



AB 1362 (Kalra)

Foreign Labor Recruiter (FLR) Registration: Establishing Accountability and Preventing Human Trafficking

While many foreign labor recruiters (FLRs) behave ethically and lawfully, others do not. They misuse U.S. visa programs to exploit workers, often charging exorbitant fees for their services, thereby forcing workers into debt bondage. They falsify documents and deceive workers about the terms and conditions of proposed employment. These unscrupulous FLRs threaten workers with blacklisting, discrimination, and other forms of retaliation, including the imposition of additional fees and violence against the workers themselves, family members, or their home communities for reporting abuses or seeking to escape their fraudulently induced servitude.

NEED FOR ACTION

In 2014, in the absence of a comprehensive federal scheme addressing these abuses, California passed SB 477 (Steinberg), which was intended to provide protection to *all* temporary workers coming to the state through registration of FLRs.¹ A drafting error resulted in the bill being interpreted to cover only workers holding H-2B visas, limiting coverage to about 5,000, or less than 3%, of the 250,000+ temporary workers coming to California at that time. In 2021, AB 364 (Rodriguez) was introduced to correct this error and provide coverage to all temporary workers coming to the state as SB 477's sponsors originally intended.² The bill had eight co-sponsors and went to the Governor's desk in 2022.

¹ SB4 77 included two limited exceptions: FLRs bringing workers to the U.S. pursuant to J-1 visas and talent agency FLRs who are covered by a licensing requirement imposing more stringent obligations than those included in SB 477.

² Letter from Former Senator Steinberg, Mayor of Sacramento writing to "express that the intent of SB 477 was to cover all temporary workers coming to California, including H2A workers." (March 3, 2018) Available at <https://lmu.box.com/s/4drig4cc3pu34xqysid05nwo5x86k0r4>

Unfortunately, Governor Newsom [vetoed the bill](#),³ persuaded by arguments from representatives from the agricultural and winemaking community --who predominantly employ workers using H-2A visas-- that SB 477 was duplicative of existing law.⁴

Despite their contentions, however, other than SB 477, [no other provision of California law or Federal law](#) provides protections for any other temporary work visa groups for the predatory and fraudulent activities of FLRs at the *point of recruitment* in their home countries. It is these unregulated, corrupt FLR practices which not only create temporary workers' vulnerability to trafficking and exploitation, but also place law-abiding California employers at a competitive disadvantage resulting from their peers' use of unscrupulous recruiters.⁵ But for the [misunderstanding](#) created by those opposing AB 364, the bill would have been enacted into law. California must now act to realize the intentions of the California legislature in originally passing SB 477 in 2014 and to ensure comprehensive coverage for the increasing number of temporary workers coming to California each year.



TEMPORARY WORKERS ACROSS ALL VISA CATEGORIES
EXPERIENCE TRAFFICKING AND OTHER ABUSES

[Reports confirm](#) that the need for California to oversee and protect immigrant workers coming to the state continues to escalate. Data from the national human trafficking hotline consistently shows that those coming to the United States on temporary visas are some of the most vulnerable to human trafficking.⁶ As California is one of the largest destination state for individuals entering the United States on temporary work visas --receiving almost one-fifth of the approximate 3.2 million workers entering the country -- regulating FLRs bringing these vulnerable workers to the state is essential.⁷

Resident Nonimmigrant Population by Category of Admission and State of Residence: Fiscal Year 2019

State	Total		Temporary workers		Students		Exchange visitors		Diplomats and other representatives	
	Number	Col. Pct.	Number	Col. Pct.	Number	Col. Pct.	Number	Col. Pct.	Number	Col. Pct.
Total	3,190,000	100%	1,620,000	100%	1,100,000	100%	350,000	100%	130,000	100%
California	560,000	18%	300,000	19%	210,000	19%	50,000	14%	10,000	7%
New York	390,000	12%	160,000	10%	160,000	14%	50,000	14%	30,000	23%
Texas	250,000	8%	160,000	10%	60,000	6%	20,000	5%	10,000	5%
Florida	190,000	6%	110,000	7%	60,000	6%	20,000	4%	10,000	5%
Massachusetts	160,000	5%	50,000	3%	80,000	8%	30,000	8%	-	1%
New Jersey	140,000	4%	100,000	6%	30,000	3%	10,000	4%	-	2%
Illinois	140,000	4%	70,000	4%	50,000	5%	10,000	4%	-	1%
Washington	130,000	4%	80,000	5%	40,000	3%	10,000	2%	-	3%
Pennsylvania	100,000	3%	40,000	2%	50,000	4%	10,000	3%	-	1%
Michigan	100,000	3%	60,000	4%	30,000	3%	10,000	3%	-	0%

