



Migration that Works

July 21, 2020

Letter to the U.S. Senate on Supporting Protections for Temporary Foreign Workers In the Next COVID-19 Response

Dear U.S. Senator:

On behalf of [Migration that Works](#) (MTW), a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics working to address abuses in international labor recruitment, we urge you to protect the more than one and a half million workers employed in the United States through temporary foreign work visas in any future legislation related to the impacts of the COVID-19 pandemic.

Temporary foreign 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, restaurants, healthcare, childcare, and information technology. As the pandemic has shown, workers employed in these industries are incredibly vulnerable to COVID-19 infection if adequate measures are not implemented to keep them safe. This can be exacerbated for workers who may also be dependent on their employers for transportation and housing. Historically, guest worker programs have been rife with abuse and under-regulated. Workers are terrified to complain about workplace abuses for fear of retaliation, even when they face unsafe working conditions. This reality has only been exacerbated by the COVID-19 pandemic.

Instead of enhancing desperately needed protections for temporary foreign workers during the COVID-19 pandemic, recent actions by the administration threaten to increase their exploitation and vulnerability to trafficking, adding to existing vulnerabilities. As the Senate considers additional legislation to respond to the COVID-19 pandemic and its economic impacts, specific measures must be included to protect the health, safety, and economic security of these essential workers.

On April 20, 2020, the Department of Homeland Security (DHS) published a [temporary rule change](#) to the H-2A agricultural guestworker program that removes certain limitations to visa extensions. DHS published a similar [temporary rule change](#) to the H-2B visa program on May 14, 2020. The regulations, both of which are currently in effect, essentially permit valid H-2 employers to acquire H-2 temporary visa holders already in the country on an existing H-2 job contract by offering them a subsequent H-2 job offer as their existing contract expires, bypassing existing approval processes for the employers.

These rules have the potential to magnify problems inherent in the H-2 visa programs that encourage employer abuse of workers. The rule changes create dangerous ambiguities that threaten worker safety, including: which government agencies are responsible for proper government oversight of visa transfers between employers, how information on the changes will reach workers, which parties are responsible for contracts and transportation costs for workers, workers' rights to decline additional employment offers, and how data will be shared between relevant agencies. In addition, the rules omit transparency mechanisms that are crucial to protect against fraud, exploitation, and labor trafficking.

The exacerbated risks of these temporary changes also present the opportunity to implement **systemic changes to the structure of the guestworker visa system** that make these workers subject to exploitation. Between January 1, 2015 and December 31, 2019, more than 3,600 victims of labor trafficking who held legal, temporary work visas [were reported to the National Human Trafficking Hotline operated by Polaris](#). Approximately 87 percent of these individuals held H-2A or H-2B visas. The rules and fee requirements in place only authorize H-2 visa holders to work for a particular employer for the length of the contract tie to the visa, which emboldens abusive employers as well as depresses the market for competitive wages and decent working conditions. If the worker quits his or her job, the visa is null and void—and the worker becomes unauthorized. These restrictions also apply to workers on visas other than the H-2, such as J-1 au pairs. This system leaves workers open to two of the most powerful tools of trafficking and exploitation—the threat that leaving a trafficking situation will result in a change in immigration status or the targeting of the worker by immigration authorities; and the threat of retaliation for speaking up about unacceptable conditions, resulting in the loss of one's livelihood and potentially the only chance to repay debt incurred to get the job in the first place. These factors too often leave workers trapped and exploited in conditions that amount to modern slavery.

Migration that Works, along with a wide array of allied organizations, [submitted a letter to the administration asking that these risks be immediately addressed](#) by implementing specific recommendations to increase clarity, transparency, oversight, and communication as well as make systemic changes to the H-2 visa program to protect workers. **We ask members of the Senate to similarly urge DHS, the Department of State, and the Department of Labor to clarify these ambiguities and put in place mechanisms and policies to protect these H-2 workers and other essential workers from exploitation and trafficking.**

These H-2 rule changes were followed by an [executive order](#) (EO) on June 22, 2020, restricting entry to the United States for those workers seeking to enter with H-1B, H-2B, J, or L temporary worker visas through the end of 2020. However, the EO does not apply to H-2A workers, which are agriculture workers; those in the food chain supply; and does not include visa holders already in the U.S.

