American Jobs First Act of 2015: Section by Section

Title I. H-1B Visa Program

- **Section 101.** Would modify §§ 212, 214, and 274A of the Immigration and Nationality Act (INA) to make fundamental, pro-American worker changes to the H-1B visa program (program). Changes to these two statutory provisions would:

    - Require H-1B employers who seek H-1B visas under the program to commit to paying the foreign workers they recruit either what an American worker who did identical or similar work made two years prior to the recruiting effort, or $110,000 (whichever is higher).

    - Establish a "layoff cool-off" period of two years (730 days), which would prevent an employer from bringing on an H-1B visa-based foreign worker within two years of an employee strike, an employer lockout, layoffs, furloughs, or other types of involuntary employee terminations other than for-cause dismissals.

    - Require an employer who seeks to use the program to submit a sworn affidavit to the Department of Labor with as part of the H-1B application packet. This affidavit must contain (among other information) the specific steps the employer took to attempt to hire American workers, demonstrated efforts to advertise in mainstream and trade publications, and a statement that it was unable to hire a single American as a result of its efforts. False statements made on such affidavits would subject the signatory to federal criminal perjury charges.

    - Strengthen internal (company) and external (public domain) transparency requirements, in order to ensure that both company employees and the job-seeking public are aware of the company's H-1B visa application and potential job opportunities at the company.

    - Require increased H-1B visa application transparency on the part of the Department of Labor, with real-time online updating of companies' H-1B visa application submissions, the publication of certain application information (including the identities of the companies and employees who have submitted the applications), and additional reporting to Congress about program abusers.

    - Clarify, consolidate, and enhance penalties for employers who are found to have violated the statutorily required conditions of the program. In addition to mandating referral of false statements made in the application's sworn affidavit to the Attorney General for criminal prosecution, new, stiffer penalties will exist for material failure to adhere to the conditions of the program (and even stiffer penalties will exist for circumstances where a material failure results in the displacement of an American worker). Retroactive compensation for displaced American workers is permitted in conjunction with (not in place of) other employer penalties.

    - Eliminate the "H-1B dependent employer" category and the H-1B blanket petition option.

- Require educational institutions and non-profit organizations to be subject to H-1B visa processing fees.

- Prevent continued use of the non-statute-based Optional Practical Training (OPT) Program, and the creation and use of other similar programs, which have also been used to displace American workers under the guise of student training.

Title II. New H-1B Visa Requirements

- **Section 201.** Would establish new educational degree requirements for foreign workers in order for them to be eligible for employment in the United States pursuant to the program. The new language would require foreign workers to possess doctorate or post-doctorate degrees to be eligible to work under an H-1B visa, and would prohibit foreign workers with only undergraduate or master's degrees from being eligible unless they have a minimum of ten years of non-academic experience in the relevant field. Foreign educational institutions would have to be certified by the Secretary of Labor as evidencing adequate educational criteria (that will be at least as stringent as those required for United States-based universities) in order for their graduates to be eligible to work under an H-1B visa. Foreign students who receive doctoral or post-doctoral degrees from a United States-based university would receive priority for placement with employers under the program.

- **Section 202.** Would prevent employers who seek access to the program from requiring American employees to sign so-called non-disclosure or non-disparagement agreements, in order to prevent employers who are looking to bring foreign workers in under the program from preventing American employees from discussing potential misuse of the program publicly. While employers who seek access to the program may not require non-disclosure or non-disparagement agreements to prevent the disclosure of program-related abuses, employers may, if litigation results in the wake of use of such an agreement, offer the affirmative defense that the agreement was necessary to prevent the disclosure of sensitive, proprietary information.

- **Section 203.** Would establish standing in federal courts for an American worker who believes he or she is about to be displaced, or has been displaced, by an employer through improper use of the program. It would also permit an employee to seek court involvement and remedies before the conclusion of Department of Labor-led inquiries into potential employer abuses of the program.

Title III. Repeal of Other Provisions

- **Section 301.** Repeals the diversity visa lottery, which is currently authorized pursuant to Title II of the INA.