

**H-2B EMERGENCY RELIEF:  
“SAVE OUR SMALL AND SEASONAL BUSINESSES ACT OF 2005”**

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## **H-2B SHORT-TERM WORKERS: ESSENTIAL FOR OUR NATION'S ECONOMY**

**ISSUE:** The restrictive cap limiting the H-2B visa category was exhausted on January 3, 2005, leaving in crisis many U.S. employers who use the short-term visa program to augment their American workforce. Unless Congress acts quickly to pass the "Save Our Small and Seasonal Businesses Act of 2005" (S. 352/ H.R. 793), thousands of positions, for which there are no U.S. workers available, will go unfilled. Consequently, many U.S. small businesses will be forced to limit their services or close their doors—some permanently.

**BACKGROUND:** H-2B workers perform non-agricultural, seasonal or short-term tasks essential to the American economy and the economies of communities across this nation. Tourism from Maine to Alaska, swimming pool management companies across America, the timber industry in Maine, the catfish and timber industries in Louisiana, crab processing in North Carolina, and the shrimp industry in the Southeast are but a few of the industries that depend on the H-2B program to bring in needed workers.

U.S. employers rely on the H-2B program for access to essential workers in those instances in which no U.S. workers are available. H-2B visa holders help keep the doors of American businesses open. These workers include restaurant, landscape, food production, and hotel service workers. They fill the rosters of our minor league hockey and baseball teams, teach our kids to ski, and repair helicopters that fight summer forest fires.

The H-2B program is capped at 66,000 visas per year. This number has not been adjusted since the visa category was initially capped in 1990. However, during that period a variety of factors have hampered U.S. employers' ability to find and hire willing American workers for short-term positions. Shortages in certain sectors of our economy are getting worse and the demand for workers to fill service sector jobs is increasing. In some cases, Americans are unwilling to engage in low-skilled and semi-skilled short-term employment. In addition, many of these short-term jobs would require Americans to relocate for several months to a remote location, a move many are unwilling to make. Despite employers' efforts to recruit U.S. workers, employers find they need H-2B workers to fill vacancies.

The current blackout follows the exhaustion of the FY 2004 cap last spring. Employer outcry last year resulted in the introduction of two bills in the Senate. However, their efforts stalled when overreaching permanent changes to the H-2B program were required in exchange for limited temporary relief. Such dramatic permanent changes do not belong on an emergency fix whose purpose is to enable U.S. employers to hire short-term workers for positions that otherwise would remain vacant.

In response to employer outcry after the H-2B cap exhaustion this fiscal year, the "Save Our Small and Seasonal Businesses Act of 2005" (S. 352) was introduced by Senators Mikulski (D-MD) and Gregg (R-NH). Companion legislation (H.R. 793) was introduced in the House by Representatives Gilchrist (R-MD) and Delahunt (D-MA).

S. 352/ H.R. 793 would provide emergency relief for this year and next by exempting from the cap prior H-2B workers who have participated in the program in one of the previous 3 years and successfully complied with all program requirements. The 66,000 numerical cap would be reallocated

with 33,000 visas reserved for each half of the fiscal year. The bill also would charge petitioning employers an anti-fraud fee. This fee would give the applicable agencies additional resources to investigate and prevent fraud. New enforcement provisions would give DHS and DOL an enhanced ability to punish those that misuse the program. Finally, a new reporting mechanism would provide Congress with new statistics on how the H-2B program is used as well as characteristics of H-2B visa holders.

**AILA's POSITION:** Congress must act quickly to pass the "Save Our Small and Seasonal Businesses Act of 2005" in order to provide U.S. employers with access to H-2B workers for this fiscal year and next year. It is urgent to underscore that this bill does not take the place of comprehensive immigration reform. However, it is an urgently needed emergency fix and time is of the essence. Without swift action, the economies of communities that depend on the availability of a short-term workforce will suffer dramatically.

