

108TH CONGRESS
2D SESSION

H. R. 5413

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mr. PASCRELL introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. WAGE DETERMINATION.**

4 (a) CHANGE IN MINIMUM WAGES.—Section
5 212(n)(1)(A) of the Immigration and Nationality Act (8
6 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

7 “(A) The employer—

8 “(i) is offering and will offer during the
9 period of authorized employment to aliens ad-

1 mitted or provided status as an H-1B non-
2 immigrant wages that are at least—

3 “(I) the locally determined prevailing
4 wage level for the occupational classifica-
5 tion in the area of employment;

6 “(II) the median average wage for all
7 workers in the occupational classification
8 in the area of employment; or

9 “(III) the median wage for skill level
10 two in the occupational classification found
11 in the most recent Occupational Employ-
12 ment Statistics survey;

13 whichever is greatest, based on the best infor-
14 mation available as of the time of filing of the
15 application; and

16 “(ii) will provide working conditions for
17 such nonimmigrant that will not adversely af-
18 fect the working conditions of workers similarly
19 employed.”.

20 The wage determination methodology used under
21 clause (i) shall be submitted with the application.

22 (b) PROVISION OF W-2 FORMS.—Section 212(n)(1)
23 of such Act (8 U.S.C. 1182(n)(1)) is amended by adding
24 at the end the following new subparagraph:

1 “(H) If the employer employed, in such pre-
2 vious period as the Secretary shall specify, one or
3 more H–1B nonimmigrants, the application shall be
4 accompanied by the Internal Revenue Service Form
5 W–2 Wage and Tax Statement filed by the employer
6 with respect to such nonimmigrants for such pe-
7 riod.”.

8 **SEC. 2. GOOD FAITH RECRUITMENT REQUIREMENT.**

9 (a) **EXTENDING TIME PERIOD FOR NO DISPLACE-**
10 **MENT.**—Section 212(n) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1182(n)) is amended—

12 (1) in paragraph (1)(E)(i), by striking “90
13 days” and inserting “180 days” each place it ap-
14 pears; and

15 (2) in paragraph (2)(C)(iii), in the matter be-
16 fore subclause (I), by striking “90 days” and insert-
17 ing “180 days” each place it appears .

18 (b) **REQUIRING ACTIVE REQUIREMENT.**—Section
19 212(n)(1)(G)(i)(I) of such Act (8 U.S.C.
20 1182(n)(1)(G)(i)(I)) is amended by inserting “actively”
21 before “recruit”.

22 (c) **PROHIBITION OF OUTPLACEMENT.**—Section
23 212(n)(1)(F) of the Immigration and Nationality Act (8
24 U.S.C. 1182(n)(1)(F)) is amended to read as follows:

1 “(F) An employer shall not place, out-source,
2 lease, or otherwise contract for the placement of an
3 alien admitted or provided status as an H–1B non-
4 immigrant with another employer, regardless of
5 whether or not such other employer is an H–1B-de-
6 pendent employer.”.

7 **SEC. 3. LABOR ENFORCEMENT.**

8 (a) **CENTRALIZATION OF ADMINISTRATIVE AND EN-**
9 **FORCEMENT FUNCTIONS.**—Section 212(n)(2) of the Im-
10 migration and Nationality Act (8 U.S.C. 1182(n)(2)) is
11 amended by adding at the end the following new subpara-
12 graph:

13 “(I) The Secretary shall be responsible under this
14 paragraph for investigations of wage complaints, as well
15 as investigations of allegations of fraud in the filing of
16 applications under this subsection.”.

17 (b) **AUDITS.**—Section 212(n)(2)(A) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is
19 amended by adding at the end the following new sen-
20 tences: “In addition, the Secretary may conduct surveys
21 of the level of compliance by employers with the provisions
22 and requirements of this subsection and may conduct an-
23 nual compliance audits in the case of employers that em-
24 ploy H–1B nonimmigrants. In the case of an employer
25 that employs H–1B nonimmigrants that represent 15 per-

1 cent or more of the total number of individuals employed
2 by the employer, the Secretary shall conduct annual com-
3 pliance audits of such employer.”.

4 **SEC. 4. MAKING H-1B NONIMMIGRANT PETITIONER FEE**
5 **PERMANENT.**

6 (a) IN GENERAL.—Section 214(c)(9)(A) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1184(c)(9)(A)), in
8 the matter immediately preceding clause (i), is amended
9 by striking “October 1, 2003”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to petitions filed beginning on
12 or after January 1 of the year beginning after the date
13 of the enactment of this Act.

14 **SEC. 5. PRIVATE RIGHT OF ACTION.**

15 Section 212(n)(2) of the Immigration and Nationality
16 Act (8 U.S.C. 1182(n)(2)) is amended by adding at the
17 end the following new subparagraph:

18 “(I) In addition to any other remedies available under
19 this paragraph, a person who is harmed by a violation by
20 an employer of a requirement of this subsection may bring
21 a civil action against the employer in any court of com-
22 petent jurisdiction for damages or other appropriate re-
23 lief.”.

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