



June 10, 2013

Mr. Michael Jones
Acting administrator
Office of Policy Development and Research
Employment and Training Administration
United States Department of Labor
200 Constitution Avenue, NW
Room N-5641
Washington, DC 20210

Re: Regulatory Information Number (RIN) 1205-AB69

Acting Administrator Jones:

Attached please find ImmigrationWorks USA's comment on the "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2" interim final rule.

The comment reflects the results of a survey of H-2B employers.

ImmigrationWorks fielded the survey during two weeks in late May and early June 2013. The survey consisted of four questions about the Department of Labor's interim wage rule and its March 2013 decision to temporarily suspend processing of H-2B visa applications. Several trade associations representing H-2B employers forwarded the survey to members, and a number of private enterprises that help companies navigate the application process passed it along to clients. Responses were collected online and by fax and email.

As you will see from the survey results, a significant number of employers found the suspension of processing extremely disruptive. Some are still waiting for H-2B workers to arrive; others experienced revenue losses of tens of thousands of dollars. And employers are even more concerned about the likely impact of the wage rule, which several state could have the effect of putting them out of business entirely.

Thank you for the opportunity to comment.

All best,

A handwritten signature in black ink that reads "Tamar Jacoby".

Tamar Jacoby
President



2013 H-2B SURVEY

QUESTION 1

Q. Were you unable to hire H-2B workers this season because of processing delays?

A. Of 80 respondents, 19 replied YES. A sampling of YES answers:

LATE WORKERS

- We didn't get our H-2B workers until the end of March, instead of the middle of February.
- We are receiving our workers a full month later than when we needed them to start.
- It appears we will get our six workers, but they have been delayed by almost three months. We have been fortunate that it's been a cool spring and we've been able to scrape by.

STILL WAITING FOR WORKERS

- Business was disrupted big time. I am still in limbo about my H-2B visas.
- I have not received any H-2B workers as of yet. They usually have been here for two weeks already.
- The process has been very difficult and there have been many delays. Plus the cost for acquiring the visas is becoming a financial burden on our business.
- We are still in the process of hiring our H-2B workers, about a month delayed.
- We had completed all administrative requirements, identified individual workers, arranged for housing, etc. Then the suspension occurred.
- We still do not have our H-2B workers and are having trouble finding local workers to fill the positions we need.

DIDN'T GET WORKERS

- Some of the workers that come to work for us every year went with other employers who had their processing approved before ours was. The workers became concerned when our processing was delayed, so they took job offers from employers who were already approved. This obviously gave my competitors an unfair advantage in hiring.
- We were unable to hire H-2B workers this season because of the processing delays. We began the process late but followed all the DOL requirements to get the workers within a reasonable time. It is now months later and no workers yet.

- I was unable to hire my usual workers. I was forced to re-advertise, which means spending more money and delaying the starting time on my contracts. At this point, I still don't know if I am going to get any workers.

WITHOUT H-2B WORKERS, STRUGGLING TO FIND U.S. WORKERS

- We tried to hire for two positions, hoping to find U.S. workers with the same skills as our H-2B workers. Of 14 applicants for one of these positions, only four had relevant experience and only two showed up for interviews. One of those didn't accept the position because he wanted more money, and the other was illegal. Of the 21 applicants for the other position, six were qualified and we offered jobs to four of them. Not one accepted.
- We either do not get answers to our employment ads or the workers who do apply find the work too strenuous and/or beneath them, and they do not stay for more than a few weeks. It is difficult to know what your workforce will look like in a month or two.
- We have hired numerous individuals over the last few months, but all have left due to the intense labor required of them. Not only are there long hours, but also extreme weather conditions. Landscaping is not easy work, but our H-2B workers are willing and able to tolerate the hours and weather conditions.
- During the interview and hiring stage, we may hire three or four local workers, but come spring they either don't show up or leave after a few days. In the meantime, we lose slots for H-2B workers who are willing to work. The H-2B program is essential to the survival of this business.

