

H-2B Temporary Foreign Worker Program

Wage rates, effect on U.S. workforce, true costs, and other factors in today's economic and political environment

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EPI Briefing Paper #416—Is it the complete story?



On January 19, 2016, the Economic Policy Institute [EPI] published briefing paper #416 titled "**The H-2B temporary foreign worker program – For labor shortages or cheap, temporary labor?**" The #416 study examined the H-2B program's effects on "employment growth, wages and unemployment rates in the main occupations of H-2B workers" [page 1 paragraph 3 of EPI#416] and drew conclusions which are factually unsupportable.

The #416 study principally argues that the H-2B program suppresses the wages of U.S. workers and, thus, becomes the employment option of choice for employers seeking cheap labor. This characterization is at odds

with the practical reality of the program. This short SEA paper demonstrates the fallacy of the EPI conclusions.

The study ignored or overlooked numerous vital factors and considerations, including:

1. That USDOL changed the H-2B wage rate methodology in 2015 which has driven H-2B wages up by 30% (or more in selected areas and industries) in the intervening time. The #416 study relied on 2014 and earlier H-2B wage rates.
2. That H-2B workers have never represented more than .08% of the total U.S. workforce. It is impossible that such a statistically negligible

number of workers could depress the wages of the balance of 99.92% of US workers.

3. That wage suppression, to the extent it can be identified, is properly attributable to the presence of unauthorized workers who make up 5% of the total U.S. workforce (2014 data). As much as 25% or more of the labor force in industries with significant H-2B participation (landscaping, hospitality, reforestation, seafood processing and others) are likely unauthorized.
4. H-2B employers incur significant other mandatory costs that drive up the overall cost of program participation.

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“Under current regulations, there is no difference between the mean H-2B wage rate paid and the mean OES wage rate.”

When Wage Calculation Methods and Regulations Change -The Old Narrative Is Obsolete

The #416 study relied on H-2B wage regulations in force prior to the enactment of the USDOL 2015 Interim Final H-2B Regulation to support its conclusion that use of the H-2B program suppresses wages in the industries which rely on the seasonal H-2B program.

EPI claims that the average H-2B wage rate is lower than the Occupational Employment Statistics (OES) national mean wage. This compares apples to oranges. H-2B employers have never compensated H-2B workers according to a national wage rate; they have always been

required to offer workers the OES-established wage rate appropriate for the H-2B job in the geographic area of employment.

What changed in 2015 is that employers may no longer pay entry-level wage rates (Level I). Under the 2015 regulations they are obliged to pay the OES mean wage for their geographic area which generally equates to Level 3 wages. Note that USDOL's wage database now states “H-2B wage rate.” (Figure 1)

Before 2015 employers could rely on the four-tier OES wage rate system taking into ac-

count how much prior experience was required of H-2B workers. Employers requiring minimal or no experience could offer the Level I wages. The 2015 Interim Final wage rule eliminated the tiered system and mandated that employers pay the “mean” or Level 3 Wage Rate, regardless of experience requirements. This new methodology immediately increased wages and negated the wage discrepancies reported by the EPI study. As mentioned previously, the wage rates paid by H-2B employers have increased 30% or more in the past three years.

Figure 1

FLC Wage Results New Quick Search New Search Wizard

You selected the All Industries database for 7/2016—6/2017.

Your search returned the following: [Print Format](#)

Area Code: 47894
Area Title: Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan
OES/SOC CODE: Landscaping and Groundskeeping Workers
GeoLevel: 1
Level 1 Wage: \$10.76 hour—\$22,381 year
Level 2 Wage: \$12.73 hour—\$26,478 year
Level 3 Wage: \$14.70 hour—\$30,576 year
Level 4 Wage: \$16.67 hour—\$34,674 year
Mean Wage (H-2B): \$14.70 hour—\$30,576 year

www.flcdatacenter.com

<https://www.bls.gov/oes/current/oes373011.htm>
of Fed: How to Become a Law 4 Paths to Legal Status Green Card Adjustment How to Use a Fake IP 7 Actionable Steps to Nonimmigrant Visa

