

105TH CONGRESS
1ST SESSION

H. R. 119

To amend the Immigration and Nationality Act to impose additional conditions on employers of H–1B nonimmigrants.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

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

A BILL

To amend the Immigration and Nationality Act to impose additional conditions on employers of H–1B nonimmigrants.

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. SHORT TITLE.**

4 This Act may be cited as the “Protecting American
5 Workers Act of 1997”.

6 **SEC. 2. CHANGES RELATING TO H-1B NONIMMIGRANTS.**

7 (a) ATTESTATIONS.—

8 (1) COMPENSATION LEVEL.—Section

9 212(n)(1)(A)(i) of the Immigration and Nationality

10 Act (8 U.S.C. 1182(n)(1)(A)(i)) is amended—

1 (A) in subclause (I), by inserting “100 per-
2 cent of” before “the actual wage level”,

3 (B) in subclause (II), by inserting “100
4 percent of” before “the prevailing wage level”,
5 and

6 (C) by adding at the end the following: “is
7 offering and will offer during such period the
8 same benefits and additional compensation pro-
9 vided to similarly-employed workers by the em-
10 ployer, and”.

11 (2) DISPLACEMENT OF UNITED STATES WORK-
12 ERS.—Section 212(n)(1) of the Immigration and
13 Nationality Act (8 U.S.C. 1182(n)(1)) is amended
14 by inserting after subparagraph (D) the following
15 new subparagraph:

16 “(E)(i) The employer—

17 “(I) has not, within the six-month period
18 prior to the filing of the application, laid off or
19 otherwise displaced any United States worker
20 (as defined in clause (ii)), including any worker
21 obtained by contract, employee leasing, tem-
22 porary help agreement, or other similar basis,
23 in the occupational classification which is the

1 subject of the application and in which the non-
2 immigrant is intended to be (or is) employed;
3 and

4 “(II) within 90 days following the applica-
5 tion, and within 90 days before and after the
6 filing of a petition for any H-1B worker pursu-
7 ant to that application, will not lay off or other-
8 wise displace any United States worker in the
9 occupational classification which is the subject
10 of the application and in which the non-
11 immigrant is intended to be (or is) employed.

12 “(ii) For purposes of this subparagraph, the
13 term ‘United States worker’ means—

14 “(I) a citizen or national of the United
15 States;

16 “(II) an alien lawfully admitted to the
17 United States for permanent residence; and

18 “(III) an alien authorized to be so em-
19 ployed by this Act or by the Attorney General.

20 “(iii) For purposes of this subparagraph, the
21 term ‘laid off’, with respect to an employee, means
22 the employee’s loss of employment, other than a dis-
23 charge for cause or a voluntary departure or vol-
24 untary retirement.”.

1 (3) RECRUITMENT OF UNITED STATES WORK-
2 ERS.—Section 212(n)(1) of the Immigration and
3 Nationality Act (8 U.S.C. 1182(n)(1)), as amended
4 by paragraph (2), is further amended by inserting
5 after subparagraph (E) the following new subpara-
6 graph:

7 “(F) The employer, prior to filing the applica-
8 tion, attempted unsuccessfully and in good faith to
9 recruit a United States worker for the employment
10 that will be done by the alien whose services are
11 being sought, using recruitment procedures that
12 meet industry-wide standards and offering wages
13 that are at least—

14 “(i) 100 percent of the actual wage level
15 paid by the employer to other individuals with
16 similar experience and qualifications for the
17 specific employment in question, or

18 “(ii) 100 percent of the prevailing wage
19 level for individuals in such employment in the
20 area of employment,

21 whichever is greater, based on the best information
22 available as of the date of filing the application, and
23 offering the same benefits and additional compensa-
24 tion provided to similarly-employed workers by the
25 employer.”.

1 (4) DEPENDENCE ON H-1B WORKERS.—Section
2 212(n)(1) of the Immigration and Nationality Act (8
3 U.S.C. 1182(n)(1)), as amended by paragraphs (2)
4 and (3), is further amended by inserting after sub-
5 paragraph (F) the following new subparagraph:

6 “(G)(i) Whether the employer is dependent on
7 H-1B workers, as defined in clause (ii) and in such
8 regulations as the Secretary of Labor may develop
9 and promulgate in accordance with this paragraph.

