

# Why We Play the H-2B Numbers Game



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The H-2B nonimmigrant seasonal guest worker program is a relatively small and insignificant federal program. Strangely though, even though it seemingly works exactly as it should, it is being tinkered to death by the very federal agencies in charge of administering it.

Landscape and lawn service company owners across the nation again experienced firsthand this spring the frustration of counting on the H-2B nonimmigrant seasonal guest worker program as a source of reliable labor. The program, due to a court case, was shut down for several weeks in March causing hardship for many employers.

On March 2, the [U.S. Citizenship and Immigration Services](#) (USCIS) temporarily suspended adjudication of H-2B visas awaiting a decision in a Florida court case. Because of the USCIS action, the Department of Labor quit accepting applications for temporary labor certifications. Several weeks later, the government resumed processing these petitions, but the temporary shutdown resulted in many companies getting their employees later than expected. Other companies missed out on getting their employees altogether because the USCIS announced March 26 the annual cap of 66,000 visas for FY 2015 had been reached.

Steve Rak II, president of [Southwest Landscape Management](#), near Cleveland, Ohio, spent a lot of time this spring visiting job sites and checking with clients. Rak, without his regular complement of seven H-2B workers until late April, somehow – with the help from a temp agency – kept his company going through early spring. He is one of many employers whose petitions for these workers got delayed.

Rak considers himself lucky. At least he got his employees. Other company owners, their petitions also caught in limbo during the shutdown, weren't as fortunate. Their petitions weren't adjudicated in time to obtain work visas.

"You are depending on the government for your workers, and they can shut down

the program anytime they want. Yes, it is frustrating,” says Rak resignedly.

Few numbers resonate more loudly within segments of the landscape services industry than 66,000. That number represents the total number of H-2B visas the federal government authorizes for foreigners to come to the U.S. to perform temporary, seasonal or peak-season, non-agricultural work. The visas are apportioned 33,000 for each half of the agencies’ fiscal year.



Editor’s note: This information is from the DOL Office of Labor Certification. It reflects the number of approved temporary worker certifications. It does not reflect the actual number of visas each company receives, which can be less after review by Homeland Security and officials at U.S. Consulates. PHOTOS:  
RONNIE HALL

The length of H-2B workers’ employment is set at nine months, although there are provisions for extending their stay in special circumstances. The landscape industry is the most aggressive employer of these workers, annually snapping up more than half of all available H-2B visas.

It could use a lot more, say many company owners.

Employers point to the relatively small number of H-2B visas in relation to America’s \$16.8 trillion economy. The seasonal guest worker program is the tiniest of bones to toss to them, especially now with unemployment at its lowest level in a decade and consumer demand for services growing again.

“Our economy is recovering, the phones are ringing and contractors are turning down work because they don’t know if they can produce because they can’t find reliable employees,” says Sandy Munley, executive director of The [Ohio Landscape Association](#) (OLA).

“How bad is that? How does that help the economic growth in our country?” she says.

Employers dread the possibility that they may miss out on obtaining these employees because of the program’s many difficulties. Contractors claim the program’s daunting paperwork requirements, unexpected changes and the ever-higher and unreasonable government-mandated wages they must pay H-2B workers make the use of the program increasingly difficult to justify. These last two factors are the most discouraging to H-2B users.

“Contractors base their budgets and their contracts on knowing what their labor costs and other expenses will be each year,” says Munley. “The uncertainty in the program seems to get worse each year.”



## **H-2B a job creator**

One of the most persistent complaints from the program’s critics (and the

program has many, labor unions among them) is that it takes jobs away from U.S. workers. Employers that use the program, and the many service industry associations to which they belong, say this is hogwash.

"We use the H-2B program in spite of the government's best efforts to do away with it," says John Munie, founder and operator of [Focal Pointe Outdoor Solutions](#), Caseyville, Illinois.

Munie feels it's a fallacy to think that if the program is abolished, as some politicians and H-2B critics suggest, it would provide more job opportunities for U.S. workers. In fact, Munie is convinced the program accomplishes the opposite – it provides more employment opportunities for U.S. workers. "The availability of these seasonal workers creates more jobs for Americans," he says. "It allows us to employ very well-paying positions within our organizations because by using H-2B workers we have been able to grow.



"These H-2B employees believe it is an honor to be working here, and they appreciate the work they do," he adds. "It is unfortunate some of our politicians don't see the benefits of these tax-paying individuals who actually create jobs within our economy."