- Base number rounds to zero.
Notes: Detail may not sum to total due to rounding; percentages are column percentages and were calculated prior to rounding; data include dependent family members.
Source: U.S. Department of Homeland Security

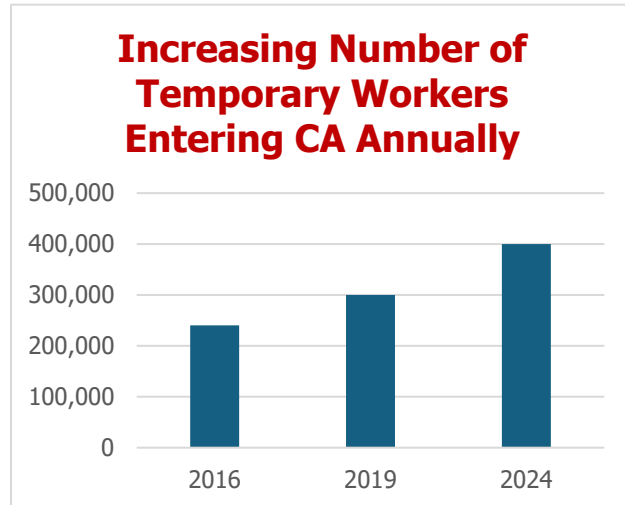
³ Daniel Costa, "In a year of tremendous legislative gains for California workers, Governor Newsom was wrong to veto a bill to protect 300,000 migrant workers," Economic Policy Institute (Oct. 6, 2022), [available at https://www.epi.org/blog/in-a-year-of-tremendous-legislative-gains-for-california-workers-governor-newsom-was-wrong-to-veto-a-bill-to-protect-300000-migrant-workers/](https://www.epi.org/blog/in-a-year-of-tremendous-legislative-gains-for-california-workers-governor-newsom-was-wrong-to-veto-a-bill-to-protect-300000-migrant-workers/)

⁴ *Id.* at Note 3.

⁵ Employers using legitimate recruiters are harmed by the practices of unregulated FLRs in several ways. First, they are often subject to "double dipping" for recruiting fees collected by FLRs who charge both the worker and the employer for these fees. Second, they compete for the limited available skilled visas against these unprincipled actors who engage in fraudulent practices, including impersonating legitimate employers, to appropriate many of the limited number of temporary migrant visas. Finally, use of legitimate FLRs increases their costs of business vis-à-vis those employers who avail themselves of unscrupulous FLRs, such as Infosys (discussed below), which manipulates visa programs to avoid their respective legal requirements. See <https://www.uscis.gov/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program>

⁶ Polaris (2024). *California Human Trafficking Data, 1/1/2017 - 11/30/2022*. Unpublished raw data from The National Human Trafficking Hotline, polarisproject.org

⁷ Bryan Baker, Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019, Department of Homeland Security (May 2021), [available at https://ohss.dhs.gov/sites/default/files/2023-12/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf](https://ohss.dhs.gov/sites/default/files/2023-12/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf)



The number of temporary workers coming to California has increased by 43% since SB 477 was enacted and is expected to continue growing in future years due to worsening labor gaps.⁸ Today, less than 5,000 of the now estimated 350,000 temporary workers in California have SB 477's essential protections.⁹ The significant increase of temporary immigrant workers in California can largely be attributed to the trend to expand temporary work visas to fill essential but undersupplied jobs¹⁰ post-pandemic and the notable expansion in the H-2A program nationally. Between 2017-2022, there was a 64.7% increase in H-2A workers nationwide.¹¹ Although all temporary workers who come to California need enhanced protections,¹² as the number of H-2A

visas issued annually has increased, workers recruited under this category have consistently been the most confirmed cases of human trafficking reported on the National Human Trafficking Hotline.^{13 14}

Abuses of temporary workers recruited under the H-2A visa program for jobs in California are widespread. The collection of illegal recruiting fees from workers ranging from \$2,000 to \$5,000, as well as unreimbursed travel and transport expenses, are exacerbated by broken promises of employment terms, wages, hours and conditions, once workers arrive in the U.S.¹⁵

Illustrating this abuse are the following cases:

Mario and Diego came legally to the United States on H-2A visas. To receive their temporary visas, they paid illegal recruitment fees to an FLR who promised them minimum wages, food, housing, and transportation once they arrived in the United States. The FLR later coerced them into signing forms in English, falsely stating that they had been reimbursed for their visa and travel expenses. The FLR further told them that they would not even receive the minimum wage

