New rules for guest worker program help fight abuses

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By Rebecca Smith, Star-Ledger Guest Columnist

In February, the U.S. Department of Labor introduced new rules for the H-2B guest worker program, which allows employers to hire temporary foreign workers for seasonal jobs when American workers are not available. Used mainly in industries such as construction, retail, hospitality, janitorial, landscaping, seafood processing and forestry, nearly 2,500 H-2B workers were employed in New Jersey in 2011 — mainly as landscapers, maids, hospitality service and constructions workers — with tens of thousands of others working around the country.

The new rules are common sense. In a struggling economy, they establish recruitment requirements so companies first look to U.S. workers to fill seasonal jobs, including workers recently laid off. They outlaw the exorbitant “recruitment fees” that impoverish many guest workers and leave their families destitute. They require employers to disclose the names of their recruiters and to prohibit them from charging such fees. They also beef up government oversight to ensure compliance.

Predictably, the rules have been greeted with howls of protest from industry groups. For a program that, until three years ago, operated with no rules whatsoever, they cry “overregulation.” Industry has persuaded a federal judge to enjoin the new rules, which were set to take effect
today. But the guest worker program has increasingly made foreign workers vulnerable to human trafficking.

The new rules are a modest attempt to bring order to a system in dire need of it. For years, employers have all too easily rigged the recruitment process against U.S. workers to bypass the requirement that they attempt to hire U.S. workers before turning to the H-2B guest worker program. In fall 2010, for example, undercover investigators from the U.S. Government Accountability Office captured recruiters advising employers on how to circumvent rules on worker recruitment and weed out U.S. workers. In another case, a company tried to discourage applications by scheduling interviews for 6 p.m. Christmas Eve.

At the same time, foreign workers have fallen prey to unscrupulous employers and recruiters who search the developing world for the most vulnerable workers they can hire. Lured with false promises of permanent green cards and lucrative jobs when these workers arrive in the United States — after signing over property deeds, dissolving life savings and falling into debt to pay up to $20,000 in “recruitment” fees — the well-paid jobs they were promised don’t materialize. Instead, they are forced to work off their debt in horrendous conditions.

These human rights abuses are documented in government and private studies, and the Department of Justice and the Equal Employment Opportunities Commission have prosecuted dozens of cases. As an example, the EEOC recovered an estimated $1 million for 48 H-2B welders from Thailand who were held against their will, had their passports confiscated, were forced to work without pay and were confined to apartments without any electricity, water or gas.

Private litigants, including Filipino teachers, Indian welders, Guatemalan forestry workers and Mexican landscapers, have similarly brought legal action alleging forced labor and trafficking in the H-2B program.

The International Labor Organization and other international bodies also have noted that conditions under which guest workers labor are ripe for human rights violations. These studies and legal cases are only the tip of the iceberg.

Well-founded fears of retaliation mean that, in many cases, workers don’t or can’t speak up. Because, by law, their visas are tied to only one employer, complaints about harsh and illegal conditions almost surely result in deportation.

In light of all this, the new rules are a good move for workers both inside and outside the United States. They make certain that the program is used consistently with its aims: to ensure temporary workers are hired for jobs where U.S. workers aren’t available and to ensure that the rash of forced labor cases in the temporary foreign worker program ends now.

H-2B employers should get behind this sensible approach and not stand in the way of treating workers fairly.

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