That sigh of relief you might have heard late last month was the collective exhalation from contractors across the country expressing their relief that two rule changes that would drastically alter the H-2B visiting worker program were put on hold until later this year.

On December 16, Congress included language as part of its spending bill that delayed the change in the Department of Labor’s (DOL) wage methodology that would have dramatically increased the hourly rate contractors are required to pay their H-2B visa workers. The delay pushes the rule changes to Sept. 30 of this year. Contractors are still waiting to hear the rulings on two separate lawsuits tied to the DOL changes.

“It’s great we’ve got that long extension, but we would have preferred to get the ruling on our lawsuit,” says Tom Delaney, government affairs director for the Professional Landcare Network (PLANET). “At least everybody knows for the next eight months where they’re at. The judge really has until September to rule, but we think she’ll rule well before September.”

The current uncertainty leaves some contractors with an unpleasant nagg- ing feeling in the back of their brains.

“When are they going to say, ‘It’s not going to happen. You don’t have to worry about this anymore,’” asks Bill Gordon, owner of Signature Landscape, Olathe, KS. “I don’t think it’s going to happen. I don’t think legislators are willing to push hard enough to eliminate the stupidity they’ve come up with.”

The delay allows contractors to move ahead with their plans for 2012.

“It buys us the spring and the summer, but the same problem rears its head (in the fall),” says Fred Haskett, managing partner/operations for U.S. Lawns, Defiance, MO. “We’re going to spend a huge amount of our time going back to Congress again and spending a lot of time that we could be devoting to building our businesses, taking care of our clients, taking care of our employees and creating jobs into fighting the federal government on a continuous level.”

According to Delaney, senators and members of the House of Representatives are finally beginning to realize this is a small business issue and not an immigration issue.

“People in Congress understand what we’re dealing with now and are becoming more empathetic to us,” Delaney says. “It’s a result of our lobbyists and our members. They finally understand what impact the DOL would have.”

The lawsuits and rule changes are just as important to contractors who don’t use the H-2B program.

“If we lose our H-2B workforce and are looking for replacement workers at the local level, we’re going to aggressively advertise and look for people, and guess who we’re going to be recruiting,” Haskett says. “We’re going to look for the guys that have some experience.”

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We’re practically tripping them on the street and dragging them in the building. And we can’t get them to work. We’ve never had more than one or two people (in 7 years) show up for an interview properly. We’ve had one person show up for work. They lasted for two days.

— FRED R. HASKETT
Managing Partner/Operations, U.S. Lawns
The problem

The H-2B program is necessary, contractors argue, because they cannot fill positions any other way. Contractors recite story after story about hiring applicant after applicant who never shows up. And the few who do rarely stay beyond the first day.

“Yes, I’ve relied on the program because the program has brought me a group of professional work ethic-oriented guys who have made us what we are,” says Josh Denison, president of Denison Landscaping, Fort Washington, MD. “There are no call outs; there are no no-shows. They come here to earn a living for their families, make money to send home, live a good life and come back the next year.”

It’s not for a lack of trying to find domestic workers.

“I’ve had 170 guys walk out the door with the season here,” Denison says.

As of late December — with his H-2B workers back across the border for several weeks — the weather was still good enough for landscaping work to continue.

“All of our contractors are still making that big end-of-the-year push,” Denison says. “They want to get work in the ground; they want to get work done. We are a seasonal need company, but with the weather the way it’s been, we’ve stayed busy. My (H-2B) guys have left, and I would normally hire 25-35 (domestic workers). That would have gotten me through the winter, but I can’t even get those guys in the door.

“In the last 25 days, I have hired 29 people of whom (only) four are left — that’s hired and came to work.”

“I feel I could have given those guys $35 an hour and those guys wouldn’t have shown up for work,” Denison continues. “I talked to a gentleman last week who said, ‘Why should I come bust my ass and break my back when I can sit at home and collect unemployment? Why should I go to work?’”

It seems, in less than a generation, landscaping has gone from a good way to make some money to a job no Americans want.

“The culture of America is different than it was 25 years ago,” Gordon says. “Hard labor, seasonal work is something Americans just don’t want — especially young Americans. They’d rather work fast food.”

It hasn’t always been that way.

“My dad grew up — if he didn’t work, they didn’t eat,” Haskett says. “That’s gone in this country and we are the worse for it, unfortunately. By trying to be good, we’re hurting our work ethic.

“The safety net in this country has gotten so elaborate with government assistance,” Haskett continues. “You don’t go hungry; you don’t go without clothing; you don’t go without shelter. You can live a basic existence without having to work.”

H-2B means American jobs

The irony for many contractors is that
losing the H-2B program (or making it too expensive) would result in the loss of American jobs.

The program can be quite valuable for contractors. Haskett has a workforce of 41, of which 28 are seasonal and 25 are H-2B visa workers.

