SEA comments on Seasonal Worker Solidarity Act

Recruitment Provisions

- Electronic jobs registry. We support an electronic jobs registry. This regulation is already in process. See seasonaljobs.gov
- *Pay workers for at least the number of hours stipulated on the job order, and no less than 40 hours per week.*
    - o What if it rains five out of six days in week? Are you supposed to pay a worker for 40 hours worked that week when he or she may have only worked 10 hours? This requirement would put companies out of business. The 3/4ths guarantee is sufficient to ensure that H-2B workers get paid at least 3/4ths of the hours promised on the original job order.
- *Hire minimally qualified workers, without unnecessary experience requirements or criminal background screens*
    - o H-2B job sites include schools, military bases, churches etc. A criminal background check is essential in many instances.
- *Post job orders domestically for 60 days before looking abroad for workers.*
    - o American workers are not looking for seasonal jobs 60 days from the start of the job. This would not accomplish its intended goal. We would be willing to discuss keeping a job order open after the active recruitment ends.
- *DOL will allocate funding to train State Workforce Agencies on the program and platform so they can engage in recruitment efforts, including requirements to engage with relevant unions*
    - o We have no issue with requiring the SWAs to notify the local unions of the H-2B positions.
- *Provide transportation and housing for any qualified worker regardless of where they are from*
    - o Transportation costs are already covered by the employer. Requiring that housing be provided by the employer would make the program cost prohibitive since H-2B employers already pay above market wages, pay overtime etc.

Non-Discrimination and Wage Equity Provisions

- *DOL will engage in effective oversight of the program to ensure no adverse effect on wages and working conditions and no differential treatment of U.S. workers and H-2B workers.*

- The Wage and Hour Division of DOL already engages in effective oversight of the program. The recently announced fines of horse trainer Chad Brown prove that the current regulations are sufficient.
- *Require that the wage offered is never lower than 150% of the federal minimum wage.*
    - The prevailing wage has effectively followed the market in each location. The prevailing wage exceeds 150% of the federal minimum wage in almost all locations.
- *Assess H-2B employers a diversity fee to create a funding pool to offset travel costs for workers coming from underrepresented and more distant nations*
    - Employers are required to pay the travel costs of all H-2B workers they bring in, regardless of the country they come from. This provision is unnecessary.
- *Designate all countries as eligible for H-2B recruitment*
    - The State Department usually removes a country from the list of eligible countries list when the country refuses to repatriate its citizens who are in the United States. The State Department should retain this authority.

Visa Allocation Provisions

- *H-2B eligible job orders will be limited to 7 months duration to prevent the misuse of the program for year-round employment*
    - A nine month need qualifies as seasonal. For example, in the southeast grass does not grow from December through February. Southeastern landscapers have a true seasonal need but an arbitrary seven month restriction would prevent these businesses from servicing their contracts, expanding etc.
    - A seven month restriction would also harm the H-2B workers. The H-2B workers rely on nine months of wages to provide for their families in their home countries.
- *Cap at 100 the number of visas that any single employer can receive, including any subcontractors hired by that employer*
    - An arbitrary limitation on the number of visas that can be granted to one company violates the intention of the program. An employer must prove a temporary or seasonal need and then must hire all willing and qualified American workers before bringing in an H-2B efforts. As long as these conditions are met, there is no need to restrict how many H-2B workers a company can bring in.

Employer Accountability Provisions

- *Employers committing willful or dangerous violations, including felonies, will be subject to immediate and permanent debarment*
    - Already in the regulations
- *Employers will be joint and severally liable for the actions of recruiters and foreign labor contractors they employ*
    - Already in the regulations

- *USCIS and DOL will assess H-2B employers fees for labor certification and petitions at a level necessary to support effective processing and meaningful investigation and enforcement capacity*
    - We are concerned that the open-ended 'cost recovery' user fee structure would be a back-door opportunity for USDOL to impose unlimited fees for access to the H-2B program.
- *DOL expanded investigative mandate:*
    - DOL already has a broad investigative mandate. There is no need for it to be expanded.
- *Workers' ability to challenge employer treatment will be enhanced through private right of action and federal cause of action and eligibility for federally funded legal services*
    - H-2Bs are eligible for legal services representation but are banned from representing H-2As.

Provisions to End Captive Employment

- *DOL will create a grant program for unions and NGOs to do pre-departure and post-arrival Know Your Rights trainings for H-2B and other seasonal workers*
    - Employers are already required to post the workers' rights on the job site. H-2B workers are also eligible to be represented by federally funded legal services.
- *Workers will be issued an 9 month visa for every H-2B position they are offered and will maintain control over the next steps for their visa status*
    - Workers are not bound to one employer. They are free to switch employers the next year.
- *Workers cannot be assigned involuntarily to a worksite different that than stipulated on their original job order*
    - Already in the regulations.