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# H-2B BILL CO-SPONSORS

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## COSPONSORS BY STATE

**HOUSE (H.R. 793)** 28 Total (11 Democrats, 17 Republicans) as of 3/7/2005

**Connecticut**  
Simmons (R-Conn.)

**Guam**  
Bordallo (D-Guam)

**Illinois**  
Weller (R-Ill.)

**Kansas**  
Moore, D. (D-Kan.)  
Ryun, J. (R-Kan.)

**Maine**  
Allen, T. (D-Maine)

**Maryland**  
Bartlett, R. (R-Md.)  
Van Hollen (D-Md.)  
Wynn (D-Md.)  
Gilchrest (R-Md.)

**Massachusetts**  
Delahunt (D-Mass.)

**Michigan**  
Miller, C. (R-Mich.)  
Schwarz, J. (R-Mich.)  
Stupak (D-Mich.)

**New Hampshire**  
Bass (R-N.H.)  
Bradley (R-N.H.)

**New Jersey**  
Pallone (D-N.J.)

**New York**  
McHugh, J. (R-N.Y.)  
Serrano (D-N.Y.)

**North Carolina**  
Jones, W. (R-N.C.)

**North Dakota**  
Pomeroy (D-N.D.)

**Pennsylvania**  
Platts (R-Pa.)

**Texas**  
Paul (R-Texas)

**Utah**  
Cannon (R-Utah)

**Virginia**  
Davis, Jo Ann (R-Va.)  
Drake (R-Va.)  
Moran, James (D-Va.)

**Wyoming**  
Cubin (R-Wyo.)

**SENATE (S. 352)** 24 Total (13 Democrats, 10 Republicans, 1 Independent) as of 3/7/2005

**Alaska**  
Stevens (R-Alaska)

**Colorado**  
Salazar, K. (D-Colo.)

**Connecticut**  
Dodd (D-Conn.)

**Delaware**  
Biden (D-Del.)

**Maine**  
Collins, S. (R-Maine)  
Snowe (R-Maine)

**Maryland**  
Sarbanes (D-Md.)  
Mikulski (D-Md.)

**Massachusetts**  
Kennedy, E. (D-Mass.)  
Kerry, J. (D-Mass.)

**Michigan**  
Levin, C. (D-Mich.)

**Minnesota**  
Dayton (D-Minn.)

**New Hampshire**  
Gregg (R-N.H.)  
Sununu (R-N.H.)

**North Dakota**  
Dorgan, B. (D-N.D.)

**Rhode Island**  
Chafee (R-R.I.)  
Reed, J. (D-R.I.)

**Vermont**  
Jeffords (I-Vt.)  
Leahy (D-Vt.)

**Virginia**  
Allen, G. (R-Va.)  
Warner (R-Va.)

**Wisconsin**  
Kohl (D-Wis.)

**Wyoming**  
Enzi (R-Wyo.)  
Thomas, C. (R-Wyo.)

# H-2B

## Workforce Coalition

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February 16, 2005

Dear Senator:

The H-2B Workforce Coalition urges you to support the “Save Our Small and Seasonal Business Act of 2005.” This bipartisan bill would **exempt temporary seasonal workers who have participated in the H-2B visa program and have completely followed the law during the past three fiscal years from counting toward the statutory cap.**

The congressionally mandated 66,000 annual cap on the number of workers allowed to participate in the program that was established fifteen years ago does not reflect current economic conditions or meet the needs of the service industries that rely on these workers. In fiscal year 2004, the statutory cap was reached on March 9. This year the cap was reached on January 3. Since employers cannot begin the process to secure temporary workers under the program more than 120 days before their date of need, all but the earliest seasonal employers have been effectively denied access to temporary workers under the program.

Before employers can hire temporary guest workers under the program, they must advertise their job openings, work with local unemployment offices to identify potential American workers and offer the positions to any qualified domestic applicants. The jobs these guest workers fill do not take jobs away from Americans. It is not until employers have carried out this time consuming and expensive due diligence in trying to hire American workers are that they are allowed to petition the federal government for a labor certification and ultimately bring in foreign labor – their final option to run their businesses.

Without immediate action by Congress to address the negative impact of the program’s early shut down, U.S. companies will see severe economic consequences with the start of the spring season in many parts of the country. The inability to access workers under this program for the peak spring and summer seasons will have widespread economic consequences for diverse economic sectors including the landscaping, food processing, stone, travel and tourism, thoroughbred horse racing, construction, entertainment, hospitality, recreation and many other seasonal industries.

Thank you for your attention to this very important small business matter.