Metropolitan areas with the highest employment level in this occupation:

| Metropolitan area | Employment (1) | Employment per thousand jobs | Location quotient (9) | Hourly mean wage | Annual mean wage (2) |
|--|----------------|------------------------------|-----------------------|------------------|----------------------|
| New York-Jersey City-White Plains, NY-NJ Metropolitan Division | 24,830 | 3.77 | 0.58 | \$16.00 | \$33,280 |
| Los Angeles-Long Beach-Glendale, CA Metropolitan Division | 17,400 | 4.12 | 0.64 | \$15.70 | \$32,660 |
| Chicago-Naperville-Arlington Heights, IL Metropolitan Division | 17,360 | 4.77 | 0.74 | \$15.20 | \$31,610 |
| Houston-The Woodlands-Sugar Land, TX | 16,000 | 5.45 | 0.84 | \$12.94 | \$26,920 |
| Atlanta-Sandy Springs-Roswell, GA | 14,650 | 5.74 | 0.89 | \$13.83 | \$28,760 |
| Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division | 14,160 | 5.69 | 0.88 | \$14.70 | \$30,570 |

More To The Wage Story-Wage Surveys

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The #416 study states, "The 2015 H-2B Final Wage Rule continues to permit wage surveys that were not conducted by the U.S. Department of Labor. In fiscal year 2016, it is all but certain that the likely increased use of private wage surveys to set H-2B wages as a result of the December 2015 appropriations riders will lower the wages paid to H-2B workers to levels far below the local averages paid to similarly situated U.S. workers." This has not happened.

Between 2008 and the 2015 H-2B Rule, employer applicants could use one of five methodologies to determine the H-2B wage rate applicable for the job and geographic location:

1. Collective bargaining agreement between the employer and a union
2. The 4-tiered OES wage system based on the experience required in the job description

3. A valid employer-provided survey of the local wage rates for the job and geographic area
4. The Davis-Bacon Act
5. The McNamara-O'Hara Service Contract Act

The #416 study is correct that employers in the past relied on private wage surveys to establish wage rates. However, the 2015 Rule imposed such stringent private survey guidelines it eliminated their use in all but the most limited of circumstances. To be accepted, surveys must:

1. Be independently conducted and issued by a state agency, state college, or state university; or
2. Be submitted for a geographic area where the OES does not collect data, or in a geographic area where the OES provides an arithmetic mean only at a national level for workers in the Standard Occupation Classification

(SOC); or be for job opportunities not included in the SOC system or where the SOC system designates the job opportunity as an "all other" classification.

In addition to the de facto elimination of private wage surveys, the 2015 Rule further curtailed employers' options by prohibiting the use of the Davis-Bacon or McNamara-O'Hara methodologies for prevailing wage determinations.

In FY 2016 (prevailing wages issued from 10/1/15 – 9/30/16), the U.S. Department of Labor (DOL) issued 13,385 prevailing wage determinations for H-2B. Of those, only 157 requested a survey wage. Of those 157, 79 (0.5%) were issued a wage based on the private survey. 39 of the 79 were using a Swarthmore College survey that DOL stopped accepting in 2017. Clearly, reliance on private wage surveys is now impossible.

"The 2015 rule imposed stringent guidelines for private surveys that, in practice, have effectively eliminated their use."

H-2B and Wage Rate Suppression

EPI concluded that the lack of wage growth in the top ten H-2B categories was the result of the H-2B workers in the respective labor forces.

As discussed above, using the 2014 wage rates to argue wage suppression is no longer valid. For this discussion we compare 2016 worker populations and wage rates of the top 10 H-2B occupations. H-2B workers made up only 1 % of

the total workforce in the top 10 occupational categories in 2016.

In order to adversely affect overall wage rates in these categories by a mere 0.5% each H-2B worker would have to take an hourly wage cut of \$6.37 per hour.