⁸ Claire Klobucista and Diana Roy, "U.S. Temporary Foreign Worker Visa Programs," Council on Foreign Relations, (Jun. 8, 2023), available at <https://www.cfr.org/background/us-temporary-foreign-worker-visa-programs>; Andrew Kreighbaum, "Expanding Temporary Work Visas: Congress' New Efforts Explained," Bloomberg Law (Sept. 5, 2023), available at <https://news.bloomberglaw.com/daily-labor-report/expanding-temporary-work-visas-congress-new-efforts-explained>

⁹ See U.S. DEPT. OF HOMELAND SECURITY, "Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019" available at: https://ohss.dhs.gov/sites/default/files/2023-12/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf; See also U.S. DEPT OF HOMELAND SECURITY, Resident Nonimmigrant Population by Category of Admission and State of Residence: Fiscal Year 2019.

¹⁰ Daniel Costa, "Temporary work visa programs and the need for reform," Economic Policy Institute (Feb. 3, 2021), available at <https://www.epi.org/publication/temporary-work-visa-reform/>

¹¹ Between 2017 and 2022, the number of certified H-2A workers grew by 64.7%, from 224,965 to 370,628. See American Immigration Council, "The Expanding Role of H-2A Workers in Agriculture" (June 11, 2024), available at <https://www.americanimmigrationcouncil.org/research/h-2a-workers-us-agriculture>;

¹² According to the Congressional Research Service, "there are 24 major nonimmigrant visa categories, which are commonly referred to by the letter and numeral that denote their subsection in the Immigration and Nationality Act (INA). Jill H. Wilson, Immigration: Nonimmigrant (Temporary) Admissions to the United States, Congressional Research Service, updated Sept. 10, 2019.

¹³ [A chart summarizing these visa categories can be accessed here for a simple summary of each visa category.](#)

¹⁴ Polaris (2024). *California Human Trafficking Data, 1/1/2017 - 11/30/2022*. Unpublished raw data from The National Human Trafficking Hotline, polarisproject.org

¹⁵ DEPARTMENT OF HOMELAND SECURITY periodically outlines the number of Nonimmigrants Residing in the United States – recent reports for 2016 and 2019 can be found at https://ohss.dhs.gov/sites/default/files/2023-12/Nonimmigrant_Population%2520Estimates_2016_0.pdf and https://ohss.dhs.gov/sites/default/files/2023-12/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf. These numbers are based on the number of "temporary workers" plus the number of "exchange visitors" in California; 2024 estimations are based on the rapid increase of temporary migrant programs nationally which consistently report that CA continues to be a major recipient of migrant workers through these programs. See American Immigration Council, "The Expanding Role of H-2A Workers in U.S. Agriculture" (June 11, 2024), available at <https://www.americanimmigrationcouncil.org/research/h-2a-workers-us-agriculture>

For example, in 2023, CA certified 41,000 H-2A workers alone. See Farida Jhabvala Romero and Carlos Cabrera-Lomeli, "US Department of Labor Hails Expanded Protections for H-2A Farmworkers in Santa Rosa" KQED (April 27, 2024), available at <https://www.kqed.org/news/11984268/us-department-of-labor-hails-expanded-protections-for-h-2a-farmworkers-in-santa-rosa>

¹⁵ Siddharth Kara, *Modern Slavery: A Global Perspective*, Chapter 3: LABOR TRAFFICKING IN CALIFORNIA'S CENTRAL VALLEY AGRICULTURAL INDUSTRY (Columbia University Press 2017) at 86, 88.

payments they had staked their families' future on after taking out loans to pay the FLR for their visas.

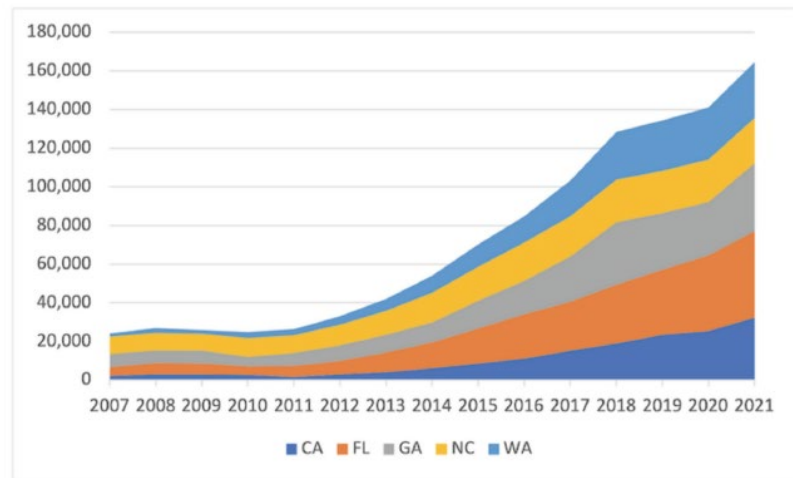
Felipe came to work on a farm in Bakersfield, CA, after an FLR promised him \$10,000 for the season. Felipe paid \$2,000 to the recruiter for his H-2A visa and \$667 for transportation to California. Once he arrived at the farm, the FLR confiscated his visa. He was beaten by the crew leader and not allowed to leave the farm during the day or his apartment at night. He was routinely unpaid or paid only a fraction of what he was owed. In addition, each month he was charged additional expenses for transport to the U.S., food, rent, transport to the farm where he worked, attorney fees to process his visa, and even costs to fix the truck that took him to the worksite. Felipe told researchers that he worries that he will never be able to leave and will die. When interviewed, he said he had been working on the farm under these conditions for four years.¹⁶