Sincerely,

American Horse Council  
American Hotel & Lodging Association  
American Immigration Lawyers Association  
American Nursery & Landscape Association  
Associated Builders & Contractors  
Associated Landscape Contractors of Colorado  
California Thoroughbred Trainers  
Cape Cod Chamber of Commerce  
Cendant Corporation  
Chesapeake Bay Seafood Industry  
Communicating for Agriculture and the Self-Employed  
Federation of Employers and Workers of America  
Golf Course Superintendents Association of America  
Greenberg Traurig  
H2A and H2B Employers Labor Programs (HELP)  
H2B Employers Council  
International Association of Amusement Parks and Attractions  
International Franchise Association  
Martha's Vineyard Chamber of Commerce  
Mid-America Green Industry Council  
Mid-Atlantic Solutions  
Morris Group Hotels  
National Club Association  
National Fisheries Institute  
National Restaurant Association  
National Roofing Contractors Association  
New England Apple Council  
Pan American Recruiting Company  
PLUTO  
Practical Employee Solutions  
Professional Landcare Network  
SaveSmallBusiness.org  
Six Flags, Inc.  
The Association of Pool & Spa Professionals  
The Southwestern Company  
Travel Industry Association of America  
U.S. Chamber of Commerce  
Workforce Advantage

# ARTICLES ON H-2B VISAS

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## **Visa Program Puts Small Businesses in a Tough Spot**

**Kansas City Star**

**March 1, 2005**

**Op-ed**

**By Mary Sanchez**

The U.S. government is shoving some employers toward hiring illegal workers -- either that, or watch their businesses go under. The issue is a visa program intended to bring in immigrant temporary and seasonal help when American workers can't fill the need. Landscapers, the fishing industry and canneries are big users of the program. But with only 66,000 visas available annually, demand for the visas is greater than the number offered.

A bad thing happened when some American businessmen went to great lengths to legally hire immigrant workers.

The government inadvertently pushed them to hire illegally.

Yes, that's right.

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The issue is a visa program intended to bring in immigrant temporary and seasonal help when American workers can't fill the need.

Landscapers, the fishing industry and canneries are big users of the program, called H-2B.

But with only 66,000 visas available annually, demand for the visas is greater than the number offered.

This year, the visas were all handed out by January, three months into the fiscal year.

A lot of businesses lost out.

Not only did they not get their workers, they also lost the money they had spent to apply, a complicated process that includes the Department of Labor setting the wage and agreeing that no American workers are available and willing to do the work.

The businesses operate mostly with full-time American-born staff. The immigrants fill gaps in busy seasons and then return home.

Well-known phrases describe this kind of work: Back-breaking labor. Stooped labor. Hard labor. Sunup to sundown labor.

The kind of jobs that many Americans either won't do or don't have to do.

Mowing lawns. Laying sod. Picking crab meat. Thinning forests.

Today, a group of 15 Kansas City area business owners will travel to Washington to speak with representatives about a temporary fix Congress is considering.

This is not a group of lobbyists. They are small-business owners, the sort of down-to-earth people who were the targets of the old "buy American" campaigns.

Take Bill Gordon, owner of Olathe-based Signature Landscape.

Gordon began the company 16 years ago, in his garage.

He has used the H-2B program to hire when his business gets busy in the summer months.

"I can understand them saying there are not enough jobs in certain sectors of the economy," Gordon said. "But the service sector industry just has jobs that American people don't want to do."

The way Gordon sees it, this is a business situation that cuts straight to the core of demographic realities in America.

We are an aging population. The last of the baby boomers are now in their 40s.

Baby boomers are a demanding population; they need lots of services but there are simply not hordes of younger people waiting in the wings to serve them.

This is especially true at the lower ends of the hiring pool.

That's an issue Gordon and some of the other business owners gingerly discuss.

Constance Kallevig is a little less polite.

"These Mexicans are willing to do everything," she said. "They come in, they are willing to work Saturdays and late. They don't come up with bull. No excuses."

Kallevig says it would be easy to drive into Olathe and pick up some illegal workers.

"They are there," Kallevig of Bucyrus said. "If that is what it is going to come to, that is what I'm going to have to do."

Kallevig's husband began Kallevig Lawn & Landscape 40 years ago, with a lawnmower and a pickup truck.

She applied, but didn't get her workers.