Figure 2

| | | |
|---|-------------------------|------------------------------|
| Total Non H-2B Workforce TOP 10 Occupations | 7,509,438 | 98.99% |
| Total H-2B Workers Certified for TOP 10 Occupations | 76,911 | 1.01% |
| TOTAL | 7,586,349 | 100% |
| Total Non H-2B Workforce WEEKLY payroll for same positions | 3,882,686,165.60 | 99.04% |
| Total H-2B Workforce WEEKLY payroll for same positions | 37,598,664.62 | 0.96% |
| TOTAL | 3,920,284,830.22 | 100% |
| 0.5% drop in TOTAL WEEKLY Payroll for same 10 Occupations | 19,601,424.15 | = 3,920,284,830.22 X .005 |
| Each H-2B workers WEEKLY portion to contribute to .01% drop | 254.86 | = 19,601,424.15 / 76,911 |
| Each H-2B workers HOURLY portion to contribute to drop | 6.37 | = 254.86 / 40 hours per week |

Since USDOL issues wage rates for H-2B at OES Mean Wage—the drop in pay of \$6.37 per hour could not occur.

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“Unauthorized workers have a disproportionate impact on wage rates for the top H-2B industries”

Figure 3

Effect of the Unauthorized Workforce on the OES wage rates of the H-2B industries

The EPI #416 study overlooks the effect of the unauthorized workforce on wage rates.

A 2014 PEW research study estimated the number of unauthorized workers working in a wide variety of industries. We have added a column to the PEW report to represent the H-2B share of the legal workforce (assuming the number of workers approved in labor certifications were issued visas) in order to compare the H-2B workforce to the total workforce (including unauthorized workers), legal workforce and unauthorized workforce.

In total, unauthorized workers represented 4.8245% of the total workforce (4,230,000 workers) while H-2B workers comprised 0.0533% of the total workforce (84,015 workers). (Figure 3)

It is abundantly clear that unauthorized workers have had a far more significant effect on wage rates than the H-2B workers, however, this was omitted from the study. EPI is silent on this issue, failing to acknowledge both the adverse wage effects as well as other hidden savings from lack of regulation and worker protections for unauthorized

workers. In the top H-2B industries, the share of unauthorized workers is much higher than the average 4%. This means unauthorized workers have a disproportionate impact on wage rates for the top H-2B industries, such as landscaping and hospitality.

The landscaping industry, for example, represents 37.7% of the total H-2B workforce. Out of the total workforce of 1,540,000, 19.5% of workers are unauthorized. H-2B workers make up only 2.2% of the total workforce.

Detailed occupations with highest shares of unauthorized immigrant workers 2014

Based on PEW Research Center—data provided from IPUMS <https://usa.ipums.org/usa/>

