

Michigan carnival company ordered to pay back wages and travel expenses to H-2B visa workers

J. M. Palmer, Kevin Reed
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A Michigan-based carnival company has been ordered to pay back wages and travel expenses withheld from employees who worked under the terms of the federal H-2B visa program for temporary foreign national workers in the spring and fall of 2021.

In a court order dated July 31, 2024, the Labor Department's chief administrative law judge in San Francisco, Paul C. Johnson, announced a "Settlement and Consent Findings" stating that T.J. Schmidt & Company, a Standish, Michigan, carnival company, "shall pay the Administrator the total amount of \$86,000, representing \$72,253.85 in back wages and \$13,746.15 in civil money penalties."

In a press release dated August 2, the Labor Department said that T.J. Schmidt & Company owed the money to "32 temporary non-immigrant workers the employer hired to run midway games, staff food stands, and build and operate rides but then paid them less than the wages promised and did not fully reimburse all workers for travel to the U.S. as required."

The press statement also said the decision and settlement was the result of an investigation conducted by the Labor Department's Hours and Wages Division, "that examined the company's records from April 1 through Oct. 12, 2021, and found that the employer violated some of the terms outlined in its federal H-2B temporary visa program application."

The settlement amount is equivalent to an average of \$2,257 owed to each of the 32 H-2B workers. The \$13,746 in civil penalties is the fine the company must pay for breaking the law and amounts to a slap on the wrist for the firm which has annual revenues greater than \$5 million.

In Judge Johnson's order approving the settlement, it is stated that the parties involved, "absent a breach of the agreement," will waive any legal proceedings before the Administrative Law Judge, "and will waive any right to challenge or contest the validity of the Consent Findings and this Order issued in accordance with the parties' agreement."

However, this did not prevent T.J. Schmidt & Company from issuing a statement to local news media claiming that it had not broken the law. As reported by MLive, the carnival company said the Labor Department had made "false statements," and, contrary to the settlement, the company claimed it "paid its employees and reimbursed their travel expenses in compliance with the law." The company further stated it agreed to settle, "after years of

litigation," and made the decision "to avoid further litigation costs."

Whatever the denials of T.J. Schmidt & Company, the fact that the agreement included an order from the judge that the carnival company must use an "approved timekeeping system, post prevailing wage information and provide nonimmigrant workers with H-2B resource material," shows that it had systems and communications practices that took advantage of the foreign workers who were likely unaware of their rights under US law.

According to the Labor Department website, the "H-2B nonimmigrant program permits employers to temporarily hire nonimmigrants to perform nonagricultural labor or services in the United States." The maximum number of workers permitted to travel to and work in the US under the auspices of the H-2B program is 66,000. For the fiscal year 2024, the Labor Department made an additional 64,716 workers available for the H-2B program.

Among the top five most common jobs that H-2B workers are hired for in the US are landscaping and groundskeeping, forest and conservation, amusement and recreation attendants, maids and housekeeping cleaners and meat, poultry, and fish cutters and trimmers.

An H-2B visa is valid for the duration of the job, up to one year, with the possibility of extending for up to a maximum of three years. Countries are determined to be eligible for participation in the H-2B visa program by the Department of Homeland Security (DHS) based on their record of cooperation with US immigration laws and other diplomatic considerations.

DHS reports that most H-2B workers come from Latin America and the Caribbean, while workers from other parts of the world, such as Africa, Eastern Europe and Asia are also eligible and sometimes participate.

Most of the workers, 70-75 percent annually, come from Mexico. The next four most represented countries are: Jamaica at 5-6 percent, Guatemala at 3-4 percent, Honduras at 2-3 percent and El Salvador at 1-2 percent. The balance of 10-15 percent come from the Philippines, South Africa, Dominican Republic, Peru, Costa Rica, Nicaragua and Colombia.

Under the H-2B visa program, the employment of the workers "must be of a temporary nature for a limited period of time such as a one-time occurrence, seasonal need or intermittent need." The

Labor Department states that the wages paid to H-2B workers must be, “the highest of the prevailing wage or Federal minimum wage, State minimum wage, or local minimum wage.” In the state of Michigan, the minimum wage is \$10.33, which is higher than the federal minimum wage of \$7.25.

