



Department of Industrial Relations' (DIR) Implementation of SB 477 - The Foreign Labor Recruiters Registration Act¹



After SB 477 was passed in 2014, the Labor Commissioner's Office finalized and published regulations for its implementation in 2019 (see <https://www.dir.ca.gov/t8/ch6sb14.html>). Since the provisions of SB 477 for H-2B workers are already in place, the implementation of AB 1362 can be seamlessly adapted to include temporary workers recruited under all visa categories. The only necessary update to the SB 477 regulations would be a revision to the Article One Definition Section, expanding its scope to cover all temporary worker visa categories instead of limiting it to H-2B workers.

Additionally, the Labor Commissioner's Office has already established the registration system, allocated staff for this program, and spent five years piloting these processes for H-2B workers, as described below. See also: <https://www.dir.ca.gov/dlse/fnlc.html>

This existing foundation makes the expansion under AB 1362 straightforward and efficient.

HOW SB 477 HAS BEEN IMPLEMENTED FOR THE H-2B PROGRAM

➤ Initial identification of Foreign Labor Recruiters (FLRs) and California employers using FLRs to employ temporary workers

The DIR reviews the U.S. Department of Labor's public website to initially identify California employers who have used Foreign Labor Recruiters (FLRs) to hire temporary workers using the H-2B visa process.² The H-2B disclosure data for each California employer using an FLR can be retrieved from the yearly tables provided on the DOL website. A summary of this information sorted by SJI is available [here](#).³

The State identifies California employers using FLRs through its H-2B application process:

Section G of the H-2B application directs the employer to check a box indicating

¹ Based on communication with the Labor Commissioner's Office, Department of Industrial Relations (DIR), [Division of Labor Standards Enforcement](#), November 4, 2024. See also [DIR Foreign Labor Contractor Website for Implementation Materials for SB 477](#).

² See <https://www.dol.gov/agencies/eta/foreign-labor/performance>.

³ For access to chart use this link

<https://www.lls.edu/media/loyolalawschool/academics/clinicexperientiallearning/sji/publicationsandreports/CHART%20-%20Proposed%20Legislation%20v.%20Existing%20Federal%20%20State%20Laws%20and%20Regulations.docx>

- (1) Whether they will use an FLR in the hiring process;
 - Is the employer, and its attorney or agent, as applicable, engaging or planning to engage any agent(s) or recruiter(s) in the recruitment of prospective H-2B workers, regardless of whether such agent(s) or recruiter(s) is (are) located in the U.S. or abroad?
- (2) Whether they are attaching a copy of the contract with the FLR, and
 - Indicate whether a copy of all agreements with any agent or recruiter whom you are engaging or planning to engage in the recruitment of H-2B workers is attached to this application.
- (3) Whether they have completed Appendix C of the application providing the identity and location of the FLR:
 - Indicate whether a completed Appendix C providing the identity and location of all persons and entities hired by or working for the agent or recruiter subject to the agreement(s), including any of the agents or employees of those persons and entities, is attached to this application.

Appendix C requires name and location information for each of the FLRs used by an employer and states such "Foreign Labor Recruiter Information" should be provided pursuant to 20 CFR 655.9(b):⁴

- The employer, and its attorney or agent (as applicable), must provide the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agent(s) or employee(s) of those persons and entities, to recruit prospective foreign workers for the H-2B job opportunities offered by the employer under this *H-2B Application for Temporary Employment Certification*, Form ETA-9142B.

➤ **DIR creates a list of FLRs and employers potentially subject to the requirements of SB 477 if they recruit/hire temporary H-2B workers for jobs in California.**

Under SB 477 employers are required to: (1) Register FLRs with the State⁵ and (2) file a disclosure statement.

