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Committee Passes Mandatory E-Verify - Seasonal Worker Provisions Stripped

The House Judiciary Subcommittee passed a bill, HR 2885, which would require employers to verify the employment eligibility of newly hired workers using the government E-Verify program.

The only thing that Democrats and Republicans seemed to agree on was a Democrat amendment that changes current law so that seasonal workers must fill out a new I-9 each year. Current law exempts seasonal workers who work for the same employer every year from completing a new I-9.

"The seasonal worker amendment was a punitive shot at farmers and other seasonal employers, and we are urging lawmakers to remove it from the final bill," said Washington Farm Labor Association (WAFLA) Director Dan Fazio.

WAFLA does not support or oppose mandatory E-Verify. "It's inevitable," said Fazio. "How do you argue with the proposition that employers should only hire workers who are legally authorized to work?"

The bill includes a four year phase-in for employers, depending on company size, and a three year phase-in for all agriculture employers.

Agriculture organizations are lobbying Congress to couple mandatory E-Verify with a workable guest worker program. To that end, the committee continued work on an agriculture guest worker bill, HR 2847, sponsored by Lamar Smith (R- TX), which would reform the H-2A program. Another bill, HR 2895, sponsored by Dan Lungren (D- CA) would create a totally new guest worker program that appears better suited for west coast growers. "Both of these bills are great, said Fazio. "We are working to perfect them, and I hope they both pass."

All these bills - mandatory E-Verify and the guest worker reforms, face an uncertain future in the full House and the Senate.

PLANET Files Lawsuit, Continues to Lobby Congress to Save the H-2B Program

As you may know, especially if you use the H-2B program, the Department of Labor (DOL) started using a new formula for calculating prevailing wages, which is now to be effective November 30, 2011 rather than the original implementation date of September 30, 2011. This regulation will impact H-2B users who have labor certifications that are valid after November 30, 2011 and anyone hiring H-2B workers during 2012.

Effective November 30, these new wages will need to be paid to H-2B workers and any U.S. workers hired in connection with the H-2B recruitment process. Many employers have begun to receive new prevailing wage determinations that are about 40-50% higher than the current wages paid to their H-2B workers. PLANET recognizes the devastating impact that these higher wages will have on our members.

Therefore, they filed a lawsuit September 21 asking a federal court in Florida to block the implementation of the wage rule. We were joined on the lawsuit by PLANET members including ArtisTree Landscape Maintenance & Design, National Hispanic Landscape Alliance, Ohio Landscape Association, Inc., U.S. Lawns of West St. Charles County, and others including Bayou Lawn & Landscape Services, Lake Cowart Seafood Corporation, and New York Thoroughbred Horsemen's Association.

In declaration filed as part of the suit, PLANET CEO Sabeena Hickman outlined the irreparable harm that the rule would place on PLANET members who use the H-2B Program.

According to PLANET President Gerald J. Grossi, Landscape Industry Certified Technician, "The H-2B employee has been the backbone of our members' and the American workforce for many years. If this regulation is not stopped, the H-2B program will cease to be an option, and without these workers, our industry cannot survive. PLANET has to take a leadership role as a plaintiff in this case because it is so important for our members and the industry in these harsh economic times to have the workforce necessary to fulfill their commitment to their customers."

In December, the DOL is planning to finalize a second rule that will further cripple the program. The rule will likely require employers to hire any qualified U.S. worker up to three days before the H-2B worker is scheduled to begin, involve labor unions in the hiring process and require employers to pay transportation and subsistence costs for potential U.S. workers.

In addition to filing the lawsuit, PLANET continues to vigorously lobby Congress to block the DOL from implementing both the wage rule and the proposed rule. Thanks to the outreach of many of our members, 7 Senators and 40 Members of Congress sent a letter to DOL Secretary Solis asking the Department to rescind both the wage rule and a March proposed rule. Several other members sent DOL their own letters. Some state delegations are planning to send letters to President Obama. Senator Mikulski is also circulating a letter for Senators and Members of Congress to sign onto that will be sent to the President. Congress works best when it down to the last minute so they trying to help now.

For more information, contact PLANET's Director of Government Affairs Tom Delaney at tomdelaney@landcarenetwork.org.

IMPORTANT UPDATE: PLANET learned on September 26 that in the case of Bayou Lawn & landscape Services, et al., v. Hilda L Solis, et al., in which PLANET is a plaintiff, Judge M. Casey Rodgers of the U.S. District Court Northern District of Florida Pensacola Division issued a temporary restraining order for 14 days against bot the Wage Rule and Expediting Rule and set a hearing on a permanent injunction for yesterday (October 3). WALP will update you as more news becomes available.

Questions on any of the topics addressed in this "WALP Watch"? Contact the WALP Office at info@walp.org or (425) 967-0729.