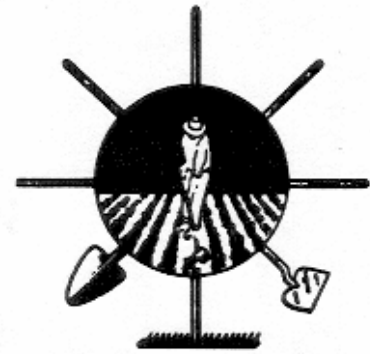


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Keep the Job Preference for U.S. Workers in Guestworker Programs

Oppose the Chambliss Amendments

U.S. workers should have first crack at jobs inside the U.S. when an employer claims it can't find workers and asks permission to bring in temporary foreign workers on non-immigrant visas.

Sen. Chambliss's amendment 3235 would abolish the key provision in the H-2A agricultural guestworker program that provides a meaningful job preference to U.S. workers.

The H-2A program's "50% rule" requires H-2A employers to hire qualified U.S. workers who apply for work until half the season has elapsed. 20 C.F.R. § 655.103(e). Frequently, the first day of work in a season does not require all the workers who will be needed later in the season. Consequently, hiring often continues past the first "date of need" for worker specified by an employer when it is applying for H-2A guestworkers.

In the 1986 amendments to the H-2A program, due to grower concern about the 50% rule, Congress ordered DOL to continue the rule for three years while the agency performed a study to consider the costs and benefits of the rule and determine whether to maintain it. 8 U.S.C. § 1188(c)(3)(B).

DOL commissioned a study which concluded that, in actual practice, the benefits of the 50% rule substantially outweighed the costs. The citation is Bateman, Rudolph, & Dain, "The Benefits and Costs of the '50 Percent Rule,'" Prepared for the U.S. Department of Labor Under Contract No. 99-4700-75-059-01 by the Cosmos Corp.).

On July 19, 1990, the first Bush Administration announced in the Federal Register announcing that it was maintaining the 50% rule. (DOL had already received the draft of the Cosmos Corp. report and had conducted its own investigation of the facts and considered submissions by interested parties.)

DOL explained that a significant minority of (the few) U.S. workers hired by H-2A employers gained their job after the foreign workers departed their homelands, so that elimination of the 50% rule would foreclose legitimate employment opportunities for

U.S. farmworkers. Indeed, the first day of the season is often a day on which there is little work, so arriving by that day is often pointless. Moreover, attrition often means that there are job openings during the season. Further, the nature of some farm work permits absorption of an extra worker in some instances.

It was, therefore not unexpected when the Bush Administration DOL concluded, "DOL also is not aware of any circumstances wherein application of the rule has resulted in any significant burden, financial or otherwise, being placed on employers or workers." Moreover, few employers were affected by the rule because so many H-2A employers fill their jobs only with H-2A workers. 55 Fed Reg. 29356, 29358 (July 19, 1990).

U.S. workers deserve the first chance for jobs at employers in the U.S. The Congressionally-mandated study concluded that the 50% rule served the purpose of protecting American jobs and, remarkably enough, did so with no burden to employers. The desire to hire foreign workers instead of domestic workers is not a proper justification for ending the 50% rule. Moreover, there is absolutely no evidence to justify modifying this job preference for U.S. workers.

Support the AgJOBS bipartisan compromise in the Senate Judiciary immigration.
Oppose all the Chambliss amendments, including Amendment 3235.

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