“Since we started using the program, this company has grown 400%,” says Haskett. “Prior to 2005 our annualized turnover rate was north of 250% at the seasonal workers. Today that is between 5% and 7%.

“Every time we bring in three or four of these guys, we add another full-time, year around job with benefits,” he continues. “It creates jobs. This action on the government will kill jobs and kill companies.”

For most business owners, there seems to be a love-hate relationship with the H-2B visa program. They need the program to grow and maintain their businesses, but they would much prefer to wean themselves off it. “I’d like to think that I have the ability to become less dependent on the program in the future,” Denison says. “That would be a goal — to become less dependent on the program. But how do I become less dependent on a program whose people have become so ingrained in what we’ve done? They’re not guys who just get here on a bus. They’re my guys. They all have faces, they all have names; they all have families; they all have needs. If I become less dependent on the program, who doesn’t come back next year?”

Gordon finds value in the program as well, but he’s also been burned by the experience.

“I’ve been beat up by the program so many times,” he says. “We’re continuing to use it but we’re trying not to be too dependent on it because it’s so undependable.”

The lawsuits
While the judges in a pair of lawsuits — one in Florida and another in Louisiana — have yet to rule, contractors who use the temporary visa worker
program are once again able to plan for the 2012 season.

“We’ve been involved in the Florida litigation suit since its inception,” Deni-son says. “We felt that this suit was our only chance to get someone to listen. We did not step into litigation against a branch of the federal government lightly. It was our last effort, our only hope.”

Before Congress pushed back implementation of the wage rules, it was thought the judges were set to announce their rulings. This delay allows them to spend more time on their decisions. Even if the judges ultimately favor the Green Industry’s position, the rulings are unlikely to end the debate. The pro-union (and seemingly pro-Adminis-tration) forces that pushed the DOL to make changes to the wage methodology in the first place will likely urge an appeal if the legal decisions go against them.

But that it’s even gone this far is wrong, according to Delaney.

“Congress changes what the mini-mum wage is and here’s the DOL coming in and saying how much you have to pay your workers,” Delaney says. “It’s sort of Communistic. We’ll have to keep fighting until some better system comes along that helps those who use and need the program.”

The future
The H-2B situation looks almost exactly as it did at this time last year. Contrac-tors will have the opportunity to petition for their H-2B workers and plan their seasons accordingly. As it stands now, if nothing changes, the wage and hiring provisions will automatically go into effect Sept. 30.

If the provisions do go into effect, most contractors will likely highly curtail their use of or altogether abandon the H-2B program. If decisions are delayed again, contractors might again get stuck in planning limbo.

“How in the hell do I develop a proper business plan to protect my year-round full-time people with all this uncertainty — with our current administration try-
ing to stick their nose in all these details with small business?” Haskett asks. “I’ve got enough trouble trying to keep the doors open in a recession. The uncertainty is almost as bad. At least if I knew what was going on, I could pick Plan A or Plan B.”

What becomes more interesting is how the situation plays out if the wage and hiring rules go into effect, making the H-2B program very expensive to use.

“There are two groups of contractors in our market,” Gordon says. “The ones that are going to completely turn their heads the other way with regards to immigration, which is most contractors. The other ones are going to fight like hell to make sure they have a legal workforce. H-2B is the best way to get that done.”

Given this is in an election year, it seems unlikely Congress will act to make any sweeping changes.

“My greatest hope is that we have a new administration and a new DOL secretary that favors us over some of the labor unions,” Delaney says. “We can fix the system, but don’t break it. The immigration system is broken and when we try to work on it they look to the H-2B program, which everybody admits that we still have to have. When we fix the immigration system we want a program like the H-2B to work.”

The human element

While it’s easy to look at the H-2B as a numbers game, it’s easy to forget the people involved.

“My guys aren’t just my guys,” Denison says. “My guys that have been here seven, eight, nine years have become part of this company. They’ve become part of what makes Denison Landscaping what it is today.”

And saying goodbye at the end of the season is difficult.

“It’s a bittersweet experience for them and for us,” says Haskett, who hosts a cookout at his home at the end of every season.

“We’re happy that they’re going home, and they’re happy that they’re going home to see their wives and children,” he says. “Ninety-five percent of them are married and have families. That’s what motivates them to come here. It’s family-oriented. They’re going to their wives and children. They have not seen them physically for eight or nine months. It’s a tremendous sacrifice they make — to be able to earn a living.”

No matter what happens, the goal is to keep the doors open. The H-2B program makes that easier. But for Denison, the mission is clear.

“We’re going to survive next year,” Denison says. “Our plan for the next couple years is to survive. Our plan is to be here. We’re going to do everything necessary to be here. I’m going to continue forward and use the program.”

Additional reporting done by Senior Editor Beth Geraci