Given that most Michigan workers are earning upwards of \$15 per hour and only 1 percent of the workforce is earning the minimum wage, the ability of employers such as T.J. Schmidt & Company to hire H-2B workers is clearly an opportunity to boost profits.

According to a 2022 study by the Economic Policy Institute (EPI), a Washington D.C. think tank affiliated with the AFL-CIO and Democratic Party, “mass violations of wage and hour laws are being committed in the industries that employ H-2B workers.”

The EPI report says, “Data from the U.S. Department of Labor’s Wage and Hour Division (WHD) show that, in the seven major industries in which nearly all H-2B workers are employed, nearly \$1.8 billion in wages was stolen from workers (which includes both U.S. and migrant workers) between 2000 and 2021.”

The EPI report includes data that shows between 2000 and 2021 there were 180,451 cases filed with the Labor Department in which 1.7 million H-2B workers were defrauded an average of \$1,076 in wages. In the amusement industry alone, there were 5,962 cases with violations that impacted 65,337 workers who were defrauded of a total \$35 million, or approximately \$536 each.

These facts establish that the T.J. Schmidt & Company’s theft of H-2B workers’ wages and travel expenses are not an aberration but something of a standard practice in industries which use H-2B workers.

Another example of the outrageous abuse of these workers was reported in June 2020 when two women workers from Mexico came to the US under the program to peel crawfish for Acadia Crawfish based in Crowley, Louisiana. During their employment, the workers lived in cramped conditions in company housing. When the two women contracted COVID and became very ill along with 100 other workers, they went to the hospital for medical care and were then fired by the company.

The EPI report goes on to say, “Not only are migrant workers brought into industries where wage theft is a major problem, but workers employed through the H-2B program do not have equal rights with other workers.” The report goes on to reveal that the H-2B program, “empowers employers to legally exert an unreasonable amount of control over migrant workers, who often must incur substantial debt to labor recruiters in order to secure jobs in the United States.”

This means, even though the rules of the H-2B visa program explicitly prohibit employers, recruiters, and contractors from collecting fees from workers for placing them in jobs within the US, such illegal labor contracting is regularly practiced.

Meanwhile, if the captive workers speak up about not being paid their promised wage or about being forced to pay contractors for the right to have a job, they “can result in getting fired, which leads to becoming undocumented and possibly deported. It also means not being able to earn back the money that was invested to obtain the temporary job.”

The report goes on to state, “These problems, which are inherent

in the H-2B program, are well documented. There are numerous cases of litigation, investigative media reports, government audits, and studies revealing how migrants employed through the H-2B program arrive in the United States with massive debt, are often exploited and robbed by employers, and even become victims of human trafficking.”

These facts show that the H-2B workers—who risk everything to come to the US because conditions in their respective countries are so impossible that they feel they have no other option—are exploited and abused on a regular basis by American employers. The conditions in the countries from which these workers originate are the result of US imperialist operations over many decades.

There are many examples of companies taking advantage of the H-2B visa program as the number of workers permitted to enter the US through this scheme has been substantially increased by the Biden administration. The goals of the Biden White House have been to both expand the pool of cheap labor available to US employers, cover up the abuse these workers are subject to and deny them the ability to become US citizens.

Although the abuse of these workers, which has only partially been exposed by the EPI report, is well-known, the incentive for capitalist enterprises to participate in the program is the opportunity to pay wages well below what workers with US citizenship require and thereby increase exploitation and drive up profits.

T.J. Schmidt & Company is one such firm that took advantage of the profit benefits afforded by the H-2B visa program. The carnival company’s website is replete with photographs of smiling, happy people, the implication being that people will be equally happy if they avail themselves of the amusements and carnival rides for a fee. The company, of course, does not show pictures of workers who have been over-worked, defrauded, injured, forced to live and work in dangerous and unsanitary conditions, killed on the job, or arrested en masse by immigration enforcement.



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