



Foreign Labor Contractor Registration: Creating Accountability *and* Preventing Human Trafficking

Every year, there are 2 million migrant workers who are recruited abroad and hired to work in the United States through temporary work visa programs. California is the fifth largest economy in the world and attracts the most foreign temporary workers of any U.S. state according to the U.S. Department of Homeland Security (DHS).¹ The majority of migrant workers who enter the U.S. on temporary work visa programs rely on finding this work in their home countries through foreign labor recruiters (FLR). An overwhelming number of these workers face common patterns of abuse directly related to the unregulated recruitment practices in their home country, including fraud, discrimination, economic coercion, retaliation, blacklisting, forced labor, debt bondage, and human trafficking.

Regardless of the visa category, employment sector, race, gender, or national origin, these abuses are reported pervasively for all individuals working in the U.S. on temporary work visas. Indeed, the National Human Trafficking Hotline documents that most of its cases involving foreign workers reaching out for help involve temporary work visas and foreign labor recruiters.

Undeniably, in California, individuals with H-2A visas, issued for agricultural work, are most exploited by FLRs despite California's current regulatory scheme for Farm Labor Contractors (FLCs). This is because FLC provisions provide no protection for workers at the point of recruitment in their home country. Therefore, corrupt FLR practices create vulnerability to trafficking at the point of recruitment and additional regulations protecting California workers are needed.

Although many believe that it is only H-2A and other unskilled laborers affected by fraudulent labor recruiters, in reality it is *all* temporary work visas holders entering California who are vulnerable to exploitation. Studies show trafficking can negatively affect tech and health care industries in California. Tech, like agriculture, is a major driver of the state's economy and relies heavily on migrant labor, and by extension temporary work visas. **Across all industries, abusive FLRs entice corporations with the promise of cheaper labor by providing vulnerable and compliant foreign workers who can be exploited and manipulated. In not taking action to protect against unscrupulous FLRs, California is giving these entities an unfair competitive advantage over companies who play by the rules.** This

¹¹ Daniel Costa, "California is on the brink of enacting the first significant law to combat international labor recruitment abuses and protect 300,000 temporary migrant workers. Will Governor Newsom sign the bill?" ECONOMIC POLICY INSTITUTE (Sept. 8, 2022), *available at* <https://www.epi.org/blog/california-is-on-the-brink-of-enacting-the-first-significant-law-to-combat-international-labor-recruitment-abuses-and-protect-300000-temporary-migrant-workers-will-governor-newsom-sign-the-bill/>



is a lose-lose-lose situation where foreign workers are trapped and abused, U.S. workers are displaced, and law-abiding businesses are unable to compete with companies which can manipulate and exploit their workers with no accountability, while overutilizing the limited work visas available.

The concern for the hundreds of thousands of temporary migrant workers in California has led to multiple legislative efforts to protect these workers during the recruitment process as so many rely on FLR services. In 2014, California made great strides forward by enacting SB 477 (Steinberg, Chapter 711, Statutes of 2004) which provided comprehensive protections to temporary workers coming to California. However, a drafting error resulted in the bill being interpreted to cover only H-2B workers, limiting coverage to only 5,000 of the almost 200,000+ temporary workers who come to California annually.

California can rectify this gaping hole in its protections and fulfill the original intent of SB 477. In doing so, California will be taking a major step towards empowering workers, protecting law-abiding businesses, and preventing fraud, debt bondage, exploitation, and human trafficking throughout the state.

GOALS

The primary goal of this legislation would be to create transparency and simplicity by clarifying existing law to ensure any temporary visa holder coming to work in California is protected by the statutory framework for FLRs enacted in 2014 by SB 477. This legislation would (1) ensure migrant workers have a better understanding of protections and limitations of their temporary visas, and (2) that Foreign Labor Contractors (FLC) are accountable and abiding by the law in recruiting migrant workers under temporary visa programs. This clarity can facilitate a more secure market economy by helping to prevent forced labor situations, and incentivizing and rewarding ethical recruiters, while holding those that persist with unethical behavior accountable. This bill would benefit workers and ethical businesses alike.

