

H-2B Supporters Continue the Battle Against DOL Rules



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Supporters of the H-2B seasonal foreign worker program have been successful in temporarily blocking another H-2B program shutdown. Initially, the deadline for lifting the injunction against implementation of the Department of Labor (DOL) rules had been set for April 15, but Judge M. Casey Rodgers at the Northern District Florida Court extended the stay of the injunction until May 15. This means the [DOL](#) and Homeland Security are processing worker petitions – for now at least.

H-2B program users and supporters claim that DOL overstepped its authority when it issued regulations in 2008 that – should they be implemented – will make the program too cumbersome and expensive for most employers. DOL's efforts to implement the regulations to his point have been blocked by courts in spite of several efforts to implement them.

In particular, employers insist that the regulation's government-mandated wage rates for H-2B workers (and domestic workers doing the same tasks) are unreasonably high and not based on the local market wages.

On March 16, the [DOL and immigration](#) said that they hope to issue the regulations, known as a joint Interim Final Rule, by April 30. Landscape employers and other H-2B user industries are seeking a permanent injunction prohibiting the DOL from enforcing certain of these DOL regulations.

All of this boiled to a crisis on March 4 when the federal district court in north Florida, responding to a suit, vacated DOL's 2008 [H-2B regulations](#) on the grounds that the DOL lacked authority to issue regulations to the program. The DOL responded by announcing it would stop processing requests for prevailing wage determinations and petitions, and would not review any new worker petitions. The [Department of Homeland Security](#) (DHS) made a similar announcement.

The H-2B program ground to a halt with employers' petitions for seasonal workers trapped in a dead zone.

Although the processing of petitions resumed by March 20, thanks to pressure from U.S. legislators, the temporary shutdown of the program caused delays that resulted in many companies having to wait weeks later than they requested to get their employees. Other employers not making the cap because of the processing stoppage were denied their H-2B employees altogether.

The unexpected suddenness of the H-2B cap being filled, the first half of FY2015 by February 2 and the second authorized 33,000 H-2B visas by March 31, frustrated and caught many employers by surprise.

Typically, the DHS continues adjudicating worker certifications beyond the 66,000-visa cap because some employers withdraw their requests for workers and other employers' petitions and denied for one reason or another. The DHS in previous years promptly posted this information on its website. This year, as of this writing, it had not posted this information, leaving some frustrated employers wondering if, in fact, DHS did approve the full compliment of 66,000 visas.

Read more on H-2B:

[4-20-15: H-2B Supporters Gather in Washington Seeking Help from Congress](#)

[4-13-15: H-2B Supporters Stage April 15 Fly-in to Defend the Program](#)

[3-30-15: PLANET H-2B Update: Processing Resumes, But Support Still Needed](#)

[3-18-15: DHS Announces It Will Restart Processing H-2B Visas](#)

[2-10-15: PLANET Legislative Alert: H-2B Cap Reached](#)