QUESTION 2

Q. Was your business disrupted as a result?

A. Of 80 respondents, 27 replied YES. A sampling of YES answers:

EXTREME DISRUPTION

- We are months behind in receiving our workers. It has been a disaster. We have been piecing together schedules with part-timers, overtime for regular staff and using managers. Our business has suffered greatly. Staff members cannot complete their regular work because they are filling shifts that should have been filled by H-2B workers.
- We have been extremely shorthanded this spring. This has resulted in our crew having to work long hours and getting worn down just to accomplish the bare necessities.
- Business operations have been disrupted and continue to be disrupted as we operate without H-2B workers. We were supposed to have workers here on April 22nd and we will be lucky to have them by June 22nd. Regular staff members are exhausted covering all the extra shifts.
- We are extremely disrupted in all phases of our business. Our H-2B workers were a month late, and we haven't been able to hire locally. As a result, we were unable to staff our maintenance crews for the month of May and ran 1000 hours in overtime every week trying to make up for this. The same was true on our install crews. We are going to miss a June 1 deadline even though we have been working weekends.

- We are having to use a local temp agency and experienced a 200 percent turnover rate. Quality has declined.
- We are headed for imminent disaster. Our biggest week of the summer is coming up and we may not have adequate staff.

MODERATE DISRUPTION

- I do half of my business in the summer tourist season, when our community relies on H-2B workers. I have not been able to keep my business open as long as usual, and sales are suffering. My other employees are stressed and overworked.
- We had to have our permanent employees work much longer hours to try and compensate. We weren't able to find any other temporary people that were willing to work for a month or two.
- We are behind schedule on projects due to processing delays in getting our H-2B workers. It may not be realistic to think we can meet our revenue expectations and make up the work in the remaining months.

TURNING DOWN BUSINESS

- Since our business is directly tied to labor availability, we will have to decline business opportunities. This will require reducing the number of support staffers who are American workers.
- We have been unable to bid some jobs because we are not sure if we will have the manpower to complete them in a timely fashion.
- April, May and June are the busiest time of the year for a landscape company. This is when we need the most workers. We work incredibly long hours, and with no help, it has been impossible to service our customers. Our customers have entrusted their business to us and expect prompt, quality service.
- We had to turn down work and work the people we did hire 80 hours a week.

QUESTION 3

Q. Did you lose revenue as a result? Do you expect to?

A. Of 80 respondents, 27 replied YES. A sampling of YES answers:

- We have lost over \$160,000 in annual revenue since the beginning of April when our workers were slated to arrive. Although we worked to replace it with new revenue, we are still behind and most likely will remain behind for the year. At our company, revenue is tied directly to a bonus that our staff will probably not be enjoying this year.
- We are covering missing H-2B shifts with overtime for existing workers. This has cost us \$20,000 to date, and the cost continues to accrue. Managers are covering H-2B shifts and part-time students have been hired, but they cannot cover all the shift requirements. The costs are now in excess of \$5000 per week.

- If we cannot meet the high demand during the Bluegrass Festival week, we will lose thousands of dollars in sales, and at least as important, we will have many disgruntled customers who cannot get the bakery products they expect.
- We did not bring in the revenue in February and March as expected, and we are still not where we should be.
- We lost revenue in excess of \$100,000.
- We lost \$50,000 to \$60,000 due to the short landscape season.

QUESTION 4

Q. How will the new wage regulations affect your business and your bottom line?

A. Of 80 respondents, 60 replied to this question. A sampling of their answers:

NEW WAGES MAKE OLD CONTRACTS UNPROFITABLE

- My pricing for this season is based on the DOL wage set last year. Any wage increase will have a very negative impact on my bottom line. My prices are locked in for the year and my customers will not accept an increase.
- Our jobs have already been bid and annual contracts have been signed based on last year's wage rate. We cannot raise these prices – there is too much competition.
- Work for the upcoming season is bid anywhere from two months to two years in advance. Most of our work for the 2013 season was bid and contracted at last year's wage rate of \$9.36. We are unable to go back to the customer and get a price increase.
- Customer contracts have already been bid, negotiated and signed for this year. An increase in wages will have a devastating effect on our business.
- All of our install contracts were negotiated last year and do not provide clauses for us to come back and ask for increases due to the cost of labor. Walking away from this work is not an option as it would seriously tarnish our reputation. The proposed wage increase will cause a 23 percent increase in our raw labor cost.
- This is devastating. We have millions of dollars in contracts that were bid using the previously approved labor wages. This increase is financially devastating.
- To change the wages in the middle of a season on companies that have planned and budgeted and followed the law to bring in a legal workforce is criminal.