Mario, Diego, and Felipe's stories result from the federal government's decades long failure to protect the workers who [account for 10%](#) of the country's farm labor force.¹⁷ According to the [2020 report](#) "Ripe for Reform," 26% of the 100 H-2A workers interviewed said they paid illegal recruitment fees as high as \$4,500. In another report, [58% of H-2A workers](#) surveyed said they paid an illegal recruitment fee.¹⁸ Research conducted in California's Central Valley

found that out of 1,000 farm workers interviewed, 128 H-2A visa-holders had been labor trafficked due to the activities of FLRs.¹⁹ The recruitment fee paid by these California workers ranged from \$2,000 to \$5,000.²⁰ Some reports note that illegal recruitment fees can be as high as \$8,000.²¹

H-2A visa holders are not the only vulnerable workers. Recent news reports highlight the same fraudulent practices are used to recruit highly skilled immigrant workers through programs like the TN visa for technical jobs such as engineering.²² . Similarly in these cases, workers were promised highly paid, skilled engineering jobs under certain conditions and paid significant visa fees, travel expenses for consular

The top five states had 52% of H-2A jobs in Fiscal Year 2021; in California and Washington H-2A rose the fastest



Economic Policy Institute

¹⁶ Siddharth Kara, *Modern Slavery: A Global Perspective*, Chapter 3: LABOR TRAFFICKING IN CALIFORNIA'S CENTRAL VALLEY AGRICULTURAL INDUSTRY (Columbia University Press 2017) at 88.

¹⁷ Daniel Costa, "EPI comments on DOL's proposed changes to Adverse Effect Wage Rate Methodology for H-2A Visas for temporary migrant farmworkers, Economic Policy Institute (Jan. 31, 2022), available at <https://www.epi.org/publication/epi-comments-on-dols-proposed-changes-to-the-adverse-effect-wage-rate-methodology-for-h-2a-visas-for-temporary-migrant-farmworkers/>

¹⁸ Centro de Derechos Migrantes, Recruitment Revealed (2018), available at https://cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf

¹⁹ Siddharth Kar, *Modern Slavery: A Global Perspective*, Chapter 3: LABOR TRAFFICKING IN CALIFORNIA'S CENTRAL VALLEY AGRICULTURAL INDUSTRY (Columbia University Press 2017) at 86.

²⁰ *Id.* at Note 15.

²¹ Tina Vasquez, "Human trafficking or guest worker program? H-2A's systemic issues result in catastrophic violations," Prism (Apr. 14, 2023), available at <https://prismreports.org/2023/04/14/h2a-visa-wage-theft-exploitation/>

²² "Lawsuits Reveal Labor Abuses Faced by Some Migrant Workers on TN", Immigration Impact (July 25, 2024) Visas, available at <https://immigrationimpact.com/2024/07/25/class-action-lawsuits-labor-abuses-migrant-workers-on-tn-visas/>

processing, and relocation to the U.S., but upon their arrival, were instead forced to work in warehouses and on automotive assembly lines.