| SOC Code | Occupation title (click on the occupation title to view its profile) | 2014 (most recent data available) Total Workers based on IPUMS ** | Column E All Authorized workers in Occupation to include US Born and Lawful EXCEPT Share | Column F H-2B Workers ONLY *** | Share | Column G Unauthorized Workers | Share | Column D % Difference due to rounding | |
|----------|--|---|---|-----------------------------------|--------|----------------------------------|-----------|--|--------|
| | Total, Civilian labor force (with an occupation) | 157,530,000 | 149,569,485 | 94.9467% | 84,015 | 0.0533% | 7,600,000 | 4.8245% | -0.18% |
| 47-2081 | Drywall and Ceiling Tile Installers | 160,000 | 108,800 | 68.0000% | 0 | 0.0000% | 50,000 | 31.2500% | -0.76% |
| 47-2181 | Roofers | 240,000 | 167,763 | 69.9013% | 237 | 0.0988% | 70,000 | 29.1667% | -0.84% |
| 47-2141 | Painters, Construction and Maintenance | 650,000 | 480,918 | 73.9874% | 82 | 0.0126% | 170,000 | 26.1538% | 0.15% |
| 47-3011 | Brick masons, Blockmasons, Stonemasons, ***** | 170,000 | 127,238 | 74.8459% | 262 | 0.1541% | 40,000 | 23.5294% | -1.49% |
| COMBO | Sewing machine operators | 210,000 | 161,672 | 76.9867% | 28 | 0.0133% | 50,000 | 23.8095% | 0.80% |
| 37-2012 | Maids and Housekeeping Cleaners | 1,790,000 | 1,355,386 | 75.7199% | 5,014 | 0.2801% | 425,000 | 23.7430% | -0.26% |
| ***** | COMBO Carpet, floor and tile installers | 170,000 | 127,406 | 74.9447% | 94 | 0.0553% | 40,000 | 23.5294% | -1.49% |
| 47-2061 | Construction Laborers | 2,000,000 | 1,577,593 | 78.8797% | 2,407 | 0.1204% | 425,000 | 21.2500% | 0.25% |
| ***** | COMBO Food cooking machine operators | 150,000 | 121,087 | 80.7247% | 413 | 0.2753% | 30,000 | 20.0000% | 0.99% |
| 37-3011 | Landscaping and Groundskeeping Workers | 1,540,000 | 1,197,835 | 77.7815% | 34,165 | 2.2185% | 300,000 | 19.4805% | -0.52% |
| 51-9111 | Packaging and Filling Machine Operators and | 310,000 | 251,089 | 80.9965% | 11 | 0.0035% | 60,000 | 19.3548% | 0.35% |
| 35-9021 | Dishwashers | 390,000 | 315,128 | 80.8021% | 772 | 0.1979% | 75,000 | 19.2308% | 0.23% |
| 53-7064 | Packers and Packagers, Hand | 570,000 | 472,074 | 82.8200% | 1,026 | 0.1800% | 100,000 | 17.5439% | 0.54% |
| 51-6011 | Laundry and Dry-Cleaning Workers | 230,000 | 188,048 | 81.7600% | 552 | 0.2400% | 40,000 | 17.3913% | -0.61% |
| 47-2031 | Carpenters | 1,320,000 | 1,108,563 | 83.9820% | 237 | 0.0180% | 220,000 | 16.6667% | 0.66% |
| 51-3022 | Meat, Poultry, and Fish Cutters and Trimmers | 280,000 | 232,279 | 82.9568% | 2,921 | 1.0432% | 45,000 | 16.0714% | 0.07% |
| 35-2014 | Cooks, Restaurant | 2,650,000 | 2,224,880 | 83.9577% | 1,120 | 0.0423% | 425,000 | 16.0377% | 0.04% |
| 51-3011 | Bakers | 250,000 | 214,980 | 85.9920% | 20 | 0.0080% | 35,000 | 14.0000% | 0.00% |
| 35-9011 | Dining Room and Cafeteria Attendants and Bartender He | 400,000 | 343,060 | 85.7650% | 940 | 0.2350% | 55,000 | 13.7500% | -0.25% |
| 53-7061 | Cleaners of Vehicles and Equipment | 430,000 | 374,080 | 86.9953% | 20 | 0.0047% | 55,000 | 12.7907% | -0.21% |
| 35-1011 | Chefs and Head Cooks | 440,000 | 387,193 | 87.9984% | 7 | 0.0016% | 55,000 | 12.5000% | 0.50% |
| 35-2021 | Food Preparation Workers | 1,070,000 | 951,308 | 88.9073% | 992 | 0.0927% | 130,000 | 12.1495% | 1.14% |
| 39-5090 | Misc. personal appearance workers | 340,000 | 299,200 | 88.0000% | 0 | 0.0000% | 40,000 | 11.7647% | -0.24% |
| 37-2011 | Janitors and Cleaners, Except Maids and | 2,850,000 | 2,564,582 | 89.9853% | 418 | 0.0147% | 300,000 | 10.5263% | 0.52% |
| 15-1133 | Software Developers, Systems Software | 1,150,000 | 1,034,995 | 89.9996% | 5 | 0.0004% | 120,000 | 10.4348% | 0.43% |
| 49-3021 | Automotive Body and Related Repairers | 150,000 | 133,500 | 89.0000% | 0 | 0.0000% | 15,000 | 10.0000% | -1.01% |
| COMBO | ALL OTHERS OCCUPATIONS | 137,620,000 | 133,653,728 | 97.1180% | 32,272 | 0.0235% | 4,230,000 | 3.0737% | 0.21% |