The legislation now being considered in Congress, the Save Our Small and Seasonal Businesses Act of 2005, would let returning immigrant workers not count against the annual cap until Oct. 1, 2006.

The act would also split the visas, reserving half of them for spring and summer help. Employers cannot apply until 120 days prior to needing the workers. So businesses busy in winter months took all of the visas.

And the bill tacks on a fee to fund fraud prevention. Like any visa program, this one has been abused.

But that doesn't mean there isn't a need for it, one that may very well be growing based on the aging population.

Kallevig would go to Washington this week, but there is no time for that.

"We have our plate full just to work, and to try and make it," she said. "Washington doesn't have a clue."

Kallevig tells it like it is. And sometimes, that is just what people need to hear.

**Immigration Bill May Aid Jobs**  
**Crisfield Times (MD)**  
**February 14, 2005**  
**By Jason Rhodes**

Washington -- Despite popular belief in most circumstances that immigration hurts U.S. employment, Maryland's officials in Congress are hoping a proposed bill to expand immigration actually helps solve a pending labor crisis on the Eastern Shore.

The bill, drafted by U.S. Rep. Wayne T. Gilchrest and Sens. Barbara Mikulski and Paul Sarbanes, would allow foreign laborers who held temporary work visas in 2003 and 2004 to return to the United States for the 2005 and 2006 crabbing seasons.

Many seafood processors on the Shore employ immigrant workers in the summer to pick crabs and perform other necessary duties. However, this year, a 66,000-permit cap on seasonal work permits for immigrants, set by Congress in 1990, was reached before most Shore plants were able to apply for them.

The labor shortage could hurt not only the processing plants, but watermen who depend on plant officials purchasing their crabs in the summer. Fewer pickers would mean fewer sales opportunities for watermen and could lead to increased prices for crabs and crab meat. The shortage also could harm Maryland's canning industry, which also depends on immigrant labor to pick fruits and vegetables for processing.

Petitions for temporary work visas may be filed by potential immigrants up to six months prior to their employment in the United States. Temporary work visas are issued only for specific types of employment, and employers must be pre-arranged before visas are granted. Holders of work visas may not change employers or positions without the approval from the US Immigration and Naturalization Service.

Petitions for temporary work visas are approved only for professionals whose skills are in short supply. On the Eastern Shore, that generally is the case for low-paying labor-intensive jobs including crab picking, oyster shucking and large-scale landscaping.

Spouses and children of temporary work visa holders may enter and remain in the United States under certain circumstances. They also may attend school in the country, but may not gain employment.

Though legislators hope the proposed bill helps keep seafood processing plants staffed for the next two summers, the solution would not be permanent. The draft bill calls for the expanded program to end in October 2006.

## **Firms Plead to Get More Foreign Help**

**Capital Times (Madison, Wisconsin)**

**February 12, 2005**

**By Anita Weier**

As lawmakers try to curb illegal immigration, some Wisconsin businesses are pleading for expansion of a program that allows 66,000 legal "non-immigrants" from other countries to come into the United States annually for temporary work.

Appleton immigration attorney Edwin Bush says that the need is critical, and that the shortage is particularly worrisome for businesses in northern states. A bipartisan bill has been introduced in the U.S. Senate and House to fix the situation, but time is running short.

In the 2003 federal fiscal year, about 2,000 workers came to Wisconsin under the "H-2B" visa program, and they worked in communities all over the state to meet seasonal needs. The program requires that employers first recruit in the state before getting approval to bring in workers from other nations, and they must prove that they have a need.

In Wisconsin, the seasonal workers have been employed in the meat packing industry in Abbotsford and Curtiss, as landscapers in several communities, doing pickling in Green Bay, in the tourism industry in Wisconsin Dells and Door County, and as restaurant workers in Green Lake. Locally, they have worked as landscapers for the Bruce Co. in Middleton, as landscapers and construction workers in Madison, and as landscapers in Verona.

Chris Purdy of the Bruce Co. said that the company does extensive local advertising every year, but has to bring workers in from Mexico. "We need over 100 laborers," he said. "Typically we never find that many locally."

The Horseshoe Bay Farms Golf Club in Egg Harbor, a residential and golf community, has brought in workers from the Philippines for three seasons, and had planned to do so again this year.

