

# Don't try cheap tricks to hire foreign labor

Employers have been caught lately taking advantage of the United States' H-2 visa guest worker program, violating the rules in ways that deprive qualified American workers of employment opportunities.

Don't risk becoming one of those employers or you may end up in the crosshairs of the Department of Labor (DOL) or the EEOC.

The H-2 guest worker program was conceived in 1952 to help U.S. employers who found it difficult to hire local, qualified workers for openings. Last year, employers sought H-2 visas to bring in more than 150,000 foreign workers after attesting they could not find qualified Americans who were willing to take the open jobs.

Part of the allure for employers: H-2 visa holders typically earn far less than U.S.-born workers.

Employers must show they tried to find American workers before submitting visa applications. Ads must run in two newspapers, including one Sunday edition. Employers must also demonstrate that hiring guest workers won't result in lower pay and benefits for American workers.

Before they can hire their first H-2 visa guest worker, employers must document that they searched in vain for Americans.

The feds are wise to the most common deceptions. Since 2009, DOL and EEOC investigators have uncovered dozens of cases in which unscrupulous employers have been caught illegally trying to dissuade American workers from taking jobs that could be filled at far lower cost by H-2 visa guest workers by:

- Advertising openings in out-of-town newspapers so no locals apply
- Describing only the most dangerous aspects of the work in ads
- Requiring extensive experience and expertise of American applicants, but not of guest workers
- Testing only American applicants—for example, asking them to perform strenuous tasks like digging ditches
- Firing American workers for minor infractions while keeping guest workers who do the same.

In each of the examples above, either the DOL or the EEOC investigated and awarded dissuaded American workers back pay, assessed penalties or referred the case for criminal prosecution.