ensure that workers on temporary visas (and all immigrant workers regardless of status), are able to report violations and abuses of basic workplace rights without fear of retaliation, including loss of status or deportation. Workers should never be penalized for taking collective or individual action for protecting themselves in the workplace, but especially in the context of a pandemic, when they face additional hazards.

As Congress considers policy solutions to address this evolving crisis created by the coronavirus pandemic, we ask that you ensure that the interests of all workers, regardless of their immigration status, are considered and included in any future legislative packages. To discuss this letter's recommendations, please contact Sulma Guzmán, Policy Director with CDM (sulma@cdmigrante.org or 410-783-0236).

Sincerely,

Migration that Works

Members

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