"As our business continues to grow, we started with seven and this year were trying to bring in 27," said Ken McIntyre, general manager of Horseshoe Bay.

"Our business is very seasonal. We are open May 1 through November 1. I can get all the employees I need from June 15 to August 15 when the kids are out of school, but my season starts in May. Members expect service."

Ads placed in the Door County Advocate and the Wisconsin State Journal produced one response, according to Bush.

"We struggle to find people," McIntyre added. "We found Filipino workers through a recruiting agency based in Chicago. The Filipino worker is known as being customer friendly and a hard worker. The work varies from food and beverage server to cooks to golf guest services to agronomy and maintenance."

Most earn \$10 per hour or less. Horseshoe Bay pays their travel expenses.

The current federal law requires that companies cannot apply for 120 days before a hire date. So the warm states and the ski industry may have snapped up all the slots, he said.

"The challenge is that the H-2B visa program follows the federal fiscal year, which begins Oct. 1. We had our applications ready to go Jan. 1 and a few days later they announced that they had reached the cap. We had 23 from the Philippines last year and there is no provision to grandfather them, though they have met all the federal requirements," McIntyre said.

He stressed that the workers are all fully documented and file tax returns.

"We are not skating the system," McIntyre said.

Unless the cap can be expanded, customer service will likely suffer, and members might leave the club, he added.

The other option would be an attempt to recruit and train and relocate workers from elsewhere in the United States, but it would likely be hard to persuade people to move for a seasonal job.

The solution that has been proposed in Congress by Sen. Judd Gregg, R-N.H.; Sen. Barbara Mikulski, D-Md.; Rep. Wayne Gilchrist, R-Md.; and Rep. William Delahunt, D-Mass., would solve the immediate problem by allowing temporary workers who have worked in the United States in one of the last three fiscal years to return.

Bush, who is a member of the American Immigration Lawyers Association, said the process for getting approval for the visa program includes filing an application with the state Department of Workforce Development and the U.S. Department of Labor.

"If they approve, we file a petition with Citizenship and Immigration Services. If they approve, the employees apply for visas at the consulate in their country," he said.

"The employers in the northern part of the country have been severely disadvantaged by the 120-day rule because the cap was used up on Jan. 3. Because the cap was exceeded for the 2004 season, everybody realized there would be a problem, so they all applied earlier. People have longer seasons in the southern part of the United States."

Bush said that temporary visa program has worked well for employees and employers.

"They are paid a fair and prevailing wage, and the program is tested for (recruitment of) U.S. citizens. The only reason there is a problem is because the cap is not sufficient."

Joanna Hedvall, a business immigration associate at the American Immigration Lawyers Association, stressed that employers have to certify that they have tried to get U.S. workers and they are not available. Security clearances also are required and workers must come into the country legally.

Hedvall said foreign workers are needed because American college students seem increasingly unwilling to take seasonal work.

**Foreign Workers Visa Cap Hits State; Federal Rule to Choke Tourism, Logging**  
**Bangor Daily News (Maine)**  
**January 15, 2005**  
**By Deborah Turcotte**

Bangor -- The state's tourism and logging industries are bracing for another season without the help of many of the foreign workers they have relied on in the past.

A federal cap on the number of H-2B visas issued to foreign workers was reached last week with very few visas being issued to people who will work this year in Maine.

Now, Maine's two senators are crying foul over how the visas are distributed nationally, and the state's two major industries are scrambling to find ways to get seasonal help.

"We've been basically excluded at this point," Sen. Olympia Snowe said during a recent interview. "It's not fair for Maine industries to be excluded from the H-2B program."

Last year, the cap of 66,000 workers was met in March - three months later than this year - but it was enough to cause some harm. Because of a shortage of workers, wood prices skyrocketed and restaurants and hotels reduced their hours of operation or opened later in the season.

This year, both industries are trying to be creative in finding workers, including calling former American employees and asking whether they can spare an hour or two a day.

The H-2B visa program allows businesses to hire foreign workers if they cannot find any Americans to fill the jobs. The foreigners work for one employer for up to 11 months beginning Oct. 1, the start of the federal year, and then they return home. They are allowed to switch employers if the federal government approves the change. For instance, a foreign worker employed at a Colorado ski area may transfer to Maine for the summer.

