

Top 5 Concerns Regarding Employment-Based Immigration in Senate Bill

1. Decimation of Employment-Based Immigration System:

- Eliminates first, second, and third employment-based immigration categories.
- “Merit-based” point system completely disconnects employment-based immigration from employers, who have only a negligible role in new system and are unable to sponsor specific employees for permanent residence.
- No provisions for multinational managers, extraordinary ability aliens, outstanding professors or researchers.
- No labor market test required to protect native-born workers.

2. Lack of Path to Permanent Status for Future Flow Essential and Highly Skilled Workers:

- New Y temporary worker program would create a constantly churning workforce, as it provides only a two-year nonimmigrant visa and requires workers to leave the U.S. for one year before being eligible to renew their work visa for a subsequent 2-year period. Maximum 6 years in Y status.
- Carve-out of 10,000 green cards per year for “essential” Y workers, but no bridge to allow essential and highly skilled but non-degreed workers a path to eventual permanent lawful status.

3. Lack of Adequate Numbers of Future Green Cards for Employment-Based Immigrants:

- Totally inadequate immigrant visa numbers (approximately 140,000 new green cards per year until the family backlogs are cleared over an 8 year period).
- Future legal immigration program (after 8 years of family backlog clearance) limited to 380,000 “point system” visas, guaranteeing that new backlogs will grow immediately, and that undocumented immigration will continue.
- Totally inadequate carve-outs for essential workers.

4. Gaps in Green Card Availability

- Immigrant visa petitions filed after May 15, 2007 on the basis of the current employment-based preference system will be rejected.
- During the period between May 15, 2007 and the date the new merit based system is up and running (likely October 1, 2008), no new employment-based green card applications can be filed.

5. Decimation of H-1B Program:

- Adds new restrictions prohibiting employers from obtaining H-1B workers where formal degrees do not exactly correlate to proposed positions.

- Eliminates dual intent for both H-1B and L non-immigrants. This would interfere with companies' ability to recruit someone from a U.S. university and seek a green card for them while employing them on an H-1B.
- Overregulates legitimate H-1B employers by subjecting all H-1B employers to burdensome rules currently applied to "willful violators" and H-1B dependent employers.
- Huge increase in H-1B fees (from current \$1500 to new \$5000 by Sanders amendment)
 - Will force companies to move projects and U.S. jobs to overseas facilities, and will make it all but impossible for many businesses to stay competitive.
 - Will inflict disproportionate pain on small firms and American innovators.
 - Additional fees for filing, premium processing, recruitment and training, antifraud, compliance and other legal and administrative costs can amount to \$9,000 just to secure initial H-1B approval.
 - H-1B employers already contribute more than \$127.5 million per year to U.S. job training and scholarships through existing fees. This training and scholarship fund would go up to over \$200 million per year even if the H-1B cap were only raised to 115,000, as currently proposed.
 - Scholarship and training fees U.S. companies now pay for each H-1B professional hired are approaching \$2 billion since 1999.
 - These fees have funded more than 40,000 scholarships for U.S. students in math and science through the National Science Foundation, hands-on science programs for 80,000 middle and high school students and 3,700 teachers, and training for more than 55,000 U.S. workers and professionals.
 - U.S. businesses pay over \$91 billion a year in state and local taxes directed toward public education.
 - Increased H-1B fees are nothing more than a tax on innovation that will end up driving U.S. jobs overseas by making it more difficult to hire the highly educated talent America needs.
- American professionals in "computer and mathematical" occupations are at virtual full employment, with a low annual unemployment rate of 2.4 percent in 2006. Cutting off the supply of H-1B talent will only hurt American competitiveness.
- The Bureau of Labor Statistics projects growth of 100,000 jobs a year in computer and math science occupations between 2004 and 2014, the highest of all white collar professional categories.

Note Re: Possible Amendments:

Cantwell Amendment (#1249)

One amendment that has been "filed," but is not currently "pending" is the Cantwell amendment which is very important to business immigration interests. We do not know at this time what will happen with this amendment – whether it will come to the floor for debate or be negotiated through unanimous consent into the final package. Nevertheless,

it is important to let senators know that this amendment is strongly supported by businesses.

The Cantwell amendment would set up a parallel and complementary employer-sponsored merit-based program. This “employer-sponsored” stream would let companies determine the skill sets that they need and would like to sponsor for a green card and this employer-sponsored merit based system would provide 140,000 visas separate and in addition to those currently in the bill. This amendment would protect U.S. workers by applying labor market tests to employer sponsorship of foreign workers.

In addition to dealing with employment-based green cards, this amendment also addresses some of the “grand bargain’s” changes to the H-1B program by striking the presumption of “immigrant intent” and restoring the “degree equivalency” provision. Furthermore, the amendment, while maintaining the provisions to strengthen H-1B enforcement in the bill, would eliminate overregulation of legitimate H-1B employers by striking provisions that would require every employer comply with burdensome rules that currently apply only to “willful violators” and to employers with excessive numbers of H-1B employees.

Durbin-Grassley Amendment (#1231)

There will also possibly be a vote on a Durbin-Grassley amendment. The amendment would strike provisions in the bill that allow the Secretary of Labor to determine whether or not there is a shortage of U.S. workers in the occupation and area of intended employment for which a Y nonimmigrant is sought. This amendment would require employers to follow extensive hiring and recruitment procedures even in areas where there labor shortages as determined by the Secretary of Labor.