

H-2B Update: Cap Count Reached for First Half of FY 2022

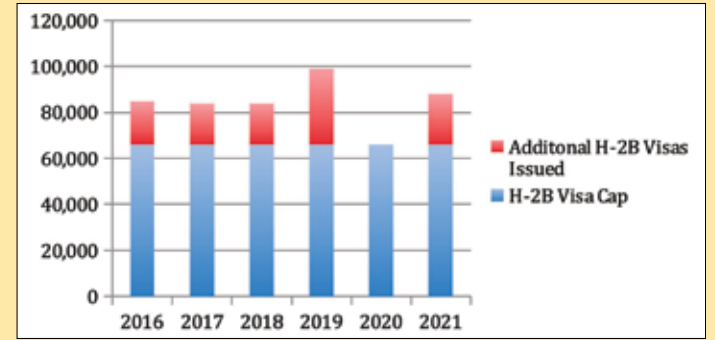
The numerical limit - "cap" - for visas under the H-2B guest worker program for the first half of the fiscal year (starting Oct. 2, 2021) was reached on Sept. 30, 2021. Once again this cap was quickly reached, showing a high demand from employers for guest workers. Congress has set a numerical cap of 66,000 H-2B visas for each fiscal year. The first half of the visas - 33,000 - is allocated to workers who begin their employment sometime between October 1 and March 31. The remaining 33,000 visas are allocated to workers who begin their employment sometime between April 1 and September 30.

While the program is capped at 66,000 visas, for the last six years Congress has given the Department of Homeland Security and the Department of Labor the authority to allocate additional visas each fiscal year. For FY 2021, the departments granted an additional 22,000 visas. So far there has not been an announcement for additional visas for FY 2022; however, the trend from the past six years suggests that there is a strong possibility of additional visas this year as well.

Employers in industries such as landscaping, hospitality, seafood processing, and construction are increasingly looking to the H-2B program as a reliable source of labor. Reliance on this program, however, comes at a cost to both domestic workers and guest workers who find themselves in exploitative conditions. The H-2B program requires that employers attempt to recruit domestic U.S. workers first. But, the requirements are minimal and there is little oversight. For instance, in demonstrating their recruitment efforts employers are not required to provide transportation and housing for U.S. workers who are willing to travel from other parts of the country. Instead, if employers are unable to find local workers, or workers willing to foot the transportation and housing bill themselves, they can look to a labor pool outside of the country. H-2B guest workers

can also find themselves in exploitative conditions with limited avenues for justice.

Despite these inherent problems with the H-2B visa program, the continued expansion of this program shows no signs of stopping anytime soon.



New Labor Advisory Council

Professional and reputable construction contractors have a myriad of challenges as federal and state construction money reach lifetime peaks for our industry: supply chain disruptions, Covid-19 complexities and skilled labor shortages are a few of these challenges. They certainly can't address and compete with an unlawful underground economy that has continued to grow in the shadows.

For the first time ever, the Hennepin and Ramsey County Attorneys' offices have consolidated plans with the Attorney General and the Governor's Department of Labor and Industry to fight wage theft. County Attorneys Freeman and Choi have invited FCF to lead a subcommittee that revisits and commits to enforcing the laws that preserve lawful standards in construction. Wage thieves, labor brokers and the contractors who use them should be on notice. The cost of doing shady business just went up.

Construct Tomorrow is Back!

Construct Tomorrow is back! After an obvious hiatus during the 2020-21 school year because of the Covid-19 pandemic, eight events are planned this school year around the state. The first event was in Rochester on October 27, and the last will be a two-day event at the Forest Lake High School Fieldhouse on April 26-27.

"Our numbers may be down a little bit so far this year because some schools just aren't allowing field trips. It's still good to see the kids in person though," explained Rik Myhre, co-chair of Construct Tomorrow.

The events still have to follow Covid-19 guidelines which include wearing masks indoors. "Part of that depends on the requirements of the cities and the schools that we deal with," said Myhre.

What hasn't changed is the central idea that there are great careers available in the Building Trades, complete with great pay and benefits. High school students can come and get hands-on experience in a trade in which they have interest. They get to physically act out what they'd be doing instead of just learning about theories. Kelly Braun, assistant principal at Byron High School, believes students enjoy the exhibits more when they are "game-ified," when there is a score involved and they can compete against their friends. "Competition with their friends... That's not a bad thing because you are getting better at what you do. They want to be the best," she said.

Leo Simpson, a senior at Mankato Loyola High School, has already decided to become an electrician. In fact, he comes

from a family of electricians. But he thought the event in Mankato was worth attending. "It showed me other careers I can go into. It helped me get an application into the electricians and helped me by having people to talk to about getting into the business."