*Actual Total Workers may not total columns E+F+G due to statistical rounding in original PEW report. % difference from 100% is in COLUMN D

**Because H-2A is agricultural—all agricultural workers (970,000) were pulled from data.

***Actual number of workers issued visas for 2014 was 68,102—however, USDOL certified 93,649 (approx. 73% issued). USDOS only provides data on total H-2B Visas issued not the actual occupations.

*****Sewing codes used: 51-6031, 51-6052, 51-6099, 51-7041

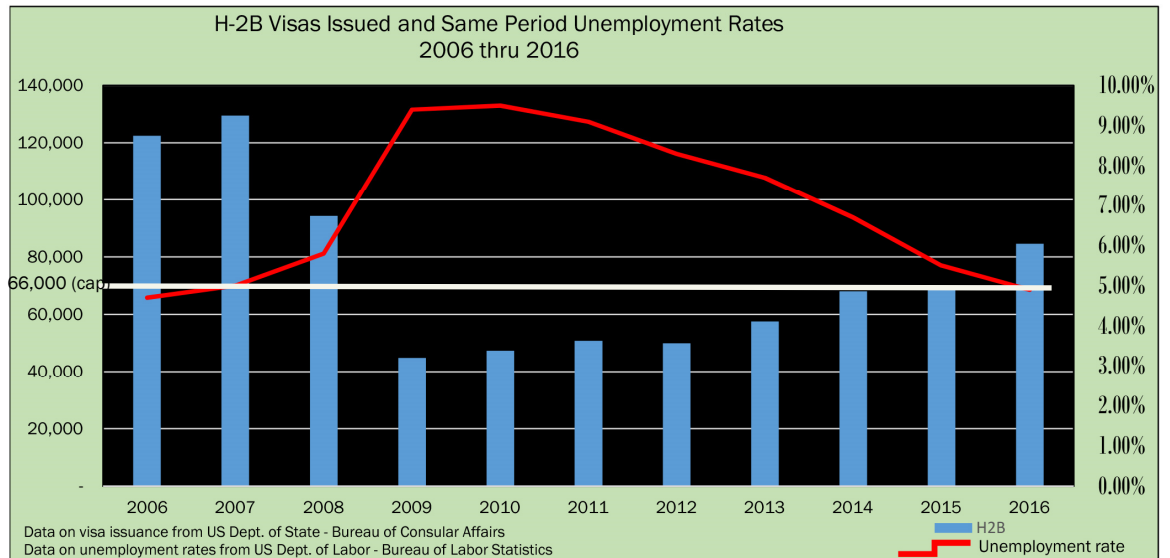
*****Carpet/Flooring codes used: 47-2041, 47-2044, 47-2053

*****Food Machine codes used: 51-3092, 51-3093, 51-3099

“When the pool of domestic workers increased (higher unemployment) employers did not depend as heavily on the H-2B legal foreign labor sources for their temporary needs.”

The Complete Picture on Unemployment and H-2B

Chart 1



The above chart is a comparison of issued H-2B visas relative to the unemployment rates for the past 10 years, based on data from the Department of State (DOS) and the Bureau of Labor Statistics (BLS).

