

**From:** lsequeira lrs-law.com <lsequeira@lrs-law.com>  
**Sent:** Tuesday, April 20, 2021 8:26 AM  
**To:** Gray Delany  
**Subject:** Bloomberg: H2B visa cap increase

In case you haven't seen...

## Bloomberg Government

---

### **Biden Agencies' Pact Boosts Seasonal Visas in Blow to Unions**

- DHS, DOL agree to lift H-2B cap by 22,000
- Comes after pressure from businesses, lawmakers

By Ben Penn and Genevieve Douglas / April 19, 2021 09:37PM ET / Bloomberg Law

Two Biden administration agencies have struck a deal to offer 22,000 extra seasonal guestworker visas to employers in the coming months, providing additional opportunities for businesses to hire temporary foreign workers, a move that will cheer business interests but alienate unions who argue those jobs belong to Americans.

Homeland Security Secretary Alejandro Mayorkas and Labor Secretary Marty Walsh agreed late last week to lift the cap on H-2B visas, two sources familiar with the process said. Once formally announced, the new stock of temporary visas would supplement a previous supply of 33,000 for the second half of fiscal 2021, all of which had been claimed. H-2B visas are capped annually at 66,000, divided evenly between two halves of the federal fiscal year, which started [on Oct. 1](#).

The accord is the Biden administration's most recent delicate immigration policy maneuver that divides various political constituencies without splitting neatly along partisan lines.

Business groups and a bipartisan group of lawmakers in states with economies that rely on seasonal guestworkers, such as the Maryland and Alaska seafood industries, have been amplifying their calls for the Biden administration to provide supplemental H-2Bs for their states' employers who weren't able to secure visas in the earlier disbursements.

But large labor unions, such as the United Food and Commercial Workers and Laborers' International Union of North America, groups whose support the president has courted and cultivated, have long opposed H-2B expansion, saying the program is rife with employer abuses and displaces U.S. workers while suppressing industry-wide wages. Walsh is a former leader at a LIUNA local in Boston and still belonged to the affiliate when he was nominated for labor secretary by Biden.

DOL spokeswoman Elizabeth Alexander declined to comment. Neither White House nor DHS media representatives immediately responded to after-hours requests for comment.

### **Legislative Authorization**

Congress, in the federal budget enacted in late December, gave the Department of Homeland Security authority to raise the cap on H-2B visas—in consultation with the Labor Department—if the agencies determined American business needs can't be met with U.S. workers who are "willing, qualified, and able to perform" the jobs.

Previous Democratic and Republican administrations have similarly opted to expand the maximum to satisfy soaring spring and summer demand for workers in industries such as seafood processing, landscaping, and tourism that commonly use these temporary guestworkers.

The Trump administration last June barred H-2B visa holders from entering the U.S. as part of [measures](#) it put in place in response to the coronavirus pandemic. The Biden administration allowed that ban to expire March 31.

Employers of H-2B guestworkers [pushed back](#) against the previous administration's actions, saying they still can't find U.S. workers to do these jobs despite massive unemployment triggered by the pandemic.

## Organized Opposition

Unions have urged the Biden and Trump administrations not to expand the seasonal worker visas at a time when large swaths of their membership remain unemployed, such as hotel workers sidelined due to the coronavirus pandemic. The hospitality union UNITE HERE, in an April 17 [Tweet thread](#), asked the Biden administration not to raise the H-2B cap and to focus instead on reforming the visa program.

"We don't need more H-2B visas—we need worker protections! In one city where 91% of our current union hotel housekeepers are still out of work, a major hotel company is asking for more H-2B visas. Why is this necessary?" tweeted the union, which has lost 56% of its membership nationwide over the pandemic. "UNITE HERE fears companies are attempting to unload their legacy workers, who also happen to be union members."

Extending more visas when applicants meet the cap has, in recent years, become an annual rite of passage. Under ex-President Donald Trump, DHS made 15,000 additional H-2B visas available in fiscal 2017 and 2018, upping the ante to 30,000 in 2019. The agency announced it would lift the cap by 35,000 in March 2020, before canceling that decision due to the contagion.

The agreement reached by Mayorkas and Walsh comes after the administration has faced sustained pressure from Republicans over its approach to migrants trying to enter the U.S. along the border with Mexico. The administration also has faced pushback from progressives after it apparently decided on Friday to not to extend the annual refugee cap of 15,000. The White House later said—in what it characterized as a clarification—that a new refugee limit would be determined by [May 15](#) and would likely increase.

To contact the reporters on this story: Ben Penn in Washington at [bpenn@bloomberglaw.com](mailto:bpenn@bloomberglaw.com); Genevieve Douglas in Washington at [gdouglas@bloomberglaw.com](mailto:gdouglas@bloomberglaw.com)

To contact the editor responsible for this story: Andrew Harris at [aharris@bloomberglaw.com](mailto:aharris@bloomberglaw.com)