



H2AUSA.COM Newsletter

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We have specialized in migrant workers for over 20 years.
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FROM: THE H2AUSA FRONT DESK:

And Here It Comes- A Legislative Summary

It didn't take long coming...enforcement is back, with a vengeance. Since the walkout on a recent Thursday night, the Republican block in the Senate has been looking for a way to match 'fire with fire' with the Democrats. It all started with a dispute over a vote to grant additional amnesty to immigrants in the Senate which caused a furor, resulting in the opponents of the bill storming out of that house of Congress.

Now, the Department of Homeland Security has announced that it intends to instigate a 'no-match' program in which Social Security numbers volunteered by employees to prospective employers either match or that the ones failing

to provide correct numbers be fired. It is only the first step in enforcement. There have been talks of raids.

However, on the heels of that atmosphere, Ag Jobs is still up in the air. "Sen. Barbara Boxer, D-Calif., is plowing ahead and says that she will try this fall to include the farmworker proposal, which would legalize an estimated 1.5 million farmworkers, to a major farm programs bill."¹

Then there's the so-called Dream Act that would legitimize thousands of children of illegals in this country. Would it be possible to consider it apart from the Ag Jobs bill? Who knows? That will largely depend on who proposes it and why in Congress.

Only now, the political
(see And Here It Comes-cont.pg.3)

Crisis of Conflict

By

Mike Nobles

President-www.H2AUSA.COM

So, what is H-2A?

As noted previously, it is a guest-worker program—not an immigration program. It was designed to fill a void in the worker pool in American agriculture. Therefore, as employers project a shortfall, they should contact the U.S. Citizenship and Immigration Services (USCIS) and file papers showing what that shortfall might be and that the wages and employment offered to those guest-workers will neither depress wages in the area or adversely affect local working conditions. The Department's Wage and Hour Division, Employment Standards Administration (ESA) has oversight for enforcing provisions of worker contracts.

Who can hire seasonal workers?

- 1-An agricultural employer
- 2-An individual proprietorship, a partnership or a corporation.
- 3-An authorized agent or entity.

Some stipulations on hiring are also in place:

1-Recruitment: There must be an ongoing attempt to hire U.S. workers in meeting expected labor demand.

2-Wages: Both U.S. workers and H-2A workers must be paid the same.

3-Housing: The employer must supply housing and it must meet with certain standards.

4-Meals: Three meals a day must be provided (the employer may charge each worker) or facilities must be provided where a worker can prepare their own.

5-Transportation: Payments in the amount of that which is reasonable and economical shall be the minimum offered to seasonals.

6-Miscellaneous: A three-fourths guarantee of the workdays in the contract must be met and the employer must hire U.S. workers who are qualified and eligible for a job until 50% of the period of the work contract has elapsed. All records must be kept in an organized and accurate state.

As you read this, some of the provisions of the H-2A program are being reviewed and considered for revision. In particular, recruitment percentages may be adjusted, due to the crackdown on the border and 'squeezing-off' of illegal migrant labor. Also, housing is being looked at closely and consideration of lump sum reimbursement or allocations advocated instead of guaranteed physical housing. Additionally the one-year contract may be extended to three years—especially to those who are reliable and long-term guest-workers with existing visas and good track records in agricultural work.

And Here It Comes

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climate in Washington is insipid at a time when cool heads should be prevailing, especially in light that harvest time is quickly approaching for U.S. agriculture.

Even that stalwart of amnesty, the Republican Senator from South Carolina, has offered a program to stop the flow of illegals into the country. Dubbed 'Lindsey Grahamnesty' by his detractors because of his attempts to provide citizenship to immigrants, the senator has faced harsh criticism back in his home state recently and since back-peddled on his position, along with another in his party, Sen. John McCain of Arizona, whose Presidential campaign is in tatters now, largely because of his unpopular stand on the immigration debate.

As reported in the *New York Times*, in an article dated: 8/8/2007:

"The expected regulations would give employers a fixed period, perhaps up to 90 days, to resolve any discrepancies between identity information provided by their workers and the records of the Social Security Administration. If a worker's documents cannot be verified, employers would be required to fire them or risk up to \$10,000 in fines for knowingly hiring illegal immigrants."²

So far, every avenue known to government has been traveled by legislators except the courts. Will a Federal Court intervene next, or the Supreme Court receive papers for consideration? If so, look for it



to come from California and the 9th Circuit Court of Appeals, where a large number of migrant laborers are represented.

¹"Republicans hardening stance on immigration," by Carolyn Lochhead, *San Francisco Chronicle Washington Bureau* - Saturday, August 4, 2007.

Link: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/04/MNJ7RCGOU1.DTL>

²"U.S. Readies Tough Rules on Employers of Immigrants," by Julia Preston, *The New York Times* - August 8, 2007.

Link: <http://www.nytimes.com/2007/08/08/washington/08cnd-immig.html?hp>



Guest Worker Program Goes Back to Executive Branch

Friday, August 10, in yet another turn-a-round in Washington D.C. a release from the Office of the Press Secretary for the White House announced that the immigration, border enforcement and guest worker programs are being addressed by the Executive Branch of government once again. Specifically, the Homeland Security Secretary, Michael Chertoff and Commerce Secretary, Carlos Gutierrez have jointly announced provisions dealing with these issues and it can be found on the internet website for the White House at: <http://www.whitehouse.gov/news/releases/2007/08/20070810.html>

4 of the 26 provisions on the 'Fact Sheet,' specifically deal with guest workers and are cited below without editing:

STREAMLINING EXISTING GUEST-WORKER PROGRAMS

- 18. **The Department Of Labor (DOL) Will Reform The H-2A Agricultural Seasonal Worker Program.** No sector of the American economy requires a legal flow of foreign workers more than agriculture, which has begun to experience severe labor shortages as our Southern border has tightened. The President has therefore directed DOL to review the regulations implementing the H-2A program and to institute changes that will provide farmers with an orderly and timely flow of legal workers, while protecting the rights of laborers.
 - 19. **The Department Of Labor Will Issue Regulations Streamlining The H-2B Program For Non-Agricultural Seasonal Workers.** Because businesses in seasonal industries such as landscaping and hospitality frequently have a difficult time locating temporary workers, the H-2B program has proven quite popular. Some employers report significant processing delays, however. DOL's proposed rule will speed processing by moving from a government-certified system to an employer-attestation system akin to the PERM system that has reduced backlogs in other areas.
 - 20. **The Department Of Homeland Security Will Extend The Visa Term For Professional Workers From Canada And Mexico To Attract More Of These Talented Workers To The United States.** The United States must compete for foreign professional workers, and those who elect to lend their talents to the U.S. economy should be welcomed with open arms, not given a bureaucratic runaround. Yet the roughly 65,000 workers who enter the United States each year on the TN visa must go to the trouble of renewing their visa every year. This regulation will extend the TN visa duration to three years - the same term as other popular professional visas.
 - 21. **The Department Of Homeland Security And The Department Of Labor Will Study And Report On Potential Administrative Reforms To Visa Programs For Highly Skilled Workers.**
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