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Bollixing Up H-1B Visas

New Trump rules will make the program less useful to many employers.

By The Editorial Board

President Donald Trump signs an executive order to try to bring jobs back to American workers and revamp the H-1B visa guest worker program in Kenosha, Wisconsin, April 18, 2017.

The Trump Administration's restrictionist immigration policies often work at cross purposes to its pro-growth deregulatory agenda. Now comes another contradiction. While touting a rapid jobs recovery, the Administration is rushing out new H-1B visa regulations that it claims are urgently needed to protect American workers during the pandemic. They aren't needed and will create more economic uncertainty for employers.

H-1Bs for high-skilled workers are capped at 85,000 annually, including 20,000 for degrees from U.S. graduate programs, but employer demand has exceeded visa supply since 2004. This year there were 275,000 new visa applications. So visas are rationed randomly via lottery. We've supported legislation that increases the visa cap, but restrictionists in both parties are opposed.

Some on the right say a higher visa cap will reduce the imperative to raise wages to attract workers or recruit in less economically vibrant areas of the U.S. Liberals say companies should work harder to recruit and train minorities. Most companies are already doing both, but they still have many unfilled positions.

One H-1B problem has been that firms that contract with American businesses for foreign technical workers have flooded the lottery with applications. Yet the government in recent years has stepped up its scrutiny of applications. This year 29% of applications were rejected, up from 6% in 2015. New approved visas for the top seven Indian-based companies declined 64% to 5,428 between 2015 and 2019.

So now the Labor Department is seeking to ration visas by increasing the prevailing wage rates that employers must pay foreign workers. The wage floor for an electrical engineer in San Jose would increase to $127,042 from $88,712 and for a medical researcher in Boston to $86,622 from $53,810, **according to an analysis by the National Foundation for American Policy**.

Current prevailing wage rates are probably too low for some occupations and could use an update, but the Labor Department's dramatic increase in pay scales will hurt many small businesses and start-ups. Big tech companies no doubt could afford to, and probably already do, pay more than these prevailing wages, but a start-up might not.

The Labor Department estimates that its rule would significantly affect the costs of 28% of small employers that use H-1Bs. These include architectural firms, small retailers trying to set up online storefronts and physician offices in rural areas. According to the Labor rule, mandating higher wages for foreign workers will increase the "economic incentive to increase employee retention, training, and productivity, which will increase benefits to both employers and U.S. workers." Or it could cause the company not to fill the job.

Also problematic is the Department of Homeland Security's new rule that would require employers to precisely match foreign worker degrees to "specialty" occupations. Employers couldn't hire a foreign worker with a mechanical engineering degree, for example, to fill a position in software programming or artificial intelligence.

Congress ought to reform the H-1B visa system. But the Trump Administration is rushing through new rules, without notice and comment, that will hurt small employers under the false premise that U.S. tech workers are threatened during the pandemic by foreigners. Unemployment in computer occupations was 2.7% in May. The economy is bouncing back faster than expected, but the Trump Administration's H-1B rules will slow the recovery like the Obama Labor fusillade did after the last recession.

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