



TO: House Federalism and Interstate Relations Committee Members
FROM: Rep. Ron Young
DATE: June 26, 2018
RE: Sponsor Testimony – H.C.R. 391 - H2A Work Permit

Madam Chair Roegner, Vice Chairman Becker, Ranking Member Leland, members of the House Federalism and Interstate Relations Committee, thank you for giving me the opportunity to provide sponsor testimony on H.C.R. 391.

This resolution is designed to point out to the US President, the US Congress and appropriate agency some of the problems created by this nation's current regulatory programs controlling the operations of our H2A migratory worker program. As we review the individual points it is important to remember that the employers utilizing the H2A program are attempting to do it right. They are using a US government program designed to legally provide the manpower absolutely necessary for the survival of their firms. They are not attempt to break our laws by hiring workers in the country illegally. They use this program to obtain workers at great expense to their operations, because it's the right and legal thing to do. However, as I attempt to point out in this testimony, they are all too often penalized greatly for doing the right thing.

Lake County is home to scores of nurseries and wineries. Several constituents have brought this issue to my attention as a bureaucratic nightmare on many occasions through the years. The turnover rate for U.S. workers "off the street" is extremely high for these labor-intensive nursery jobs thus these employers are compelled to look to migrant workers each year in order to legally complete their temporary (seasonal) employee workforce.

Please allow me to give a brief explanation of the initial hiring process that these employers go through to find an adequate labor force. The business must first engage in an extensive advertising campaign throughout the region and the Unites States in order to attempt to recruit U.S. workers. The business must then file paperwork with multiple governmental agencies including the U.S. Department of Labor, U.S Citizenship and Immigration Services, Department of Homeland Security, Ohio Department of Job and Family Services, State Workforce Agency, Ohio Department of Health, and the Ohio Bureau of Workers Compensation. Most employers who go through this process hire a costly third party company out of necessity because the timelines and requirements are so rigorous.

The complexity, cost, impractical and sometimes even punitive regulations become a deterrent to US firms attempting to properly follow US immigration/work regulations. A typical hiring process under the current H2A program can be summarized in the following way.

1. An advertising campaign as directed by the US government designed to attract US workers at company expense, as described above.
2. The business must then file paperwork with multiple governmental agencies including the U.S. Department of Labor, U.S Citizenship and Immigration Services, Department of Homeland Security, Ohio Department of Job and Family Services, State Workforce Agency, Ohio Department of Health, and the Ohio Bureau of Workers Compensation. Most employers who go through this process hire a costly third party administrator out of necessity because the timelines and requirements are so rigorous and complex.
3. Clearing the prospective H2A employee through the US clearance process to qualify for an H2A visa.
4. Paperwork must be filed with all of the agencies described above.
5. The company must pay the cost of lodging (a least 5 days of lodging), food and transportation from Mexico to the company's site of operations. For a typical smaller nursery in Lake County the average cost just for these initial applications, reports and in-bound expenses are over \$2,000 per temporary worker. These costs must be paid each year no matter how many times in the past the worker has worked for the company.
6. Upon arrival, the company must provide free lodging and free transportation, to and from work, for each employee during the whole term of their work permit in the US.
7. Initially the new workers must be trained on the company's procedures, safety guidelines, its equipment, the proper care of the plants, individual job descriptions and reporting requirements. In speaking to some of the nurseries I learned that considerable expense is also incurred in helping new employees become an effective working team.

In addition to the general complexity and expense incurred by any employer running an H2A program problems arise when a US Citizen applies for a position after the waiting period for responses to advertising has elapsed and H2A employees have been hired. For example, any time after the new visa holder's arrival they might be released, essentially fired, if a US worker applies for their job. Under the provisions of the program, if a US worker applies for work being performed by a H2A worker the employer is required by US government regulations to hire the US worker. Of course, this puts the employer in a very difficult position. Consider the employer's situation. In most cases they have already spent the over \$2,000 up front on each H2A hire. This investment only covers the costs of advertising, screening, transportation and food for initial in-bound expenses. They then must also pay for housing at the company site for the H2A worker, introduction to and training for the position and team building. Then after spending all the money required by federal regulations if a US worker applies they must hire him to do the same job. Then the employer must decide if they can afford to keep both the US citizen and the H2A employee, both of whom are doing the same work. Complicating the issue even further are the following considerations.

- a) If the employer releases the H2A employee, the program requires them to pay a significant portion of the wages the employee was originally contracted to receive, even if the employee will no longer be employed.

- b) The program requires the employer to pay the travel expenses to get the employee back to their home in Mexico, even if they just arrived on the job.
 - c) Of course, good business practice also requires the employer repeat the same training and teambuilding process just completed with the H2A for the US Citizen.
 - d) In Lake County the employment tenure for the vast majority of US citizens hired for nursery jobs is shorter than one week. Since most employers cannot afford to pay for more workers than absolutely necessary to do the work and remain profitable there is a good deal of pressure to release the H2A worker. However, if the new US worker doesn't work out the employer would then be one employee short. These businesses run very lean and being an employee short is not generally acceptable. Also, if the H2A worker is released and the newly hired US Citizen quits it is very difficult, if not impossible to get the former H2A employer to come back. Current regulations require the whole process to be completed again, which takes considerable time and entails the same expenses charged a second time. Of course, this is absurd considering the same individual had just complete the whole employment process just a short time earlier in the same calendar year, or even in the same month.
8. Another troubling factor in the process is the requirement that any company that uses H2A workers must pay any US Citizen at least what they pay the H2A workers. In Lake County the pay rate is about \$13/hr. This rate of pay makes it very difficult for employers to cost effectively hire inexperienced US Citizens thus limiting their job opportunities.

HCR 391 outlines the overly complicated and extremely expensive non-business-friendly practices that our government is requiring in the current H2A program. It urges the passage of legislation revising the requirements for that Program. Any new legislation should be designed to reduce the costs incurred by, and the regulatory and compliance burden imposed upon, employers who use the program to hire temporary agricultural workers. In addition, it calls upon our government to support our U.S. employers to be competitive with the rest of North American and the world.

Thank you for your attention, I look forward to answering any questions you might have at this time.