

Important Changes for Small and Seasonal Businesses in new Y-2B Program contained in the Senate Immigration Bill (S. 1348)

(Updated by Save Small Business on May 31, 2007)

The Senate Immigration bill will eliminate the H-2B program. In its place will be the Y-2B category, with laws linking it to the newly-proposed, and controversial, Y-1 guest worker program. Below are some of the highlights of the Y-2B program. The Bill will (a) make permanent the Returning Worker Exemption, and (b) increase the cap to 100,000. In addition to the RWE and cap increase, the Senate Bill:

1. Eliminates the H-2B visa category [Sec. 401(a)(1)(A)]
2. Establishes 10 month maximum stay, followed by minimum 2 months out of US. No extensions allowed. (Currently extensions okay). [Sec. 402(a)/218A(i)(1)(B); Sec. 402(a)/218A(i)(5)(B)]
3. Creates a new fee structure to pay for all of USCIS' costs for the Y program. [Sec. 402(a)/218A(e)(3)]
4. Mandates medical appointments for Y workers (including Y-2B) before they come to the US. (Currently there is no medical requirement for temporary visas). [Sec. 402(a)/218A(e)(4)]
5. Requires employers to advertise the position for 10 consecutive days in "one of the three highest circulation publications" in the area where the job will be held. (Currently the requirement is three consecutive days of advertisements). [Sec. 403(a)/218B(b)(1)(C)]
6. Requires employers to advertise the job opportunity in no more than three ethnic, trade, professional journals as determined by the State Workforce Agency. (No such requirement currently exists in H-2B program). [Sec. 403(a)/218B(b)(1)(D)]
7. Requires employers to furnish health insurance to each worker if foreign worker is not covered by state worker comp law. (This is a new requirement). [Sec. 403(a)/218B(c)(1)(E)]
8. Mandates that employers in high unemployment areas (> 7% unemployment rate in the county of job opportunity) are ineligible to apply for workers unless they receive waiver. To obtain waiver, employer must (among other duties) advertise job opportunity for 20 consecutive days in similar publication as above. (This is a new requirement) [Sec. 403(a)/218B(e)(3)]
9. Permanently bars workers from ever returning to the US if overstay visa (could even be one hour overstay). Very limited appeal right. (Current law is 3 year/10 year bar). [Sec. 402(a)/218A(n)]
10. Reduces worker protection by creating opportunity for Y-2B workers to leave their sponsoring employer at any time and begin work for another employer, so long as new employer has provided USCIS with notification of change. If successor employer petition is ultimately denied, foreign worker will be out of status and face lifetime permanent bar. (Currently H-2B workers can exercise "portability" at time of approval of successor employer's USCIS petition). [Sec. 402(a)/218A(p)]
11. Requires employers to report movement of all workers. (New Requirement). [Sec. 402(a)/218A(q)]
12. Mandates that biometrics of Y-2B must be filed as part of USCIS petition (to be determined by future regulation). (New Requirement—eliminates "unnamed workers"). [Sec. 402(a)/218A(c)(1)(D)]
13. Limits countries where Y-2B workers originate to those that have completed bilateral agreement on immigration and police cooperation with US. (New Req.). [Sec. 410(b)]
14. Institutes a new Y-2B visa requirement for Canadians. (New). [Sec. 402(a)/218A(d)(2)]
15. May create opportunity for further changes if Senate is not clear in its making its wishes known regarding the H-2B/Y-2B program. For instance, the Bill discusses Y-2B beneficiaries in the singular throughout. Unless Congress is clear that this is NOT ITS INTENT, this could likely result in the elimination of (a) filing for multiple beneficiaries, and (b) substituting beneficiaries at the Consulate. The elimination of USCIS multiple beneficiary filing would increase filing fees by 1000 to 10,000%.