10 “(ii) For purposes of clause (i), an employer is
11 ‘dependent on H-1B workers’ if the employer—

12 “(I) has fewer than 41 full-time equivalent
13 employees who are employed in the United
14 States and employs four or more non-
15 immigrants under section 101(a)(15)(H)(i)(b);
16 or

17 “(II) has at least 41 full-time equivalent
18 employees who are employed in the United
19 States, and employs nonimmigrants described
20 in section 101(a)(15)(H)(i)(b) in a number that
21 is equal to at least ten percent of the number
22 of such full-time equivalent employees.

23 “(iii) In applying this subparagraph, any group
24 treated as a single employer under subsection (b),

(c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer under this subparagraph. Aliens with respect to whom the employer has filed such an application shall be treated as employees, and counted as non-immigrants under section 101(a)(15)(H)(i)(b), under this paragraph.”.

(5) JOB CONTRACTORS.—(A) Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by paragraphs (2) through (4), is further amended by inserting after subparagraph (G) the following new subparagraph:

“(H) In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H–1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.”.

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

1 “(E) The provisions of this paragraph shall apply to
2 complaints respecting a failure of another employer to
3 comply with an attestation described in paragraph (1),
4 that has been made as the result of the requirement im-
5 posed on job contractors under paragraph (1)(H), in the
6 same manner that they apply to complaints of a petitioner
7 with respect to a failure to comply with a condition de-
8 scribed in paragraph (1) by employers generally.”.

9 (b) SPECIAL RULES FOR EMPLOYERS DEPENDENT
10 ON H-1B WORKERS.—Section 212(n) of the Immigration
11 and Nationality Act (8 U.S.C. 1182(n)) is amended by
12 adding at the end the following new paragraph:

13 “(3)(A) No alien may be admitted or provided status
14 as a nonimmigrant described in section
15 101(a)(15)(H)(i)(b) if the employer who is seeking the
16 services of such alien has attested under paragraph (1)(G)
17 that the employer is dependent on H-1B workers unless
18 the following conditions are met:

19 “(i) The Secretary of Labor has determined
20 and certified to the Secretary of State and the At-
21 torney General that the employer who is seeking the
22 services of such alien is taking steps described in
23 subparagraph (C) (including having taken the step
24 described in subparagraph (D)).

1 “(ii) The alien has demonstrated to the satis-
2 faction of the Secretary of State and the Attorney
3 General that the alien has a residence abroad which
4 he has no intention of abandoning.

5 “(B)(i) It is unlawful for a petitioning employer to
6 require, as a condition of employment by such employer,
7 or otherwise, that a payment to a fund described in sub-
8 paragraph (D)(i), or any part of it, be made directly or
9 indirectly by the alien whose services are being sought.

10 “(ii) Any person or entity which is determined, after
11 notice and opportunity for an administrative hearing, to
12 have violated clause (i) shall be subject to a civil penalty
13 of \$5,000 for each violation and to disqualification for 1
14 year from petitioning under section 204 or 214(c).

15 “(iii) Any amount determined to have been paid, di-
16 rectly or indirectly, to a fund described in subparagraph
17 (D)(i) by the alien whose services were sought, shall be
18 repaid from the fund or by the employer, as appropriate,
19 to such alien.

20 “(C)(i) An employer who attests under paragraph
21 (1)(G) to dependence on H-1B workers shall take timely,
22 significant, and effective steps (including the step de-
23 scribed in subparagraph (D)) to recruit and retain suffi-
24 cient United States workers in order to remove as quickly

1 as reasonably possible the dependence of the employer on
2 H-1B workers.

3 “(ii) For purposes of clause (i), steps under clause
4 (i) (in addition to the step described in subparagraph (D))
5 may include the following:

6 “(I) Operating a program of training existing
7 employees who are United States workers in the
8 skills needed by the employer, or financing (or other-
9 wise providing for) such employees’ participation in
10 such a training program elsewhere.

11 “(II) Providing career development programs
12 and other methods of facilitating United States
13 workers in related fields to acquire the skills needed
14 by the employer.

15 “(III) Paying to employees who are United
16 States workers compensation that is equal in value
17 to more than 105 percent of what is paid to persons
18 similarly employed in the geographic area.

19 The steps described in this clause shall not be considered
20 to be an exhaustive list of the significant steps that may
21 be taken to meet the requirements of clause (i).

22 “(iii) The steps described in clause (i) shall not be
23 considered effective if the employer has failed to decrease
24 by at least 10 percent in each of two consecutive years

1 the percentage of the employer's total number of employ-
2 ees in the specific employment in which the H-1B workers
3 are employed which is represented by the number of H-
4 1B workers.

