

H-2B

WORKFORCE COALITION

Protecting American Workers Through a Stable and Reliable Seasonal Workforce

www.h2bworkforcecoalition.com

Brian Crawford, Co-Chair
American Hotel &
Lodging Association

Laurie Flanagan, Co-Chair
AmericanHort
National Association of Landscape
Professionals

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Outdoor Amusement Business
Association

Steering Committee:

American Hotel and Lodging Association

American Horse Council

AmericanHort

American Seafood Jobs Alliance

Federation of Employers and Workers of
America

Forest Resources Association

Golf Course Superintendents Association of
America

Mackinac Island Convention & Visitors
Bureau

National Association of Landscape
Professionals

Outdoor Amusement Business Association

Seasonal Employment Alliance

U.S. Chamber of Commerce

August 12, 2021

The Honorable Marty Walsh
U.S. Department of Labor
Secretary of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Walsh and Secretary Mayorkas:

We are writing on behalf of the H2B Workforce Coalition. The H-2B Workforce Coalition is comprised of small and seasonal businesses across the country owned and operated by thousands of employers and their representatives from industries such as lodging, landscaping, seafood, restaurants, tourism, equine, forestry, amusement parks, golf courses, and others. Our members are businesses that rely on the H-2B visa program to supplement their U.S. workforce during seasonal surge and peak business needs.

Our member employers are following the CDC guidance on worksite health, safety and testing protocols while encouraging their workforce to do the same in non-work environments, given the recent rise in COVID-19 Delta variant cases and President Biden's push to get as many people vaccinated as possible. At the same time, we would appreciate additional insight on reports that the Administration is considering a policy to require proof of vaccination for any individual seeking admission or entry to the United States. Establishing a vaccination requirement for an H-2B worker to travel to the U.S. is unworkable due to the lack of available vaccines abroad and lack of reliable proof of vaccination status. We urge you and the Administration to carefully consider the impact on economic recovery of any restrictions on the admission of H-2B workers to the U.S.

A requirement for H-2B workers to be vaccinated before they travel to the U.S. could cripple the economic recovery in the U.S. for sectors of economy that rely on H-2B workers to supplement their U.S. workforce. We ask that you consider the lack of vaccine availability in countries like Mexico, Honduras,

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By ESEC at 9:39 am, Aug 16, 2021

Guatemala, El Salvador, Jamaica, and South Africa. These countries' citizenry represent the majority of the H-2B workforce. These H-2B employees coming to work in the U.S. often do not have access to the vaccine in their home country. We have seen that many of our workers coming to the U.S. this year are eager to be vaccinated in the workplace, because of the lack of vaccine availability at home. We urge you to consider these issues when discussing any requirement that H-2B workers be fully vaccinated prior to entry into the U.S. and strongly encourage H-2B workers to be allowed to be vaccinated upon arrival in the U.S. as we have sufficient vaccine supply to do so.

There is a shortage of labor in the U.S. and many employers must turn to the H-2B program to find the necessary labor to support their U.S. workforce and sustain their business. Every H-2B worker supports 4.64 U.S. jobs.¹ Further, a 2020 General Accountability Office report concluded that "countries with H-2B employers generally had lower unemployment rates and higher average weekly wages than counties that do not have any H-2B employers."² The H-2B program places many requirements on employers to try and recruit U.S. workers, and our membership dutifully follows those requirements. Some of those requirements may impact what H-2B employers can do to support vaccination efforts.

One such requirement is posting of a Job Order with the State Workforce Agency in which the employment of H-2B workers is sought. Our concern is that many employers may have already posted the Job Order and/or been certified by the Department of Labor (DOL) that there is a lack of available and willing U.S. workers. That Job Order is the contract laying out the terms and conditions of employment between the employer and its U.S. workers hired under the Job Order as well as any H-2B workers hired. We are seeking guidance from DOL on the following three scenarios:

1. If an employer who has already filed a Job Order and/or has been certified by DOL decides to require vaccination of its employees, obviously following the Equal Employment Opportunity Commission's (EEOC) guidance, would that be a violation of the terms and conditions of employment in that Job Order if the vaccination mandate was not included in the Job Order?
2. If an employer who has already filed a Job Order and/or has been certified by DOL decides to provide a monetary or other incentive to employees to encourage them to be vaccinated, again following the EEOC's guidance, would that be a violation of the terms and conditions of employment in that Job Order if the vaccination incentive was not included in the Job Order?
3. Going forward for employers that have yet to file a Job Order, would it be required to include either incentives to be vaccinated or requirements to be vaccinated in future Job Orders if an employer

¹ Zavodny, Madeline. *Immigration and American Jobs*. American Enterprise Institute, 1

² United States, Congress, "H-2B VISAS: Additional Steps Needed to Meet Employers' Hiring Needs and Protect U.S. Workers." *H-2B VISAS: Additional Steps Needed to Meet Employers' Hiring Needs and Protect U.S. Workers*, GAO-20-230; U.S. Government Accountability Office, 2020, pp. 13–14.

chooses to provide incentives or require vaccination as a term and condition of employment?

Our member employers stand by wanting to help end the pandemic while continuing the important work of rebuilding our economy. We have done everything we can during this pandemic to protect our workforce, from socially distancing in travel to the U.S. and in the worksite, to providing personal protective equipment to our workforce, and to encouraging vaccination. The guidance we seek and concern we expressed will help give employers who use the H-2B program clarity on their ability to help protect their workforce while remaining in compliance with the H-2B program requirements.

Thank you for your consideration of this important matter and we look forward to continuing the important dialogue and assisting in any way possible.

Sincerely,

The H-2B Workforce Coalition



U.S. Citizenship
and Immigration
Services

September 20, 2021

Mr. Brian Crawford
Co-Chair
H-2B Workforce Coalition
c/o American Hotel and Lodging Association
1250 Eye Street, NW, Suite 1100
Washington, DC 20005

Dear Mr. Crawford:

Thank you for your August 12, 2021 letter to the Secretaries of Homeland Security and Labor. Secretary Mayorkas asked that I respond on his behalf.

In your letter, you noted labor shortages in the United States and the importance of H-2B nonimmigrant workers in filling temporary nonagricultural jobs. Secretary Mayorkas agrees, and for this reason the Department of Homeland Security, jointly with the Department of Labor, in May 2021 made available an additional 22,000 H-2B temporary nonagricultural guest worker visas for fiscal year 2021 to employers that are likely to suffer irreparable harm without these additional workers.

You also expressed concern with reports that the Administration is considering a policy to require proof of vaccination for any individual seeking admission or entry to the United States, and specifically, that a vaccination requirement for H-2B workers is unworkable due to the lack of available vaccines abroad and lack of reliable proof of vaccination status. DHS is committed to the wellbeing of our communities and the U.S. workforce, including nonimmigrant workers. Currently, the Centers for Disease Control and Prevention (CDC) require international travelers to get tested no more than 3 days before travel by air into the United States and show the negative result to the airline before boarding the flight. The CDC, along with DHS will review public health data to drive decision-making about any new requirements for individuals traveling to the United States, and we will relay to the CDC the concerns you have raised.

Mr. Brian Crawford

Page 2

As to your questions on job orders and State Workforce Agencies, we respectfully defer to the Department of Labor. Thank you again for your letter. Please share this response with the other organizations that cosigned your letter.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director