Although skilled temporary workers are commonly viewed as not susceptible to exploitation and abuse by FLRs, in addition to the TN visa program, there are also extensive cases documenting the abuses and exploitation workers recruited under the H-1B and E-2 categories, and the illegal use of the H-1B program by certain FLRs. Prosecutions of FLR abuse of the H-1B program in hiring workers for California companies include multiple actions against Infosys (2015-19), India's second largest company and a major supplier of foreign workers to California companies including Southern California Edison, Disney and the University of California, San Francisco UCSF),²³ as well as cases against Cloudwick Technologies (2018), another FLR supplier whose clients include Apple, Comcast, Verizon and Visa,²⁴ and Login Consulting Services, Inc. (2019).²⁵

AB 1362 PROVISIONS

AB 1362 simply deletes Sec. 9998 of the Business and Professions Code which currently limits application of SB 477 to H-2B visa holders. If this bill is enacted then the approximate 350,000 workers who now come to California annually will receive the same protection enacted in 2014 by SB 477. Further the Labor Commissioner has already drafted regulations implementing SB 477. The only update needed after passage would be to change the Article One Definition Section of the SB 477 regulations to include all temporary worker visa categories rather than being limited to H-2B workers as currently drafted. See <https://www.dir.ca.gov/t8/ch6sb14.html>

CURRENT STATUTORY FRAMEWORK & PROTECTIONS UNDER SB 477

SB 477 (Steinberg) made several changes to Chapter 21.5 of the B&P Code (Sections 9998 et seq.) – The key protective elements of SB 477 include:

1. A universal standard that all workers on temporary work visas coming to California are not required to pay any recruitment fees for a legal work visa;
2. Registration of FLRs with the CA Labor Commissioner;
3. Public listing of registered FLRs in California available on the CA Labor Commissioner's website so workers and employers know who are legitimate FLRs;
4. FLRs comprehensive disclosure of working terms and conditions to foreign workers during the recruiting process through a written contract in the worker's native language provided to both the worker and the CA Labor Commissioner.

²³ In 2017, Infosys, India's second largest company and a major FLR providing foreign workers to U.S. companies, paid \$1 million to settle an investigation into its H-1B visa violations. **In 2015, Southern California Edison, was implicated in an H-1B scandal when it fired 400 IT workers and hired Infosys to replace them with foreign workers recruited on H-1B visas. **In 2015, Disney was implicated in an H-1B scandal when it fired 200 workers and hired Infosys to replace them with foreign workers on H-1B visas. **In 2016, the University of California, San Francisco, laid off 80 IT workers after signing a contract with Infosys to hire H-1B workers. **In 2019, Infosys agreed to an \$800,000 settlement with the State of California, which had accused the company of evading taxes by using B-1 business-visit visas for hundreds of foreign workers instead of the hard-to-obtain and expensive H-1B visas. See <https://economictimes.indiatimes.com/corporate/infosys-to-pay-1m-to-settle-case-of-visa-violations-in-ny/articleshow/59294907.cms>; <https://www.latimes.com/opinion/editorials/la-ed-visas-tech-workers-h1b-20150217-story.html>; <https://www.theatlantic.com/business/archive/2016/12/fixing-h-1b-visa-loophole/509639/>; <https://www.mercurynews.com/2019/12/17/h-1b-visa-indian-outsourcer-infosys-settles-with-california-over-alleged-visa-scam-tax-evasion/>

²⁴ In 2018, the US Department of Labor found Cloudwick Technologies, a California-based IT services company, guilty of severely underpaying its workers hired on long-term H-1B visas. The company is owned by Indian American Mani Chhabra and serves clients including Apple, Comcast, Verizon, and Visa. The company was ordered to pay \$173,044 in back wages to a dozen employees and to hire an independent third-party monitor to help ensure future compliance. See Ananya Bhattacharya, "A US tech company promised its H-1B workers \$8,000 a month but paid them \$800," Quartz (May 2, 2018), available at <https://qz.com/india/1268241/h-1b-visa-abuse-a-california-company-promised-its-foreign-workers-8000-and-paid-them-800>

²⁵ In 2019, the Department of Labor found Login Consulting Services Inc., a staffing and recruitment company based in El Segundo, California, in violation of the H-1B foreign labor certification program, requiring the company to pay \$58,815 to two Employees. See U.S. DEPT OF LABOR, "US Department of Labor Investigation Results in Southern California Company Paying Employees \$58,815 for H-1B Visa Program Violations," (July 17, 2019) available at <https://www.dol.gov/newsroom/releases/whd/whd20190717-2>

5. FLRs posting of a bond and provision of an address where they can accept service of process when they register as an FLR in California; and
6. A safe harbor for employers using a California-registered FLR exempting them from joint and several liability for the conduct of otherwise unregistered FLRs they might engage.

CONCLUSION

Due to the growing expansion of temporary work visa programs in California, the continued lack of oversight and protection of these immigrant workers on both federal and state levels, and the fact that California remains one of the largest state host of temporary workers, the State must adopt legislation to remedy the drafting error in SB 477 (2014) and fulfill the California legislature's original intent of protecting *all* temporary immigrant workers entering the state.

CONTACT INFORMATION

Stephanie Richard, Esq.
Policy Director
Stephanie.Richard@lls.edu
213.375.8377

