

Foreign Labor Certification

*An overview of the program
in South Dakota*

The Reasons for the Increases of non-US citizen populations in South Dakota

- ❖ **Increased sponsorship of refugees and asylum seekers by social service groups**
- ❖ **Sharp increase in employer sponsorships of foreign workers in work-visa programs**
- ❖ **Overall increases of non-immigrants and immigrants based on population center increases and job availability in those centers**
- ❖ **Movement of illegal entrants into SD in search of possible jobs.**

Ethnic population breakdown in South Dakota

According to 2017 Census Bureau estimate:

- ❑ **The population of South Dakota was 869,666 people;**

| Race and Hispanic Origin | |
|--|-------|
| f White alone, percent (a) | 85.2% |
| f Black or African American alone, percent (a) | 2.0% |
| f American Indian and Alaska Native alone, percent (a) | 9.0% |
| f Asian alone, percent (a) | 1.5% |
| f Native Hawaiian and Other Pacific Islander alone, percent (a) | 0.1% |
| f Two or More Races, percent | 2.3% |

Types of Visas commonly seen in South Dakota

- **H1B – Specialty occupations normally requiring a minimum of a bachelor degree;**
- **H2A – Temporary agricultural workers**
- **H2B – Temporary non-agricultural workers**
- **J1- Foreign students entering US for a temporary period of time and then return to school in their country**
- **F1 – Foreign students attending school in the United States.**
- **Permanent (Greencard)- permanent resident aliens**

What DLR does and doesn't do;

The South Dakota Department of Labor works ONLY with H2A and H2B applications. The USDOL processes applications for PERM and H1B.

There's literally an alphabet soup of visas issued by the United States Citizenship and Immigration Service (formerly INS).

DLR and USDOL does NOT work directly with potential foreign entrants/workers, only employers. USCIS is responsible for individual entrants and their authorization and work in the United States.

H2A

- Temporary, agricultural workers employed in the direct raising of crops or livestock. This can also include food processing IF the business is seasonal in nature.
- This program provides the most protections for an alien employee under federal Wage and Hour rules and the Migrant Seasonal [Agricultural Worker] Protection Act (MSPA), including housing inspections.
- H2A does NOT include workers in the processing of crops once they leave the field or in meat packing facilities of a permanent nature.

H2B

- Temporary, non-agricultural workers
- Usually are involved in the service industry, especially tourism in SD
- This category is the easiest to administer but provides the least protection to the workers, although protections have increased over the last several years.

Required Wages

- **Employers are required to pay the Adverse Effect Wage Rate for H2A (currently \$13.64/hr in SD) or the prevailing rate of pay for the occupation that is being applied for under H2B.**
- **The purpose of the AEWR and prevailing wage rate is to prevent the employer from attempting to hire the foreign worker(s) for a wage significantly lower than those afforded to US workers or to offer a wage that no US worker would accept.**

What is FLC's purpose?

- The program's purpose is designed to protect US jobs for US workers. It is not a program to encourage the hiring of foreign workers.
- The program can sometimes be considered a Band-Aid instead of a solution to the real problem. First question; "Why do we need foreign workers in the US?" and then ask "Why?" again once that is answered.
- Solutions to this issue are not easy or tolerated by all impacted parties.

Growth in the H2A and H2B Programs

- 1999- Virtually an unheard of program. Less than 10 applications received by the SDDOL in all categories.
- FY2012 – H2A 124 applications for 658 positions, H2B 68 applications for 1093 positions.
- FY2015 Disclosure data from ETA (last available):
 - SD H2A - 166 applications for 812 positions
 - SD H2B – 96 applications for 1266 positions

Why has growth happened?

- This growth was accomplished without local, state, or national advertising and without promotion from DLR.
- Growth is expected as long as a guest worker program exists.
- Congress talks about it, but has yet to address in a regulatory manner.

The Good, the Bad and the Ugly

- As with all change, immigration increases in SD has been good...and bad.
- How one person views the benefits can be very different than how another sees it.

The Good (Usually)

- Economics and economic impact
- Diversity of population
- New Taxpayers
- Filling a work void
- Providing a more stable labor availability

The 'Bad'

- **Language Barriers**
- **Cultural divisions**
- **Misunderstanding immigration procedures**
- **Hiring of potentially unauthorized workers**
- **Rapid growth of communities and housing issues can happen**
- **Costs to taxpayers for social programs and integration**

The Ugly

The Business Bottom Line

Vs.

Morally Acceptable Behavior of Employers

The Issues

- Paying employees properly – guest workers are not personal slaves.
- Housing and rents – regulations must be followed
- Possible adverse effects on US workers
- Possible adverse effects on foreign workers

Where is it all going?

- **Immigration policies do need updating. No significant updates to H2A regulations since 1980. Modest updates to H2B.**
- **There are too many people with differing opinions on what should be done and how it should be done. Politics, personal beliefs, NIMBY, etc.**
- **Is there a compromise?**

QUESTIONS?

- Thank you for listening!