

June 21, 2021

Chairman Cortes  
Senate Committee on Labor, Public Employment and Retirement  
Legislative Office Building (LOB)  
1020 N Street, Room 545  
Sacramento, CA 95814

Chairman Umberg  
Senate Committee on Judiciary  
State Capitol  
Room 2187  
Sacramento, CA 95814

**RE: AB 364 (Rodriguez) – SUPPORT**

Dear Senator Cortes, Umberg and Honorable Members,

On behalf of Freedom United, I am writing in support of AB 364 (Rodriguez). This bill provides a technical fix to SB 477(Steinberg) to ensure implementation of the legislature's intent that, regardless of visa category used to recruit temporary workers, *all* foreign labor contractors (FLCs) recruiting individuals for work in California, with two narrow exceptions, are subject to SB 477's requirements. SB 477 is currently interpreted by California Labor Department regulations as limited solely to FLCs recruiting workers under H-2B visas. This interpretation means that only about 5000 of the approximately 200,000 temporary workers coming to California annually are currently protected, less than 3%. AB 364 rectifies by clarifying by covering all temporary workers. The bill recently passed in the California State Assembly and we hope to see the bill pass in the California State Senate.

Freedom United the world's largest community dedicated to ending human trafficking and modern slavery. We mobilize a united community to create power for change by making the public stakeholders in ending modern slavery by equipping millions of supporters with awareness, education & ways to take action that drive real change. We have been campaigning for California to protect all temporary workers since January 2020 with CAST LA. Since the launch of our campaign, we have mobilized 32,936 supporters to take action by demanding California State Legislature to amend Bill SB477. <sup>1</sup>

Each year, California receives 20% of the total number of foreign workers temporarily employed in the United States. As of 2019, this constituted 150,000 individuals. And the number is growing. The H-2A program has tripled in size from 80,000 approved jobs in fiscal year 2008 to over 257,000 in fiscal year 2019. In the second quarter of 2019 alone, the Department of Labor received 5380 applications, more than it received during the entire 2012 fiscal year (5399). The annual increase in applications has exceeded 10% over the last six years, indicating that increasing numbers of employers in the agriculture industry and others

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<sup>1</sup> <https://www.freedomunited.org/advocate/california-protect-workers/>

are utilizing temporary workers as part of their regular workforce. For example, in 2019, California, the largest agricultural producer in the nation, became the fourth largest user of H-2A workers.

Estimates of how many employers directly recruit workers versus those who use third-party recruiters, often called foreign labor contractors, are wide ranging, but consistently show that approximately 50% or more workers are secured through third party contractors. The latest available data reveals that in 2013, at least 44% of employers hiring under the H-2A and H-2B programs alone planned to use third-party recruiters. Studies based on worker interviews further show that 80-94.5% of workers are actually recruited through third parties.

The importance of regulating the conduct of these ubiquitous intermediaries is paramount. Numerous reports confirm that the power imbalance between temporary foreign workers and those who bring them into the country often results in extreme labor exploitation, including trafficking. While some contractors behave ethically and lawfully, others do not. Unscrupulous foreign labor contractors misuse U.S. visa programs to exploit workers, often charging exorbitant fees for their services, thereby forcing workers into debt bondage. They falsify documents, impersonate legitimate businesses, and deceive workers about the terms and conditions of proposed employment. Workers who seek to report the abuses or escape their fraudulently induced servitude are threatened with blacklisting, discrimination, and other forms of retaliation, including the imposition of additional fees and violence against themselves, family members, or their home communities.

Unfortunately, a lack of comprehensive and consistent federal oversight and regulation compounds the problems. Regulation of temporary visa categories is fragmented between the Departments of State, Homeland Security, and Labor. As a result of this disjointed oversight, the lure of cheap labor results in unscrupulous recruiters treating temporary workers as disposable commodities.

AB 364 corrects fragmented federal oversight and regulations by ensuring that any worker coming to California who is authorized to work temporarily in the United States and who is not recruited directly by an employer is protected from exorbitant recruitment fees, false promises, and fraud **at the point of recruitment abroad**. Not only does AB 364 ensure the fair treatment of *all* temporary workers coming to California, but its regulation of foreign labor contractors provides essential benefits to all *businesses* employing temporary workers. **It weeds out unscrupulous contractors, eliminates unfair competitive advantages at both the contractor and employer levels, and protects employers from liability for their contractors' fraudulent practices.**

Provisions in SB 477 require foreign labor contractors recruiting individuals to work in California on authorized temporary work visas to register with the Labor Commissioner and requires employers to use *registered* FLCs. Most importantly, it prohibits these contractors from charging workers recruiting fees across all temporary work visa categories so that workers coming to California know that no recruiter should be charging them a fee for any temporary work visa. This important provision prevents vulnerable workers going into often unsurmountable debt to seek lawful employment in California.

SB 477 further requires fair contractual terms in the recruiting and employment process; provides legal remedies for workers harmed by violations of the law by both FLCs and employers; outlaws retaliation against workers exercising their rights under the law; and imposes a bonding requirement on FLCs to provide funds to cover violations.

Currently, no other protections exist under California or federal law at the place of recruitment abroad for temporary workers.

For SB 477 to be fully effective, passage of AB 364 is essential. AB 364 will clarify that SB 477's provisions cover *all* foreign labor contractors who bring individuals to work temporarily in California under *all* temporary work visa categories with two exceptions: J-1 visas (which was excepted from SB 477 protections given arguments that it is primarily for educational and cultural exchange not work purposes) and talent agency recruiters (who are already regulated under a more restrictive licensing program).

The need to better protect workers from fraudulent FLCs is magnified during these volatile times. FLC misconduct primarily affects people of color who are disproportionately suffering the ravages of the current Covid 19 pandemic and who have historically been victims of the sad legacy of systemic racism in this country highlighted so poignantly in summer 2020.

SB 477 was the first legislation passed in the United States addressing the grave human trafficking problems associated with foreign labor contractors' abusive recruiting practices. To combat the problem in California recognized by the Governor and the California legislature, it is essential that SB 477's be enforceable against *all* foreign labor contractors regardless of the visa category through which they recruit foreign workers.

Freedom United applauds this effort to better protect potential victims of human trafficking. We thus urge you to pass AB 364, recognizing that the power imbalance between temporary foreign workers and those who bring them into the country can result in extreme labor exploitation, including trafficking. Passage of this crucial legislation will give California a valuable tool to prevent the suffering and misfortunes of those subject to this modern-day form of slavery and provide a model for other jurisdictions faced with similar challenges.

Sincerely,



Joanna Ewart-James  
Executive Director  
Freedom United

cc:

Members, Senate Labor, Public Employment and Retirement Committee  
Members, Senate Judiciary Committee  
Assembly Member Rodriquez