
Border Security, Economic Opportunity, and Immigration Modernization Act S. 744

July 17, 2013

Members of the International Labor Recruitment Working Group have been working to prevent international labor recruitment abuse for many years. We have gathered data, educated the public, and as of October 2011, coordinated a concerted effort to reform international labor recruitment. Measures that address recruitment abuse in the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, include critical protections for internationally recruited workers. Since the Bill's passage on June 27, 2013, our work continues to ensure that the public and public servants are informed about recruitment abuse and measures to prevent recruitment abuse.

The Working Group organizes its advocacy efforts around 8 key principles that should guide the reform of international labor recruitment. Below those principles are listed along with information about how the Senate Bill includes some protections for workers.

Freedom from Discrimination and Retaliation

Workers shall have the right to a recruitment and employment experience free of discrimination and retaliation.

During the recruitment process, internationally recruited workers are subject to various forms of discrimination. Recruiters and employers limit access to the recruitment stream by national origin, sex, and age. They segregate workers into jobs and visa categories based on racialized and gendered stereotypes. They also retaliate against and blacklist workers who complain about unfair or unlawful treatment.

The Senate Bill prohibits foreign labor contractors from failing to hire or refusing to hire, discharge, intimidate, threaten, restrain, coerce or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, sex, national origin, religion, age, or disability.

Right to Know

Workers shall have the right to be informed in a language they understand about the recruitment process and their rights under U.S. work visa programs.

Internationally recruited workers lack adequate information about the recruitment process and their legal rights as workers in the United States. Without this information, workers are ill equipped to protect themselves from fraudulent recruitment practices and unlawful employment conditions. In this environment, recruiters and employers mistreat workers with impunity.

The Senate Bill includes provisions that would improve workers' knowledge about the recruitment process and their rights under the process. The Bill would require that important information be disclosed to workers at the time of recruitment in English and the worker's primary language. The required disclosures include the following: the identity of the employer and the recruiter; the terms of employment; a copy of the signed contract; the type, length, and terms and conditions of the visa; any costs and expenses associated with the work; any training that would be provided or required; and worker's compensation or insurance coverage in the event of injury or death, among others.

The Senate Bill would require the Department of Homeland Security (DHS) to create a public registry of foreign labor contractors containing information about the employers, visas, and locations for which they contract workers, as well as a list of foreign labor contractors whose certification has been revoked. All foreign labor contractors besides employers would be required to register and receive a revocable certification from DHS. Employers would be required to notify DHS of the foreign labor contractors they use. The Secretary would require foreign labor contractors to post a bond to ensure both the fulfillment of the contractor's responsibilities and the wages of the workers.

The Bill would also improve transparency by requiring the Secretary of State to maintain information related to the identities of foreign labor contractors and the employers to whom the foreign labor contractors supply workers. This information would be made available online, including on the websites of U.S. embassies in the official language of that country. The Secretary of State is also charged with annually disclosing data in an on-line, public format regarding the gender, country of origin and state, date of birth, wage, level of training and occupation category, disaggregated by job and by visa category of visas processed.

Freedom from Economic Coercion

Workers shall have the right to freedom from economic coercion in U.S. work visa programs.

After paying recruitment, visa processing and travel costs, internationally recruited workers across visa categories arrive in the United States with considerable debt. International labor recruiters, who often have a virtual monopoly over the job market in which they recruit, charge workers high fees for the opportunity to work in the United States. To pay these fees, many workers borrow money at high interest rates and even use their homes as collateral.

The Senate Bill explicitly prohibits foreign labor contractors from charging workers recruitment fees of any kind, including visa, visa processing, transportation, legal expenses, placement fees and other costs. Additionally the Bill requires that workers receive disclosures on any costs and expenses that will be charged to the worker, such as housing, transportation, health insurance, workers' compensation, medical examinations, and safety equipment costs. Workers are also required to receive disclosures that the foreign labor contractor or employer is not permitted to charge any fees.

Right to Receive a Contract with Fair Terms and to Give Informed Consent

Workers shall have the right to a legal employment contract that respects their rights and the right to provide informed consent before being hired.

Unjust contract practices are pervasive in the international labor recruitment process. Employers frequently fail to provide workers with the terms and conditions of employment in a form that is appropriate, verifiable and easy to understand.

The Senate Bill requires that the foreign labor contractor provide the worker a copy of the written employment contract between the employer and worker, along with other disclosures. No additional requirements or significant changes could be made to the original contract signed by the worker without the specific consent of the worker to each additional requirement. The worker is required to be given 24 hours to review and consider the additional requirements or changes. Any consent to changes must be obtained voluntarily and without threat of penalty or will be a violation of law. Foreign labor contractors are prohibited from providing false or misleading information to workers.

Employer Accountability

Workers shall have the right to be recruited for work in the United States under a system that holds the employer accountable for any and all abuses suffered during their recruitment or employment.

Employers frequently are not held liable for fraudulent, deceptive and illegal practices employed in the recruitment supply chain by contracted and subcontracted actors. The lack of employer accountability for abuses suffered during recruitment lends itself to an environment of impunity in which employers are able to shift recruitment costs to workers.

The Senate Bill provides for some enforcement mechanisms, including a DHS complaint, investigation and enforcement process, as well as the ability for workers to bring a civil action against employers in limited and narrow circumstances. The enforcement provisions include a broad safe harbor provision for employers who use recruiters who are registered with the DHS. In a compromise with business, employers could have liability for recruitment abuse in narrow and limited circumstances. A worker who believes that he or she has suffered a violation of subtitle F may seek relief from an employer by filing a complaint with the DHS within 3 years after the date on which the violation occurred or he or she became aware of the violation. If the DHS has not issued a decision within 120 days, a complaint may be filed against the employer in the appropriate district court in the United States.

Freedom of Movement

Workers shall have the right to move freely and change employers while working in the United States.

U.S. work visa programs are plagued with incidents of employers keeping internationally recruited workers in conditions of slavery, severely restricting the ability of these individuals to move freely. Many of the visas are tied to a single employer, preventing the worker from leaving the employer and seeking employment elsewhere.

[The Senate Bill](#) creates a new W visa. The new W visa category would allow some limited opportunity for workers to change employers, an important protection for those workers who experience abuse on the job. The new U visa provisions make it possible for some aggrieved workers to stay in the United States to participate in proceedings and could make it possible for some aggrieved workers to seek employment with another employer.

Freedom of Association and Collective Bargaining

Workers shall have the right to form and join unions and to bargain and advocate collectively to promote their rights and interests.

Currently, internationally recruited workers have limited ability to freely associate and bargain collectively.

[The Senate Bill](#) disclosure section in subtitle F would require that workers be made aware of any labor organizing effort, strike, lockout, or other labor dispute at the workplace.

Access to Justice

Workers shall have the right to access justice for abuses suffered under U.S. work visa programs.

Internationally recruited workers are limited in their ability to seek justice when they suffer abuse at the hands of unscrupulous employers and labor recruiters. When they denounce abusive or illegal work situations, they face reprisals from employers and labor recruiters.

[The Senate Bill](#) includes provisions that include providing know-your-rights information to internationally recruited workers at the consulates, providing access to legal-services funded attorneys, and the ability to remain in the United States while any proceedings are pending. The know-your-rights information is in the form of a pamphlet created under provisions of the TVPRA. This pamphlet would be distributed to all visa categories under INA § 101(a)(15). If other immigration relief is not available, the Attorney General and the Secretary of Homeland Security would grant advance parole to the nonimmigrant to remain legally in the United States while proceedings are pending. Workers would not be able to waive their rights under the Bill.