The BLS calculates the total U.S. 2016 workforce was 159,286,000. DOS issued 84,626 H-2B visas in 2016; or, 0.053% of the U.S. workforce. The U.S. unemployment rate (5% or 8,000,000 according to the BLS) would be reduced by 0.01%

if all 84,626 jobs had been filled by U.S. workers. This chart tells a very different story than EPI #416's narrative. The data shows that when the available pool of domestic workers increases as unemployment rises, employers were less dependent on the H-2B program to fill temporary job positions. As the chart demonstrates, employers did not use the full number of H-2B workers afforded to them during the 2008-2013 period of high unemployment.

Why Not Fill the 84,626 Temporary Positions with U.S. Workers?

The H-2B program's underlying premise is that before an H2B application can be approved, employers are obliged to a) establish terms and conditions of the job which are not unduly restrictive and deter recruitment of US workers; b) pay market-based wages which do not undercut the domestic labor market in the geographic area and c) aggressively recruit and hire US workers. These obligations are set by law and regulation with one purpose: to compel H-2B employers to identify and hire qualified US workers as a condition of the program.

Employers must follow strict and supervised recruitment efforts before they are permitted to hire an H-2B worker. Employers must accept prospective worker referrals from their State Workforce Agency (SWA). Newspaper advertising is mandatory. The SWA keeps a record of these applicants and DOL demands to know the disposition of every applicant and referral prior to certifying a position available for an H-2B worker.

For most H-2B employers, H-2B workers are sup-

plementary to their principal workforce which is made up of US workers, even in the seasonal/temporary jobs.



The H-2B program is neither easy nor cheap.

EPI ignores effect of mandatory costs of the H-2B program when calculating “employer hourly wage savings”.

The H-2B program is neither easy nor cheap. Employers choose to utilize the program because they cannot find sufficient domestic labor and they are unwilling to break the law by hiring unauthorized workers.

H-2B program employers are committed to a legal workforce. This commitment comes at significant cost. Employers must pay all fees and costs associated with getting foreign workers to the United States. Annual, recurring costs include:

- \$1000.00+ in mandatory newspaper advertising costs in the positive recruitment of US workers. Advertising costs can run as high as \$5,000 in larger markets
- \$1,835 visa petition application fee charged by U.S. Citizenship and Immigration Services (USCIS)
- \$190 per worker charged by State Department for ‘machine readable visas’ (MRVs) and \$6 border crossing fee
- \$50-130 or more per worker agent fees if a third party is utilized to recruit or coordinate the visa

application process for H-2B foreign workers (rates vary by agent)

- \$415 or more in travel costs per worker including bus ticket, meals and overnight lodging from the worker’s home to the place of employment (costs vary by country)
- \$2,500-3,500 agent fee for the 95.7% of H-2B employers who use an agent to file their application. Some agents also charge a per-worker fee in addition to the base application fee

Given the above, it costs employers from \$1,500 to \$3,000 per worker to use the H-2B program. These costs and fees are in addition to the DOL-required H-2B prevailing wage rate. All told, administrative costs typically add an additional \$1-\$3 per hour to the mandated wage the employers must pay, bringing the real cost of employing H-2B workers well above what it would cost to hire US workers. There are no ‘savings’ in utilizing the H-2B program.

H-2B Employers Should be Commended



We should commend, not criticize, employers who choose to use the expensive and burdensome H-2B program. These employers are committed to obeying the law by using the H-2B program to hire legal labor while less scrupulous employers hire unauthorized workers.

The Economic Policy Institute as well as other public policy groups, think tanks, and the media deliberately mislead the public and Congress by relying on outdated data and factual misrepresentations to discredit H-2B program employers and the program itself. The industries which rely most heavily on the H-2B program also have the highest percentage of unauthorized workers in their labor forces. Consequently, using the H-2B program puts the law-abiding H-2B employers at a significant financial disadvantage compared to their competitors.

A predictable and functional H-2B program is part of the solution to the illegal immigration problem. In its current state, the H-2B program is not sustainable. The arbitrary 66,000 visa cap needs to be eliminated. The cap needs to be addressed in order to make the program a reliable solution for law abiding employers whose future existence is currently in question due to the lack of legal labor.