

The H-2B Guestworker Program

The United Food and Commercial Workers International Union (UFCW) represents 1.3 million workers in North America, primarily within the grocery, retail, and meatpacking industries. This position paper addresses UFCW's position on H-2B guestworker programs. UFCW believes that an overhaul of our nation's immigration laws is a national priority. America deserves an immigration system that inspires confidence from our citizens, provides for legal immigration, and ensures that immigration policy protects the life, liberty, and employment prospects of everyone within our borders.

Any immigration policy reform must include serious reforms in the H-2B guestworker program—a program under which employers can bring in temporary and seasonal guestworkers. Guestworker programs are problematic and have generally created a second-class tier of workers. These programs turn permanent, full-time year-round jobs into temporary jobs with little to no benefits and have a permanent and substantial detrimental effect on these jobs, the workers, and the communities they serve.

The H-2B guestworker program is a perfect example of a program in serious need of fundamental reform. According to “Close to Slavery” a 2008 report by the Southern Poverty Law Center, H-2B guestworkers are “systematically exploited and abused.” The report said that the system “is a modern-day system of indentured servitude” and concluded that many employers who rely on H-2B workers engage in questionable recruiting tactics and subject workers to inhuman working conditions.

Abuses in the H-2B program start long before workers even arrive in the U.S., with recruiters commanding high fees and making promises about wages, working conditions and location, and length of employment which often prove to be false. Once the workers arrive in the country, they lack the ability to enforce the most basic labor protections and often face deportation, blacklisting, or other forms of retaliation. Many employers find H-2B temporary workers advantageous precisely because they will work for lower wages and benefits than American workers. The H-2B program does not provide access to an administrative complaint process for workers to bring claims against employers who violate their rights or access to legal services. In addition, workers have little or no recourse if their work situation is abusive or not what was originally promised.

The H-2B program also opens the door to misuse of the program by allowing employers to stretch the true-meaning and intent of “seasonal work.” A large meatpacking company in the Midwest has consistently claimed that work in its meatpacking plant, which operates year-round, is “seasonal work” because part of the year is spent cutting “Christmas hams” as compared to “Easter hams.” The fact that ham is used in a different season is not by definition, seasonal work such as harvesting crops certain times of the year. This definition of seasonal allows the company to misuse the true intent of the program, abuse the system, lower wages and working conditions—and hire guestworkers for work that could and should be considered year round work.



Necessary reforms of the program include enforcement of labor protections to prevent worker abuse that results in the exploitation of guestworkers and the ultimate deterioration of wages and standards for all workers in these jobs. Reform must include a real prevailing wage so that employers do not drive U.S. workers' wages down. In addition, better enforcement of labor standards will help deter abuses of foreign workers. UFCW strongly supports strengthening fairness in the recruitment process and providing workers a meaningful way to enforce promises made to them by employers. Any reform must cap the number of H-2B workers allowed in the U.S., and oppose any new or expanded guestworker programs. Clearly, better enforcement of labor standards for H-2B workers will help deter abuses of foreign workers, and also protect the wages and benefits offered to American workers who compete for the same jobs.

Specifically, UFCW believes that Congress should mandate that the Department of Labor (DOL) make an annual labor supply determination by strengthening the language of 8 CFR Sec. 214.2(h)(ii)(D) which currently delegates authority to the DOL to make labor supply determinations. UFCW also supports two important reforms of the processes to petition for guestworkers. For employers, only exemplary employers shall be able to successfully petition for guestworkers. Exemplary employers have no history of state or federal labor violations in the last ten years, have harmonious labor relations, and must demonstrate actual need. In a worker self-petition process, workers should be able to self-petition for a guestworker visa based on labor market needs by location and industry. Workers who self-petition can post on a state workforce website and will enter the labor market with American workers and compete under the same conditions. Employers will be required to pay the prevailing wages as determined by the Bureau of Labor Statistics (BLS) and cannot discriminate against native-born workers or offer different pay to native-born workers.

Labor and immigration laws also need to be reformed to afford both employer-based and self-petitioned workers with sufficient workplace protections; the ability to change employers without leaving the U.S. or applying for a renewed status; and private right of action to enforce labor contracts. The Office of Special Counsel should have jurisdiction over discrimination or mistreatment of guestworkers and the DOL should have a special division dedicated to ensuring guestworker program contracts are enforced and guestworkers' rights ensured.

Immigration reform is crucially needed in this country. The equal protection of all workers—regardless of immigration status—will improve wages, benefits, and working conditions for millions of workers. UFCW urges President-elect Obama and the 111th Congress to fix the immigration system in this country by seriously reforming the abusive H-2B programs, which only create a class of workers with non-immigrant status who are denied full protection under the law and who are barred from being full participants in our workplaces and communities.