## **A business, not immigration, issue**

Other critics attempt to cast H-2B as an immigration issue, linking it to the frustration of the government's inability to solve the problem of undocumented, i.e. illegal, workers in the country. In a sense, H-2B and H-2A, its sister program for seasonal agricultural workers, are a part of the larger debate over U.S. immigration policies.

However, the government itself describes the H-2B program as a "temporary nonimmigrant" classification. These visa holders work in the U.S. on a temporary basis and then return to their host countries. Employers claim that a small number of H-2B workers abuse that privilege by over-staying their visas. Doing so destroys any chance for them to participate in H-2B ever again.

Employers and the many business associations that support them (including the U.S. Chamber of Commerce) have argued that the H-2B program is a "small business" issue rather than an immigration issue. That distinction seemed to gain traction with U.S. legislators in the two years leading up to the 2008-2009 recession.



With U.S. unemployment at its lowest level since 2008, the owners of small seasonal businesses count themselves fortunate if they have sufficient employees to serve their clients. PHOTOS: RONNIE HALL

A coalition of industries in the two years leading up to the recession, thanks to the efforts of Senators Barbara Mikulsi (D.-Md.) and John Warner (R.-Va.), were successful in getting legislation passed allowing H-2B workers

who had worked in the U.S. in any of the previous three years to return to their employers without being counted against the 66,000 visa cap.

Efforts to extend “the returning worker” clause failed as the recession took hold and unemployment soared.

Now, six years later and with a much-improved economy, employers are again struggling to find workers. Not surprisingly, efforts by a coalition of industries representing small business are again underway to convince legislators to pass a bill to allow returning workers not to be counted against the cap.

## **Worker demand grows**

Apart from the complexity and cost of acquiring legal, non-U.S. seasonal employees, company owners face another huge challenge – the program’s popularity. The landscape services industry is one of dozens of industries drawing upon this small number of potential employees. Hotels, amusement parks, horse trainers, ski resorts, soccer and baseball camps, among other employers, compete for their share of the 66,000 available visas.

In fact, for the program’s FY 2014, just two of the nine biggest employers of H-2B getting labor certifications from the DOL were landscape companies. For FY 2015, four landscape companies cracked the top 10 in gaining labor certifications. A labor certification, of course, is required before the USCIS can adjudicate a visa request.

Many employers in the landscape and related service industries say the growth of the U.S. economy and the demand for services by consumers has outstripped the ability of the nation’s workforce to meet this demand. Entering the busy spring season, the nation’s unemployment figure hovered around 5.5 percent, the lowest number since May 2008, says the U.S. Bureau of Labor Statistics.



Coming off a heartening 2014 and optimistic 2015, many landscape company owners feel the availability of reliable, able employees – from laborers to managers – is limiting their companies’ growth and the industry’s growth.

“It is very hard to hire Americans to do outdoor work that is seasonal in nature,” says Ralph Egües, executive director of the [National Hispanic Landscape Association](#) (NHLA). In order for many companies to grow, they need that supplemental labor.

“That ability to have that additional labor force enables you to grow your company. Then you have to hire more management and buy more equipment. That’s how companies grow,” adds Egües. “Without meeting that baseline labor need for the peak season, all of that goes away.”

## **Large and small firms participate**

Parsing DOL H-2B labor certification records for FY 2014, Turf magazine learned that landscape employers sought worker certifications for 1,897

different U.S. locations and received a total of 34,845 temporary labor certifications. A dozen or more larger companies, [TruGreen Landcare](#) being one example, sought certifications for multiple locations.

Even so, more than 1,400 of these applications came from independent, local companies. They applied for anywhere from four to 50 temporary labor certifications.

Several of the nation's largest landscape/lawn maintenance companies lean heavily on H-2B workers.

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## **How You Can Play The Game**

You don't have to be a big company to obtain legal seasonal immigrant H-2B workers. A review of the 2014 DOL Office of Certification records show that landscape companies have obtained worker certifications for as few as three H-2B workers.

If you are having problems finding reliable employees, you may want to consider going the H-2B route. But don't dally. Competition for the workers is keen, and many employers start the paperwork process six to eight months before they feel they will need the workers. Here's what's involved.

Craig J. Regelbrugge, AmericanHort senior vice president for advocacy, in a recent webinar sponsored by the Texas Nursery & Landscape Association, described H-2B as "a dance that involves three federal agencies."

The first step is making an application to the Department of Labor (DOL) for what is called a temporary labor certification, says Regelbrugge.

This is the process of proving that you have a need that you are unable to fill with domestic workers, and requires advertising for any willing and available U.S. workers. If any come forward, they must be considered for employment. You must hire them if they meet the requirements needed for the position.