Businesses either fill out the visa applications or they hire agencies to do that work for them. The application process can take several months and includes a requirement that the businesses advertise and try to hire American workers first.

One catch in the federal H-2B visa law is that the applications can be received by the Immigration and Naturalization Service only 80 days before the workers' employment start dates. Therefore Southern states, with tourism seasons that start several months before Maine's, can apply earlier and collect most of the visas, as was the case this year. Disney properties, for example, require more than 10,000 of the 66,000 visas.

"It doesn't make any sense," Snowe said. "It's unreasonable that there hasn't been some flexibility in the way these visas are equitably disbursed."

The visa cap wasn't an issue until last year, when the federal Department of Homeland Security noticed the cap and required that it be enforced.

Maine's tourism industry two years ago had 3,000 foreign workers. Last year, it was about 1,000, and this year it's expected to be 500 or fewer. Logging requires 800 foreign workers, all from Canada.

"I would say about 500 have probably made it," said Vaughn LeBlanc of the Maine Department of Labor, who screens H-2B visa applications to ensure that American workers couldn't be found for the jobs before the requests are turned in to the federal government.

Any changes to the visa program - such as raising the federal cap or distributing the visas on a quarterly basis to all regions of the country - may be slow in coming.

Immigration issues, such as stemming the flow of illegal immigrants and restraining terrorism, are hot topics in Washington, D.C., and many representatives and senators are opposed to letting in any more people because they are concerned about homeland security.

Sen. Susan Collins said she shares her colleagues' concerns about illegal immigration and protecting the country from terrorists. But, she said, aligning those fears with the H-2B visa program is the wrong thing to do.

"There's a real regional equity issue here," Collins said. "There are some Southern Republican senators who are simply opposed to any more foreign workers coming into the country."

She said many of the H-2B visa workers entering the country are repeat users of the program. They have been coming to the United States for several consecutive years and typically work for the same employer each time. Their backgrounds have been screened, and when their jobs are done, they return home.

"It's ironic that here we have foreign workers who have been playing by the rules and have always returned to their home country and they are treated more harshly than those who are not playing by the rules," Collins said.

Making any changes to the H-2B visa program will require a unanimous vote, and the problem becomes one of trying to convince Southern congressional members that there's a fairness issue between Southern and Northern states and the way the visas are distributed.

"[Opposition] comes from states that truly don't understand what the system is all about," Snowe said.

Both senators acknowledge that it may be too late to help the logging and tourism industries through legislation this year. But, they said, they want to make sure that, next year, any Maine business that needs a foreign worker will be able to go through the application process without fear of the cap being met.

"I can't predict for you whether I'll be successful," Collins said. "Immigration issues are tough right now."

Dick McLaughlin, owner of the Lobster Pound Restaurant in Lincolnville, said he believes that any returning foreign workers should not be counted against the cap, only foreigners wanting to enter for the first time who need to be screened. They are reliable and are not a threat, he said. Snowe and Collins said they agree with McLaughlin and are trying to push his idea through Congress.

"It's their livelihood as well as our need," said McLaughlin, who in the past has had four foreign workers and this year may have just two.

While the federal government is imposing the cap, after years of not doing so, it also is raising the rate for processing visa applications, McLaughlin said.

Because businesses know there are only so many visas to go around, the federal immigration service started a "premium service" to process some applications more quickly than others. The "premium

service" costs \$1,000 instead of the typical \$300 fee and there is no guarantee that a visa will be administered after the process is completed, McLaughlin said.

"I have to send in \$1,000 and face being denied," he said. "You just hold your fingers crossed that you're not losing \$1,000."

In the meantime, businesses are developing strategies to get through this year. Logging and tourism industry representatives met with staff members from Collins' office this week.

Tourism industry representatives will be meeting with Maine Department of Labor officials on Feb. 4 to come up with ways to attract more Maine workers to jobs at restaurants and hotels, said department spokesman Adam Fisher.

Dick Grotten, executive director of the Maine Restaurant Association, who will attend the meeting, said hotel and restaurant owners will have to be creative to fill jobs or the industry will suffer this year.

The dramatic reduction in foreign workers has made the situation dire.

"We have the tables, we just don't have the people," Grotten said. "Rooms in hotels may not be filled."