5 “(iv) The Attorney General shall not approve peti-
6 tions filed under section 204 or 214(c) with respect to an
7 employer that has not, in the prior two years, complied
8 with the requirements of this subparagraph (including
9 subparagraph (D)).

10 “(D)(i) The step described in this subparagraph is
11 payment of an amount consistent with clause (ii) by the
12 petitioning employer into a private fund which is certified
13 by the Secretary of Labor as dedicated to reducing the
14 dependence of employers in the industry of which the peti-
15 tioning employer is a part on new foreign workers and
16 which expends amounts received under this subclause con-
17 sistent with clause (iii).

18 “(ii) An amount is consistent with this clause if it
19 is a percent of the value of the annual compensation (in-
20 cluding wages, benefits, and all other compensation) to be
21 paid to the alien whose services are being sought, equal
22 to 5 percent in the first year, 7.5 percent in the second
23 year, and 10 percent in the third year.

24 “(iii) Amounts are expended consistent with this
25 clause if they are expended as follows:

1 “(I) One-half of the aggregate amounts are
2 expended for awarding scholarships and fellow-
3 ships to students at colleges and universities in
4 the United States who are citizens or lawful
5 permanent residents of the United States ma-
6 joring in, or engaging in graduate study of,
7 subjects of direct relevance to the employers in
8 the same industry as the petitioning employer.

9 “(II) One-half of the aggregate amounts
10 are expended for enabling United States work-
11 ers in the United States to obtain training in
12 occupations required by employers in the same
13 industry as the petitioning employer.”.

14 (c) INCREASED PENALTIES FOR MISREPRESENTA-
15 TION.—Section 212(n)(2)(C) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1182(n)(2)(C)) is amended—

17 (1) in subparagraph (C) in the matter before
18 clause (i), by striking “(1)(C) or (1)(D)” and insert-
19 ing “(1)(C), (1)(D), (1)(E), or (1)(F) or to fulfill
20 obligations imposed under paragraph (3)(A) for em-
21 ployers attesting under paragraph (1)(G) to depend-
22 ence on H–1B workers”;

23 (2) in subparagraph (C)(i), by striking
24 “\$1,000” and inserting “\$5,000”;

1 (3) by amending subparagraph (C)(ii) to read
2 as follows:

3 “(ii) the Attorney General shall not approve pe-
4 titions filed with respect to that employer (or any
5 employer who is a successor in interest) under sec-
6 tion 204 or 214(c) for aliens to be employed by the
7 employer—

8 “(I) during a period of at least 1 year in
9 the case of the first determination of a violation
10 or any subsequent determination of a violation
11 occurring within 1 year of that first violation or
12 any subsequent determination of a nonwillful
13 violation occurring more than 1 year after the
14 first violation;

15 “(II) during a period of at least 5 years in
16 the case of a determination of a willful violation
17 occurring more than 1 year after the first viola-
18 tion; and

19 “(III) at any time in the case of a deter-
20 mination of a willful violation occurring more
21 than 5 years after a violation described in sub-
22 clause (II).”; and

23 (4) in subparagraph (D), by adding at the end
24 the following: “If a penalty under subparagraph (C)
25 has been imposed in the case of a willful violation,

1 the Secretary shall impose an additional civil mone-
 2 tary penalty on the employer in an amount equalling
 3 twice the amount of backpay.”.

4 (d) LIMITATION ON PERIOD OF AUTHORIZED ADMIS-
 5 SION.—Section 214(g)(4) of the Immigration and Nation-
 6 ality Act (8 U.S.C. 1184(g)(4)) is amended—

7 (1) by inserting “or section
 8 101(a)(15)(H)(ii)(b)” after “section
 9 101(a)(15)(H)(i)(b)”;

10 (2) by striking “6 years” and inserting in lieu
 11 thereof “3 years”.

12 (e) REQUIREMENT FOR RESIDENCE ABROAD.—Sec-
 13 tion 101(a)(15)(H)(i)(b) of the Immigration and Nation-
 14 ality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by
 15 inserting “who has a residence in a foreign country which
 16 he has no intention of abandoning,” after “212(j)(2),”.

17 (f) EFFECTIVE DATES.—

18 (1) Except as provided in paragraph (2), the
 19 amendments made by this section shall take effect
 20 60 days after the date of the enactment of this Act.

21 (2) The amendments made by subsection (c)
 22 shall apply with respect to violations occurring on or
 23 after the date of enactment of this Act.

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