

June 10, 2010

United States Senate
Washington, D.C. 20510

Dear Senator:

On behalf of HR Policy Association, I am writing in strong opposition to the Sanders-Grassley “Employ America” amendment to the tax extenders bill (H.R. 4213). HR Policy Association represents the senior human resource executives from more than 300 of the largest employers operating in the United States and globally. Collectively, these companies employ more than 18 million people worldwide, including more than 10 million in the United States.

The amendment would deny the approval of a petition by an employer for an employment-based visa if that employer has provided a notice of a “mass layoff” under the Worker Adjustment and Retraining Notification Act (WARN) in the previous 12 months, while terminating visas already approved if the employer later provides such notice.

Protections against displacement of domestic employees already exist under the H-1B and other employment visa programs. Moreover, the connection of such visas to WARN notices disregards a number of fundamental aspects of the WARN Act. Generally speaking, WARN notices are provided when there are employment losses at a single location of an employer involving at least 50 employees, other than part-time employees, where the entire facility is shut down or at least 33 percent of the employees are affected. If the trigger is met, the notice must be given regardless of the type of work and skills involved. Yet, the Sanders-Grassley amendment would deny a visa even if the petition involved work substantially different and an entirely different set of skills by the employees. Thus, a petition for a chemical engineer to perform work in New Jersey could be denied because 50 employees at a distribution center in Nevada received a WARN notice.

Moreover, the trigger mechanism for a WARN notice can be very complicated and challenging for compliance by employers. Employers are required to give at least 60 days notice of a “mass layoff” or “plant closing” that meets the threshold, as determined by the number of employment losses at the site occurring within a 30 day period. Moreover, under some circumstances, the requirement can be triggered by employment losses spreading out over a 90 day period. Needless to say, in a dynamic economy, the law tests the employer’s predictive abilities. Thus, to stay on the safe side, the law effectively encourages employers to provide WARN notices even where there is not a 100 percent certainty that the law will be triggered. As a result, many employers provide WARN notices but are ultimately able to retain many of the jobs because of changing economic circumstances. The Sanders-Grassley amendment would discourage employers from providing notice.

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Ultimately, the problem with the amendment is that it disregards the fundamentally different objectives of the WARN Act and the skilled visa programs. Moreover, the goals of the Sanders-Grassley amendment of avoiding displacement of U.S. employees by foreign visa-holders should be and are addressed within those programs.

Thus, we strongly urge you to vote against the Sanders-Grassley "Employ America" amendment. If you have any questions, please do not hesitate to contact me at 202-789-8622 or dyager@hrpolicy.org.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel V. Yager". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish extending to the right.

Daniel V. Yager
Chief Policy Officer & General Counsel