These goals can be achieved simply by clarifying that SB 477 covers all temporary visa categories (except J-1), i.e., A-3, B-1, H-1B, H-1C, H-2A, H-2B, L-1, O-1, 1, P-3, and TN. In regulating FLRs and enforcing the law, this measure will also support businesses that recruit their own temporary workers or who use legitimate FLRs because they will no longer have to compete with unscrupulous FLRs. Businesses who use a registered FLR or recruit their own workers are immune from any liability since they either are not using an FLR or are using a registered FLR as SB 477 requires.

Regulating FLRs and holding employers who recruit temporary migrant workers coming to California using FLRs is an important step forward in preventing trafficking in California.



CURRENT STATUORY FRAMEWORK & PROTECTIONS UNDER SB 477

In 2014, the California legislature took a significant step in protecting workers from trafficking by regulating FLRs (by enacting SB 477 (Steinberg)). This bill made several changes to Chapter 21.5 of the B&P Code (Sections 9998 et seq.) – generally known as the state Foreign Labor Contractor Law. The key elements of SB 477 include:

- 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;
- Registration of FLRs with the CA Labor Commissioner;
- Public listing of registered FLRs in California available on the CA Labor Commissioner's website so workers and employers know who are legitimate FLRs;
- FLRs comprehensively disclose 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.
- FLRs post bond and provide an address where they can accept service of process when they register as an FLR in California; and
- Employers who use a California-registered FLR are provided a safe harbor exempting them from joint and several liability for the conduct of otherwise unregistered FLRs they might engage.

On January 1st 2019, [extensive regulations implementing SB 477](#) promulgated by the California Labor Commission, went into effect.² Given the drafting error discovered in SB 477, these regulations clarify the FLR registration process for H-2B workers only thus protecting only 3% of the temporary visa holders who enter California every year.

However, given the existing regulatory framework as well as the established developed process for H-2B Workers implemented by the California Labor Commission, California can clarify this legislation and expand protections to all temporary visa categories. While SB 477 has been unable to make its desired impact by protecting all temporary workers in California and creating a uniform FLR process, clarifying legislation can be easily implemented to protect 100% of California's temporary workers from trafficking.

NEED FOR ACTION

This law would fulfill the original intent of SB 477 by clarifying that *all* temporary visa categories are covered and provided under the same regulatory protections that already exist

² DEPT OF INDUSTRIAL RELATIONS. Labor Commissioner's Office (Dec. 2018) *Foreign Labor Contractors* STATE OF CALIFORNIA. <https://www.dir.ca.gov/dlse/fnlc.html>



for H-2B workers. Only by enacting new legislation which clarifies this error in SB 477 can all temporary workers, across all industries be protected as the law originally intended.

The number of temporary workers coming to California increased 43% since SB 477 was enacted and the numbers of temporary workers utilized by California is only expected to increase further in the future. Given that it has been 10 years since SB 477 was enacted, California is overdue in passing clarifying legislation so that all workers and ethical businesses are protected.

BILL PROPOSAL

This bill seeks to clarify the scope of an existing California law (Section 9998 of the California Business and Professions Code), which was amended in 2014 to impose ethical and fair recruiting requirements of certain foreign labor recruiters. This bill would clarify that formerly enacted SB 477 applies to all temporary visa categories: (except J-1), i.e., A-3, B-1, H-1B, H-1C, H-2A, H-2B, L-1, O-1, 1, P-3, and TN temporary work visas.

The bill text would be the same as that [vetoed by the Governor](#) in 2022. [Assembly Bill 364 \(Rodriguez\)](#) was sponsored by Asm. Freddie Rodriguez, Asm. Blanca Rubio, Asm. Edwin Chau, Sen. Benjamin Hueso, Asm. Lorena Gonzalez Fletcher, Asm. Luz Rivas, and Asm. Robert Rivas.

A response addressing the concerns raised in the Governor's Veto Message can be found [here](#).

[AB 364 received wide ranging support](#) including [every living Former US Ambassador who has overseen the US governments Anti-Trafficking work in the US and globally](#), business leaders, [law enforcement](#), worker rights, women's rights, immigrant rights, and anti-trafficking groups.

But for the misunderstanding by the Governor that such a framework already exists, this bill would have been enacted into law. California must act to continue this momentum of ensuring protections for all temporary visa workers and ensuring protections for ethical businesses.

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