The essential work that temporary foreign 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. Throughout the pandemic, we have urged lawmakers to enact workplace health and safety, economic, and labor protections for temporary foreign workers. These protections are

more important than ever as the resurgence of COVID-19 in many states across the country, a tenuous economic outlook, and these actions by the administration make temporary foreign workers even more vulnerable.

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

Health & Safety

1. Require the Department of Labor to put forth an emergency temporary occupational safety or health standard and a permanent standard to protect certain employees from occupational exposure to the coronavirus, as included the COVID-19 Every Worker Protection Act of 2020 (H.R.6559) and ensure the inclusion of all workers regardless of status.
2. Employers using any of the temporary visa programs should be required to develop and implement a written COVID-19 preparedness and response plan, consistent with OSHA recommendations. Such plans must be available at the worksite and must be made available in the worker's primary language. The plans should also include a quarantine plan in the event a worker was to fall ill to the virus.
3. Employers using any of the temporary visa programs should also be required to implement appropriate social distancing measures; provide adequate soap, sanitizer and handwashing facilities at the worksite and in employer-provided housing; provide training for workers and their supervisors; and post information in appropriate languages where workers will routinely see the information and develop a written plan for implementing these steps.
4. Require employers to provide proof of social distancing implementation, proof of sufficient sanitizing and handwashing supplies at the housing and at worksites, and proof of sufficient masks for all workers.
5. Require employers to provide housing and basic necessities for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19.
6. Mandate the Department of Labor to monitor and enforce these health and safety standards and provide sufficient resources to do so.

Premium Pay for Essential Workers

1. All essential workers, regardless of their immigration status, should receive premium pay during the national emergency. We encourage Congress to ensure that temporary foreign workers and undocumented immigrant workers—who together make up 6 percent of the U.S. labor force—are not exempted from such legislative efforts, and receive the same protections as other essential workers.

2. Ensure that workers' compensation laws cover workers holding temporary visas in the event they fall ill to COVID-19.

Measures to Ensure Economic Fairness

1. 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 workers to work fewer hours.
2. Employers should not be exempted from paying the existing minimum or prevailing wage rates required by temporary visa programs during the national emergency.
3. Ensure that temporary foreign workers can access unemployment benefits while they seek another job within their visa classification.
4. 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 alternate travel arrangements.

Extensions of Work Authorization and Visa Status

1. 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. Temporary work visa holders should be granted automatic extensions of their visas should they be laid off due to slowdowns and shutdowns to allow them to find alternative employment, or to remain legally in the United States if they cannot return home due to border closures.

Months into the COVID-19 pandemic, temporary foreign workers continue to face health and economic challenges that threaten the essential work they do for our country. We urge you to include protections and support for all workers, regardless of immigration status, in the next COVID-19 response legislation. To discuss this letter's recommendations, please contact Sulma Guzman with Migration that Works via email at sulma@cdmigrante.org or phone at (410)783-0236.

Sincerely,

Migration that Works

Members

Centro de los Derechos del Migrante, Inc. (CDM), Chair
AFL-CIO
American Federation of Teachers (AFT)
Janie Chuang and Jayesh Rathod, American University, Washington College of Law

Catherine Bowman, Pennsylvania State University's Center for Global Workers' Rights
Coalition to Abolish Slavery and Trafficking (CAST)
Department for Professional Employees (DPE)
Economic Policy Institute (EPI)
Farmworker Justice
Farm Labor Organizing Committee
Jennifer Gordon, Fordham University School of Law
Patricia Pittman and Susan French, George Washington University
Justice at Work
Justice in Motion
National Domestic Workers Alliance
National Employment Law Project
New Orleans Workers' Center for Racial Justice, Seafood Workers' Alliance
National Immigration Law Center
Oxfam
Towards Justice
Polaris
Sarah Paoletti, University of Pennsylvania Law School
Safe Horizon
Service Employees International Union
Solidarity Center
SPLC Action Fund
UniteHere!
International Union
Jennifer Hill, University of Miami, School of Law
Verité