

## H-2B: Congress' Favorite Cheap Labor Visa

Federal Oversight Agencies: [DOL](#), [DOS](#), [DHS](#)

Dependents: H4

### The Basics:

- The H-2B is a numerically capped **temporary employment visa for seasonal or intermittent nonagricultural jobs**.
  - Congress set the **annual cap at 66,000** per fiscal year, to be allocated **twice a year in equal increments of 33,000 visas**.
    - A recent tactic by Congress is to use the appropriations process to [provide discretionary authority to raise the H-2B cap](#) to the Secretary of Homeland Security. Impeached Biden DHS Secretary Mayorkas routinely used this to increase the number of H-2B visas.
  - The National Defense Authorization Act for Fiscal Year 2018 created an exemption for certain H-2B employer petitioners on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI) from the requirement to show that the need for a worker is temporary. This exemption has been extended by subsequent NDAAs.
  - H-2B visas are routinely granted for landscaping, construction, ski instructors, resort workers, seafood processors, and other jobs that tend to be seasonal or have peak employment periods.
    - USCIS maintains an [H-2B Employer Data Hub](#) that provides searchable information about the employers petitioning for H-2B workers and the wages they are paying.
- H-2B is an employer-sponsored temporary nonimmigrant visa, which means the H-2B worker is dependent on employment status with the employer/sponsor for legal status in the United States.
- H-2B employers must attest that:
  - The hiring of foreign workers will not adversely affect the wages or working conditions of similarly situated American workers;
  - There is a shortage of American workers to fill the jobs; and
  - The labor need is temporary, even if the job is not a temporary one.

### The Problem:

- There is no labor shortage. There is only a shortage of cheap labor. The availability of H-2B visa workers suppresses wages for American workers in myriad industries. It also allows employers to purposefully avoid hiring American high school or college students, who used to do many of these jobs in order to gain entry-level experience.



- H-2B-reliant industries claim labor shortages while persistently offering some of the worst wages and working conditions imaginable. Many H-2B-dependent industries are perennial [Low-Wage/High-Violation](#) industries.
  - Industries like [meatpacking](#) have transformed from offering solid middle-class, blue-collar jobs to Americans to offering dangerous, low-wage work to cheap foreign workers, including, more recently, H-2B workers. These industries have engaged in [decades-long conspiracies](#) to [suppress wages in the United States](#).
- The Economic Policy Institute (EPI) has [found](#) widespread wage theft by H-2B employers.
- While Congress and DHS have coordinated efforts to expand the number of H-2Bs admitted annually, there has been no similar effort to expand oversight capacity and authority. In other words, H-2B is an obvious fraud vulnerability.
- This visa has an extremely broad eligibility spectrum. Most other nonimmigrant employment visas target a narrow slice of the vast labor market (e.g., H-2A is limited to agriculture, H-1B is for “specialty occupations”), while H-2B is defined simply as “nonagricultural.” Essentially, this is just a catch-all cheap labor category.

**LEGISLATIVE RECOMMENDATION:** First, stop expanding the numerical cap each year! Any H-2B employer who is found to have stolen wages from workers or otherwise unlawfully treated them should be permanently barred from the program. Congress should consider restricting the issuance of H-2B visas to only small employers, not large corporations that clearly have the capacity to increase wages to attract American workers. Congress should also consider limiting the industries that can petition for H-2B visas to only those industries in which wages are rising, indicating an actual labor shortage. Alternatively, the visa should be eliminated.

**ADMINISTRATION RECOMMENDATION:** USCIS should use the wage data it already possesses to prioritize the issuance of H-2B visas to employers that are paying market wages, and that are increasing their wages to at least cover cost of living increases. It should deny visas to any employer who has been found to have abused H-2B workers. It should also require employers to post their job openings on a job registry that is easily accessible to Americans seeking work.