

Working Economics Blog

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The Legal Workforce and Agricultural Guestworker Acts would push down wages and labor standards for Americans and immigrants alike

From the perspective of immigration and the labor market, perhaps the two worst pieces of proposed legislation that we'll see all year will be considered and marked up in the House Judiciary Committee Committee **starting today**.

One of the bills is the Legal Workforce Act (H.R. 3711), proposed by Rep. Lamar Smith (R-TX); it would mandate that all U.S. employers use E-Verify, an electronic system used to check if new hires are authorized to be employed in the United States. For a number of reasons, E-Verify is not ready for prime time. First, E-Verify's accuracy rate is simply not good enough. Many authorized workers, including American citizens, would be erroneously flagged as unauthorized if all employers were required to use it. Moreover, Congress has not set up a procedure or process for workers improperly flagged as unauthorized to contest E-Verify findings. Job seekers—including many of the working poor with few resources—would have to visit Social Security Administration and/or Department of Homeland Security offices on their own time and at their own expense to correct an E-Verify error, or else face losing their jobs. And if they lose their job because of a government error, there is no meaningful recourse for them to get reinstated or sue for lost wages.

Furthermore, E-Verify should not be expanded nationwide until the 11 million unauthorized immigrants in the United States—including 8 million unauthorized immigrant workers—are legalized. While E-Verify **might make sense someday** as a policy option to deter future unauthorized migration, without making necessary improvements or coupling it with a broad legalization, it will do much more harm to low-wage workers than good. Many unauthorized immigrants will begin working off of formal payrolls, making it nearly impossible for them to contribute to payroll taxes and the social safety net, or to file successful compensation claims when they are injured on the job. Expanding E-Verify without legalizing the 8 million employed unauthorized immigrants would leave 5 percent of the labor market even more exploitable and vulnerable to retaliation based on immigration status than they already are, putting downward pressure on labor standards for U.S. workers who are employed alongside unauthorized immigrants.

E-Verify expansion was considered as part of comprehensive immigration reform in 2013, and shouldn't be considered again until Congress is ready to consider major reforms to it and couple it with legalization.

Because E-Verify will upset the business community by pushing millions of undocumented workers into the informal labor market, the E-Verify bill is being considered together in the House Judiciary Committee with a bill that would create a large new guestworker program to replace the undocumented workforce. The "Agricultural Guestworker Act" (AG Act), authored by Judiciary Chairman Rep. Goodlatte (R-VA), will create a new temporary worker program that will allow migrant workers to be employed on temporary, nonimmigrant visas—not just for seasonal jobs in agriculture, but also many year-round jobs that have provided a path to the middle class for millions, including in meat processing and food manufacturing. The AG Act would create a new "H-2C" work visa program that would start at 450,000 new guestworkers per year, but the cap could increase depending on employer demand, and guestworkers could stay for longer than one year. As a result, Farmworker Justice **estimates** that as many as 2 million visas could be issued by the second year of the H-2C program's existence—equal to roughly 1.25 percent of the entire U.S. labor force. (That would be in addition to the **1 percent of the workforce** that is already made up of guestworkers with limited workplace rights.)

This new program the bill would create won't give H-2C workers equal rights on par with U.S. workers. As part of the program, H-2C workers will be vastly underpaid for their work compared to U.S. workers. Employers will only be required to pay H-2C workers slightly above the minimum wage—115 percent of the minimum wage for most jobs or 150 percent for meat and poultry processing jobs—but the bill contains loopholes that would allow them to pay less. In the **21 states** that use the federal minimum wage, 115 percent of the minimum wage means that most H-2Cs will get paid \$8.34 per hour, which amounts to \$334 per week and \$17,347 per year if they work a full 40 hours per week. But H-2C workers have no guarantee that they'll work 40 hours per week, because Rep. Goodlatte included a provision only requiring employers to provide them with 20 hours of work per week. 20 hours of work per week at \$8.34 per hour amounts to \$167 per week and \$8,674 per year.

In addition, hundreds of thousands, if not millions of H-2C workers—nearly all of whom will be earning wages that keep them well below the poverty line—will be required to pay for their own housing. Under the current H-2A guestworker program for temporary and seasonal jobs, guestworkers earn a higher wage than they would under the AG Act, and employers are required to provide housing, in part because migrant workers can't be expected to afford housing on the low wages they're paid (even at the higher wage rates in H-2A). It is nearly impossible for anyone in the United States to afford housing if they earn less than \$9,000 per year. Rep. Goodlatte is either oblivious to what it costs to live in the United States or he simply doesn't care that many H-2C guestworker will have no choice but to be homeless.

To add insult to injury, Rep. Goodlatte's bill requires H-2C workers to pay for their own health insurance, but prohibits them from accessing subsidies available to the rest of the public under the Affordable Care Act. For some H-2C workers, their annual earnings won't even be enough to afford the health insurance they're required to purchase.

The AG Act is a bad idea for a number of other reasons too, including permitting employers to *attest* rather than *prove* that they couldn't find U.S. workers to fill positions, excluding the Department of Labor from any oversight role, prohibiting federal legal aid money from being used to represent H-2C workers, and prohibiting H-2C workers who suffered workplace abuses from filing lawsuits—instead requiring them to submit legal disputes to mandatory arbitration and for good measure, requiring them to pay half the arbitration costs.

It is obvious to any rational person that the AG Act is a recipe for importing poverty and instituting a new era of legalized slavery in the United States, all so that agricultural employers can save a few bucks on labor costs and have a captive workforce that has no option but to beg for the opportunity to earn a pittance for doing some of the most important and backbreaking work in the country.

The one-two punch of the Legal Workforce Act and the Agricultural Guestworker Act will do more to erode labor standards and push down wages for lesser-skilled workers—both Americans and immigrants—than any other immigration legislation in recent memory. The best way to raise wages through immigration law is to legalize the unauthorized immigrant population and create a more rational, flexible, and data-driven system that ties immigration levels to the needs of the economy—not employer desires for indentured workers.