

Overview of Congressman Mike Pence's (R-IN) "Pence Plan"

Recently the White House invited Rep. Pence (R-IN) to discuss the Congressman's immigration plan, dubbed the "Pence Plan." Rep. Pence, a leading conservative in the House is a leading proponent of the House's bill, H.R. 4437. In realizing that there were drastic differences between the House and Senate bill and what the President envisions, the Representative designed his own immigration reform proposal which he explained in detail last week to the President and Vice President Cheney.

One of the pillars of the Representative's program is the requirement that all illegal depart the U.S. briefly and then re-enter. This is similar to the "touch-base" proposal that has surfaced before. Another cornerstone of the proposal is that private employment agencies would be established overseas to process the applications of those applying to return to the U.S. through the guest worker program. As noted by Rep. Pence, "I believe it's amnesty if you can get right with the law by paying a fine but never have to go home."

Timeline and Triggers

In short, the bill has 3 main phases: 1. secure the U.S. border; 2. upon successfully securing the border, put in place a guest worker program that will efficiently provide American employers with willing guest workers who come to America legally; and 3. enforce tough employer sanctions that ensure a full partnership between the business community and the federal government in the enforcement of our laws on immigration and guest workers. This bill mandates that the border be secured before the guest worker program can begin and requires that the Secretary of Homeland Security certify to the President and Congress that operational control over the border has been substantially achieved prior to the implementation of the temporary guest worker program. There is no set timeframe for this 'certification' and it could take anywhere from 6 months to 5 years.

What this means in practical terms is that border security measures and the employment eligibility verification system (EEVS) could be underway long before, potentially years before, a guest worker program was functioning. The Pence Plan adopts, in full, the House bill, H.R. 4437, with very minor changes. The House bill requires the reverification of employees within a specific timeframe, with few exceptions. An employer can begin reverification, on a voluntary basis, after 2 years from date of enactment; all employers must comply within 6 years. If deemed to be a critical infrastructure or if the employer is a federal/local/state government, the employer must have reverified after 3 years. With regard to new hires, an employer is required to use the new verification system (EEVS) beginning 2 years from date of enactment.

Should there not be a temporary worker program established at the time when reverification is to occur, nor a process in place by which the undocumented workers can change their status to that of a legal immigrant, many employers will lose their workforce without being provided a legal channel to recruit new workers, i.e. a temporary worker program. This is very problematic and not practical.

Learn more about the Pence Plan:

<i>Who is covered in this plan?</i>	A new temporary (W) visa would allow foreign workers already in the U.S. to leave and re-enter the U.S. and new workers to enter the U.S. and fill available jobs that require few or no skills. All applicants will need be required to process thru mini
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	Ellis Island Centers located outside of the U.S. Alien will be required to give a <u>bond</u> to insure departure upon the expiration of the W visa.
<i>How long is the visa valid for? Does it provide a path to permanent residency?</i>	The W visa would be valid for 2 years, and could be renewed two times for a total of 6 years; at the end of the visa period the worker would have to return home or be in the pipeline for a green card. If in the pipeline for an immigrant visa, the W visa could be renewed annually until a final adjudication. The Secretary of Homeland Security is authorized to extend the stay of a W nonimmigrant beyond the period of authorized stay if the alien has applied for lawful permanent resident status (green card application pending).
<i>What is the annual cap?</i>	There would be no annual cap for the first 3 years of the program. Thereafter, a reasonable limit would be determined by the DOL.
<i>What are the employer's obligations? How would employers 'apply' for these workers?</i>	<p>The bill sets forth various employer obligations under the program, worker protections, and an enforcement scheme to deal with violations of these provisions.</p> <p>An employer hiring W workers will be required to attest that it will provide adequate and comparable wages and working conditions with respect to the position. The employer must have conducted recruitment that is reasonable to the industry and location for at least 30 days.</p> <p>Employers would need to work through approved private worker placement agencies and demonstrate the availability of a job in the U.S., pay a fee.</p> <p>The worker placement agency will adjudicate a petition within 10 calendar days. DHS shall make a decision on admission within 3 business days of receipt of an approved application from a placement agency</p>
<i>Is there employment based sponsorship?</i>	An employer could sponsor the W visa holder for permanent residence. This could potentially allow the worker to remain in the U.S. beyond the 6 years while awaiting the processing of his/her green card.
<i>If the alien becomes unemployed, will s/he lose visa status?</i>	Aliens will <u>lose W status</u> if unemployed for more than 45 calendar days.
<i>When would this be implemented?</i>	DHS could not implement the temporary guest worker program authorized unless the Secretary had submitted a written certification to the President and to the Congress that operational control over all international land and maritime borders of the United States has been substantially completed. "Operational control" means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.