RIPPLE EFFECTS

- To pay these wages I will have to raise prices substantially, especially as in fairness I will need to raise wages of year-round workers as well. I would like to pay higher wages, but I must also charge competitive prices.
- We will have a lot of disgruntled higher paid employees whose pay will not reflect their achievements now that bottom-of-the-line employees will be making almost the same amount.

- We can't stay in business paying temporary H-2B workers more than what our permanent workers make. It would cause an uproar and would in turn affect the pay rate of permanent workers. A business cannot stay afloat when all funds are going toward payroll.

WILL CAUSE US TO FIRE AMERICANS

- If the new wages are left in place, we will not be able to afford to hire H-2B employees and since we cannot find Americans, we will have to reduce the number of clients we service. We will need to fire some American workers in other departments.
- This wage change will kill our profits, taking away our company's stability and ability to keep American workers employed. Without H-2B workers, we will have to cut clients, and that means cutting field staff, sales force and administrative staff as the work will not be here to support them.
- With this increase, our local guys are now asking for the same. We will have to terminate contracts and send H-2B employees who have worked with us for 15 years back home. Then we will have to start reducing overhead to match adjusted revenues. In the end, everyone loses.
- My new prevailing wage is \$10.77 an hour – more than 95 percent what my full-time year-round employees make. I need a good summer to keep my grocery store open year-round and keep people employed year-round. I will have to cut some of my full-time year-round employees back in the winter because of the way the new wage rate is inflating my payroll.

OUT OF BUSINESS

- The new regulations could very likely put me out of business.
- Reforestation labor service providers operate on an extremely narrow profit margin of 6 percent to 8 percent in a good year. After 20 years of reforestation contracting, it appears that my business will be forced to close.
- It will cause me to cut back half of my workers and customers and in doing that I would have to close my landscape business.
- This company cannot pass the higher wage rates along. Now we have to determine how we do business, if we do business at all. I have considered closing the company.
- The new rates will mean higher wages, added workers comp and general liability. But forestry companies will not pay more for planting. When you have the same revenue and higher labor prices, you cannot make money. A lot of contractors will have to stop planting.

BETWEEN A ROCK AND A HARD PLACE

- The H-2B program is essential to the survival of this business. The new rules are too costly. The company cannot absorb such a massive wage increase.
- It's not possible to pay the wages required by the DOL and stay competitive, plus it is almost impossible to get able and willing workers for the agricultural sector in the USA.

- The new wage rule will make this program too expensive for the company and jeopardize our economic survival. It is very difficult to find local workers willing to accept seasonal positions.
- This wage regulation will make it impossible for us to use the H-2B program and continue to grow. Every year we struggle to find quality, drug-free employees to do physical entry-level jobs. We are looking year-round to hire for these positions and still cannot come close to filling our workforce needs.
- Long term, it will certainly make us reconsider using H-2B employees. But there is no great alternative for filling seasonal jobs. It is hard to find domestic employees who are motivated and reliable to work a seasonal position. We can't afford to hire any more full-time employees because we don't have enough work from November to February.
- We can't afford to use H-2B with the current wage requirements.
- We may have to discontinue the program and go back to hiring undocumented workers.

ABOUT THE SURVEY

ImmigrationWorks USA fielded a survey of H-2B employers during two weeks in late May and early June 2013. The survey consisted of four questions about the U.S. Department of Labor's interim H-2B wage rule and its March 2013 decision to temporarily suspend processing of H-2B visa applications. Several trade associations representing H-2B employers forwarded the survey to members, and a number of private enterprises that help companies navigate the application process passed it along to clients. Responses were collected online and by fax and email.

ImmigrationWorks USA is a national federation of employers working to advance better immigration law. The network links major corporations, national trade associations and 25 state-based coalitions of small to medium-sized business owners concerned that the broken immigration system is holding back the nation's economic growth. Their shared aim: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.