

To our clients and friends:

MINTZ LEVIN

When You Need More...

IMMIGRATION
ALERT

SEPTEMBER 7, 2007

Boston

Washington

New York

Stamford

Los Angeles

Palo Alto

San Diego

London

www.mintz.com

One Financial Center
Boston, Massachusetts 02111
617 542 6000
617 542 2241 fax

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax

666 Third Avenue
New York, New York 10017
212 935 3000
212 983 3115 fax

707 Summer Street
Stamford, Connecticut 06901
203 658 1700

H-2B Cap Exemption Will Expire unless Save Our Small and Seasonal Business Act Is Passed

In 2005 and 2006, Congress passed—and the President signed into law—legislation that impacts the availability of H-2B visas for temporary seasonal workers. This law is set to “sunset” on September 30, 2007. Key provisions integral to the success of many core U.S. industries (which, if they sunset, will have a tremendous adverse impact on such industries) are discussed below.

The H-2B visa program is designed to allow U.S. companies to employ temporary non-agricultural workers to meet their short-term seasonal and peak-load business needs. There are several U.S. industries, from small local businesses to nationwide chains that have come to rely heavily on temporary workers to meet such needs, including hotel/tourism and seasonal resort enterprises, large warehouse storage and distribution centers, and the construction and landscaping industries, among others. The H-2B temporary employees hired by these companies include core workers such as housekeeping staff, waitpersons, warehouse laborers, construction laborers, landscapers and other staff, who are essential to the ability to operate effectively during their company’s seasonal and peak-load demand periods.

Under the H-2B program a total of 66,000 H-2B visa numbers are available annually for those employers who can demonstrate that they cannot hire sufficient U.S. workers to meet their additional needs for labor during their peak-load or seasonal demand periods and that such workers will return to their home country upon completion of the temporary program.

The recent H-2B legislation, known as the Save Our Small and Seasonal Business Act, contained two key provisions that are set to expire and that provide relief from the limited number of H-2B visas available to such employers.

203 658 1701 fax

2029 Century Park East
Los Angeles, California 90067
310 586 3200
310 586 3202 fax

1400 Page Mill Road
Palo Alto, California 94304
650 251 7700
650 251 7739 fax

9255 Towne Centre Drive
San Diego, California 92121
858 320 3000
858 320 3001 fax

The Rectory
9 Ironmonger Lane
London EC2V 8EY England
+44 (0) 20 7726 4000
+44 (0) 20 7726 0055 fax

These provisions:

1. enable employers to hire workers who have been counted against the H-2B cap in one of the last three fiscal years as an “H-2R” returning worker, and thereby obtain an exemption from the H-2B numerical cap for that three year period (*This provision is significant because it enables employers to train a pool of temporary workers and rely on them under the returning worker program for that period, thereby minimizing training and recruitment costs.*); and
2. provide for a bifurcated release of H-2B visa numbers in October and again in April of each fiscal year—thereby protecting employers whose annual seasons begin in the second half of the fiscal year by retaining half of the visa numbers for distribution to those industries and avoiding exhaustion of the cap solely for the benefit of employers whose needs occur in the first half of the fiscal year (*This provision is significant because without bifurcated release of the 66,000 visa numbers, USCIS will revert to its prior practice of releasing all 66,000 H-2B visas on one date, leading to the exhaustion of H-2B visa numbers early in the first half of the fiscal year, leaving no available visas for employers who require H-2B workers at the end of the first half of the fiscal year or throughout the second half of the fiscal year.*).

The Save Our Small and Seasonal Business Act is set to sunset on September 30, 2007, and Congress has not yet extended it. **If this legislation is not renewed, the elimination of the two key provisions above will have a significant adverse impact on core businesses of the U.S. economy, causing a crippling effect on those who are unable to benefit from these provisions.**

These changes will have a significant negative impact on employers that rely on temporary H-2B workers because the changes will reduce the availability of these additional temporary employees and greatly decrease their ability to meet their cyclical seasonal and peak-load business needs. **Additionally, while many businesses may not depend directly on H-2B availability in their workforce, their distributors or suppliers frequently rely on H-2B workers. Thus the expiration of these provisions will have a significant ripple effect in the supply chain throughout a diverse range of businesses in the United States. Indeed, while the positions filled by the H-2B workers may not be highly skilled, they are highly essential.**

New legislation (the Save Our Small and Seasonal Business Act of

2007) is currently pending before both the House of Representatives (H.R. 1843) and the Senate (S. 988). This bill would make permanent the temporary provisions passed in 2005 and 2006 that cover the staggered release of the H-2B visas, as well as the three year “returning H-2B worker” cap exemption, among others.

Take Action

If this issue is important to you, please contact your Congressional representatives and urge them to pass this legislation. You can [sign the petition here](#) to urge the passage of these bills before September 30, 2007.

* * * * *

If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or go to www.mintz.com.

Susan Cohen

617.348.4468 | SCohen@mintz.com

Jeffrey Goldman

617.348.3025 | JGoldman@mintz.com

Reena Thadhani

617.348.3091 | RThadhani@mintz.com

William Coffman

617.348.1890 | WCoffman@mintz.com

Brian J. Coughlin

617. 348.1685 | BJCoughlin@Mintz.com

Lorne Fienberg

617.348.3010 | LFienberg@mintz.com

Marisa Howe

617.348.1761 | MHowe@mintz.com

Bethany S. Mandell

617.348.4403 | BSMandell@mintz.com

Daniel Maranci

617.348.1885 | DMaranci@mintz.com

Timothy Rempe

617.348.1621 | TRempe@mintz.com

Copyright © 2007 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

The above has been sent as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and may be considered an advertisement or solicitation. The content enclosed is not intended to provide legal advice or to create an attorney-client relationship. The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please notify our marketing department by going to www.mintz.com/unsubscribe.cfm.