Registering FLRs with the state: The application requires identification and fingerprinting of owners and principal officers and posting of a bond, in addition to location information for service of process.⁶

On a quarterly basis, the Employment Development Department (EDD) provides to the Labor Commissioner's Office (LCO) a list of employers who report on their job orders that they used the services of a foreign labor recruiter. The LCO to determine whether any of the identified FLRs are registered with DIR and notifies EDD. The LCO sends out a letter to the employer notifying them of their obligations to use a registered FLRs. The LCO sends out a letter to the FLR notifying them of their obligations to register with the DIR.⁷

⁴ See https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA_Form_9142B_Appendix_C.pdf

⁵ See <https://www.dir.ca.gov/dlse/fnlc.html>

⁶ See <https://www.dir.ca.gov/dlse/fnlc/FnLC-Form-701-English.pdf>.

⁷ Sample letter can be found here: <https://lmu.box.com/s/p6jsvkkhza41pba27ex0940551z2kkqy>

The LCO sends a letter to EDD reporting whether the FLR follows the registration requirements of SB 477. Registered FLRs are listed on the DIR website.⁸

DIR also maintains a list of FLR registration denials, revocations and suspensions.⁹

Employers are required to file a Disclosure Statement: Employers are required to file a disclosure statement with the DIR if they use the services of an FLR rather than hiring workers directly.¹⁰

Employers using FLRs are not currently contacted by DIR, but DIR intends to include them in the future as its resources expand.

➤ **Consequences of failure to use a registered FLR**



Companies bringing temporary workers to the U.S. are initially required to obtain labor certification from the Office of Foreign Labor Certification, within the Employment and Training Administration (ETA) of the U.S. DOL. The application for workers brought in under H-2B visa program are specified [here](#).¹¹ Once the application is certified (approved), the employer must petition the U.S. Citizenship and Immigration Services (USCIS) for a visa for the worker.¹²

When DIR learns of a company using an unregistered FLR, the department contacts the company seeking its compliance with SB 477. The Employment Development Department (EDD) advises the Labor Commissioner's Licensing and Registration Unit (LRU) when the EDD processes an H-2B employer's work order indicating the employer is using an FLR. The LRU then checks the DIR's database to determine if the FLR is registered. If the FLR is not registered, the DIR sends a letter to the employer advising them of SB 477's requirements.¹³

California law prohibits H-2B employers from knowingly entering into an agreement for services with an unregistered foreign labor contractor.¹⁴ The consequences for the failure to comply with the provisions of SB 477 can be severe:

- (1) First, EDD, Workforce Service Branch (WSB), Foreign Labor and Farmworker Service Group will not be able to approve a job order for any H-2B employer. This will prevent the H-2B employer from conducting local recruitment, which is a prerequisite for a job order approval.
- (2) Moreover, failure to comply with SB 477 may result in a civil penalty of up to \$25,000 per violation and the offender may be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than six months, or both.¹⁵

⁸ See <https://www.dir.ca.gov/dlse/fnlc/Database.html>

⁹ See <https://www.dir.ca.gov/dlse/fnlc/Foreign-Labor-Contractor-Denied-Revoked-or-Suspended-Database.pdf>

¹⁰ See <https://www.dir.ca.gov/dlse/fnlc/FnLC-704-English.pdf>

¹¹ See <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b>

¹² See <https://foreignlaborcert.doleta.gov/about.cfm>

¹³ Sample letter can be found here: <https://lmu.app.box.com/s/p6jsvkkhza41pba27ex0940551z2kkqy>

¹⁴ Business & Professions Code section 9998.2(c).

¹⁵ Business & Professions Code section 9998.8.

(3) Finally, the Labor Commissioner may bring an action for injunctive relief against a person who violates this chapter and, upon prevailing will recover costs and reasonable attorney's fees.

This system has ensured that SB 477 requirements and protections for workers are being met for H-2B workers coming to California and has not required litigation.

ABOUT THE SUNITA JAIN ANTI-TRAFFICKING INITIATIVE

Sunita Jain Anti-Trafficking Policy Initiative (SJI) is an evidence-based and survivor-informed think tank based out of Loyola Law School. SJI intentionally works towards systemic change by taking an intersectional approach to develop and advocate for policies which prevent human trafficking and support survivors of trafficking

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