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Program abuses may be costing Americans' jobs

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Mike Emmons still remembers the day he met his "replacement," three Indian computer technicians who had been brought to the United States on special temporary visas for highly skilled workers.

Emmons and other workers for Siemens Information and Communication Networks in Orlando, Fla., were told in 2002 that they were to train the incoming workers and afterward they would be laid off and their jobs eliminated.

In addition, if the Americans refused to train the workers, they would lose their severance pay.

"I was shocked," said Emmons, 44, who now supervises management information systems for the Florida state attorney's office in Orlando. "It's all legal. Our country created these programs, and they're using them to take jobs from Americans."

In testimony before a House committee two years after the layoffs, Gregg Ward, Siemens vice president for government affairs, said the company acted due to "marketplace challenges" that forced it to "improve its positioning and sustain its business." He said the company helped some of the affected workers find jobs at Siemens.

Siemens isn't the only company to use a guest worker program to send some of its work out of the country. In the ongoing debate over immigration reform, Emmons and others say that while many worry that guest worker programs for low-skilled foreigners might affect the employment of American workers, tens of thousands of highly skilled foreign guest workers who already enter the country annually are having an impact now.

The U.S. has a variety of guest worker programs. They are used to employ everybody from college professors to research scientists to farm workers to maids, cooks and waiters to truck drivers.

The most commonly used program is the H-1B visa, a program designed to bring in highly skilled workers, largely computer programmers and high-tech professionals. About 65,000 visas are issued annually under the program. Another is the L-1 visa program, which allows foreign companies with offices in the United States to bring workers in from overseas while paying them the lower wages they earned while working on projects at home.

Those programs have drawn the ire of organized labor, engineers and computer programmers.

"They sounded good in the beginning, but they are now being used as a way of stealing jobs rather than bringing work to the U.S.," said Kim Berry, president of the Programmers Guild, an organization of computer programmers that has been fighting the visa laws.

The programs were set up in 1990 after educational institutions like Washington University and major corporations like Microsoft, Monsanto Co. and Anheuser-Busch Cos. Inc. complained that they could not find enough qualified Americans in the computer sciences and other high-tech professions.

The federal government began making tens of thousands of specialized visas available so that U.S. companies could bring in highly skilled foreign help.

Loopholes in the law

Critics, including former Labor Secretary Robert Reich, say the programs, while well-intended, have gone awry.

"The H1-B program is sensible in principle," Reich said. "But the program has been administered poorly, and

sometimes abused. Employers have been bringing into the United States semi-skilled workers, many of whom have the same skills as American workers. Employers would rather have access to the foreign workers because they're cheaper. But in too many instances, Americans are ready, willing and able to take on those jobs."

To protect American workers from being undercut, the law requires that foreign workers under H-1B visas be paid the "prevailing wage."

But a study released in June by the General Accounting Office found that the Department of Labor had approved thousands of H-1B applications even though the forms clearly stated that the applicants would be paid less than the prevailing wage.

While the visas were designed for companies that had specific technological or educational needs, so-called "body shops" that don't produce any products have sprung up, Berry and others note.

"Body shops" arrange for foreign workers to receive H-1B visas even though technically they don't have jobs. The shops then function as temporary agencies for foreign workers to find jobs in the United States.

Some agencies apply for hundreds of H-1B visas and then farm the workers out to companies on a contract basis. Others bring over only a handful of workers and then charge the workers a percentage of their salaries.

"Unfortunately, the law allows for those kinds of loopholes," said Rep. John Hostettler, R-Ind., who has been holding hearings on the law as chairman of the House Judiciary Committee.

Lack of oversight

The H-1B program has long had a troubled path. In May 1996, the Office of the Inspector General studied the program and issued a report titled, "The System is Broken and Needs to be Fixed."

That report concluded that the Department of Labor, which has oversight for the program, was doing all it could to within its authority to weed out abuses, but the "programs do not protect U.S. workers' jobs or wages."

The report said the department's watchdog role "amounts to little more than a paper shuffling and rubber stamping."

The General Accounting Office conducted a similar study 10 years later and in June released a report with similar conclusions.

Sigurd R. Nilsen of the GAO found numerous lapses but noted in his report that in many ways the Labor Department is restricted from real enforcement because of the way the law is written.

Some want to reform the program, and others want to eliminate it.

Hostettler doesn't want to see the program end, but he does want changes.

"I want to enforce the law first," he said. "After we do that, we can get a true idea of the impact on American workers. Right now, the Department of Labor has not appropriately enforced it."

Rep. Bill Pascrell Jr., D-N.J., has introduced a bill that would reform guest worker programs. His bill would eliminate "body shops"; require employers to demonstrate their inability to find an American worker before they could hire an H-1B visa worker; and more closely monitor the wages being paid to H-1B workers.

So far, the bill hasn't gotten much traction.

Instead, the Senate passed legislation to increase the number of available H-1B visas from 65,000 to 115,000 next year.