Regelbrugge says employers must also convince the DOL that the employment of H-2B foreigners will not adversely affect similar U.S. workers. Employers must offer and pay U.S. and H-2B workers the higher of the prevailing and minimum wage.

The second step is with the USCIS, a branch of Homeland Security. Once you have temporary worker certifications from the DOL, you are then petitioning Homeland Security for the right to get visas for these workers, continues Regelbrugge.

After the USCIS gives its ok, the certified workers must then seek

approval for their H-2B visas by the Department of State at a U.S. Consulate abroad. One of the busiest of these consulates is in Monterrey, Mexico, which processes several thousand H-2B visas annually. But there are others. Mexico and Central America supply most of the H-2B workers working in the U.S. each season.

It's a good idea for employers with no experience traversing the program's requirements to rely on agents or immigration attorneys to guide them through the process.

For a full description of the H-2B program and how to participate in it, visit [www.foreignlaborcert.doleta.gov/h-2b\\_detail.cfm](http://www.foreignlaborcert.doleta.gov/h-2b_detail.cfm).

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DOL records indicate that for FY 2014, ValleyCrest sought certifications for workers at 23 sites and [Brickman](#) for 11 locations, 924 applications in total. (ValleyCrest was purchased by private equity powerhouse KKR in mid-2014 and merged with Brickman. This past December, the new \$2 billion-plus company with 22,700 employees was renamed BrightView.)

Two other green industry giants figured prominently in the 2014 H-2B picture, as well. TruGreen Landcare (owned by the Aurora Capital Group since 2011) submitted petitions for approximately 940 labor certifications for 31 U.S. locations. Meanwhile, Landscapes Management Company LLC, headquartered in Lincoln, Nebraska, received certifications for 486 workers.

As Turf has been unable – to this point anyway – to access Department of Homeland USCIS data regarding the program, it is not known how many of these certifications mentioned in the preceding paragraphs resulted in the issuance of H-2B visas.

## **Significance beyond numbers**

Considering the claim by the National Association of Landscape Professionals (NALP) that the landscape services market employs about 888,000 people, the 34,421 H-2B workers certified by the DOL in 2014 seem puny indeed. This, of course, raises the question of the impact of H-2B to the industry's overall health and its growth prospects.

There are several ways to look at this.

The first way, of course, is strictly by the numbers, suggesting to some observers that the H-2B employees the industry lands each year have a relatively insignificant effect on the growth or overall health of the industry. After all, these workers amount to slightly less than .04 percent of the industry's employee base, referencing the NALP industry employment figure.

Of course, these workers are extremely important for employers counting on them, both some of the industry giants and also hundreds of small companies.

Turf has determined, from the DOL data, that 1,400 to 1,500 landscape and lawn service employers sought and received worker certifications for the 2014 season.

There is little question in any of these employers' minds that should these workers become unavailable (or too expensive to employ because of unreasonable government wage rules) it would greatly diminish the size and scope of their businesses and, relatedly, the size of the industry.

Proponents and users of the program say the best way to view H-2B is to expand the number of available visas because of the program's potential to serve as an even greater force in boosting the activity and growth of seasonal U.S. industries, especially the landscape industry.



When contractors have sufficient manpower to meet growing consumer demand and grow their businesses, they buy additional equipment and materials. This, in turn, boosts the U.S. economy. PHOTO: RONNIE HALL

This is the view suggested by Munley of OLA, and others.

"I've always looked at it as why does the government have a problem with this program? It's only 66,000 workers for the whole country." Her view is that the issuance of more H-2B visas beyond today's cap would spur even greater growth in many U.S. industries, as well as benefit the economy in general.

The only way to do this says Tom Delaney, director of government affairs for the [National Association of Landscape Professionals](#), is by pushing for congressional action. To that point, Rep. Andy Harris (Rep.-Md.) drafted a bill incorporating many H-2B fixes including the "returning worker" exemption and language addressing unreasonable wage requirements.

Recently, about 100 program supporters gathered in Washington, D.C., and spent a day meeting with legislators and promoting the Bill.

[AmericanHort](#)'s Regelbrugge, in reference to defending H-2B and immigration reform in total, says: "If you raise your voice we can amplify it. If you are just sitting back waiting for somebody else to solve the problem, we are not going to see a solution."

Is the H-2B program more significant to the industry than the comparatively small number of employees it provides would seem to indicate? The industry for the most part, especially its leadership, claims that is the case.