Photos: FCF-Vince Muzik



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Trades Education at the New Rock Ridge High School



Photos: FCF-Vince Muzik

Longtime Minnesota high school rivals Eveleth/Gilbert and Virginia have left behind their rivalry, deciding in May 2019 via referendum to combine into one school district, Rock Ridge Public Schools. Two new elementary schools are being built along with a new high school located on a ridge overlooking Virginia, Eveleth and Gilbert. The total cost for all three buildings is more than \$178 million.

The high school has ditched the one-size-fits-all "everybody goes to college" model and replaced it with a career academy model. In fact, the school will be the only wall-to-wall career academy school north of the Twin Cities. Prior to the

continued inside



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2021 Compliance Highlights

Since FCF's inception more than 10 years ago our enforcement efforts have resulted in \$3,916,680 in wage recoveries, penalties, and fines related to public construction. In 2021 FCF's efforts resulted in \$111,628 in wage and penalty recoveries for workers on public construction, with dozens of complaints still outstanding or awaiting specific results. Some highlights of FCF's recent efforts include:

- Wapasha Construction was found to owe \$14,085 to workers who had been misclassified while performing numerous types of work on the Houston Water Treatment Facility.
- On the Camp Ripley Area 9 & 10 Roof Replacement project Azure Construction was found to have underpaid employees by \$35,727 and assessed a \$16,000 penalty (half of which was stayed) for failure to keep records. Western Products was also found to have underpaid workers by \$18,779 on the same projects.
- On the Wadena National Guard Armory Renovation the MnDLI determined that WeatherPro Exteriors LLC owed workers \$14,461 in back wages and ordered the company to pay an additional \$14,461

Apprenticeship Outreach on Prevailing Wage

As the current wave of anti-Prevailing Wage activity lead to repeal in states like Indiana (2015), Kentucky (2017), Michigan (2018), West Virginia (2016), and Wisconsin (2017), it became clear that more work was needed to organize support for these laws. In 2017, FCF began an outreach program for construction apprentices in Minnesota. We want to educate them about the importance of Prevailing Wage laws in maintaining the health and growth of the construction industry. In less than four years, FCF has given more than 300 presentations, reaching more than 8,000 apprentices across the state. We discuss the history of Prevailing Wage laws, their work site and economic impacts, and how detrimental it is when these critical laws are lost to ideologically driven misinformation. When an attack on Prevailing Wage is again attempted in Minnesota, the men and women of the construction industry will be well positioned to push back with high quality research and information, protecting good careers that sustain middle class families.



Credit: FCF-Vince Muzik

Annual Prevailing Wage Reminders

Minnesota Annual State Prevailing Wage Survey 2020-2021

These are the important dates related to the survey:

- Surveys submitted were for work between April 5, 2020, and June 4, 2021.
- The deadline for submissions was June 4, 2021.
- MnDLI reviews the surveys between June 5, 2021, and late 2021.
- MnDLI published new Highway/Heavy Rates on Nov. 1, 2021.
- The Commercial Rates were published on Dec. 27, 2021.
- Once new rates are published they remain in effect until late 2022.

FCF encourages all contractors and union locals to subscribe to MnDLI notifications that include updates and additions related to the prevailing wage survey. Go to the link below to get on the list:

https://public.govdelivery.com/accounts/MNDLI/subscriber/new?topic_id=MNDLI_25

When new rates are published it is important to check them as soon as possible. There is a **30-day window** from the date of publication to submit any questions or issues that may result in a rate change. Those may be submitted by emailing them to:

dli.prevwage@state.mn.us or karen.bugar@state.mn.us

The website to check Minnesota prevailing wage rates is:

<http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

FCF does receive copies of the survey data for all contractor submissions and we summarize it by craft and distribute it to interested affiliates. If you wish to receive that data please contact Gary at the number below.

We are about halfway thru the survey period for 2021-2022 that will result in new rates published at the end of 2022. The deadline will be near June 1, 2022. We encourage all locals and contractors to participate in the survey. If you have any questions about the survey call FCF at 651-797-2726 and ask for Gary or contact MnDLI at 651-284-5091.

Rock Ridge High School *continued from front*

referendum vote, a committee decided to tailor the academies for what career opportunities were most relevant to the Iron Range.

The trades-related jobs in the mining industry are essential to the Range. Companies like U.S. Steel have jobs they need to fill, and they need people who aren't fazed by and might even appreciate the weather elements of Northern Minnesota. "Mining companies are giving us direction as well as the trades unions," said Willie Spelts, school-work coordinator at Rock Ridge. "We are hoping to fill that void by training students so they can get these high-paying, high-quality jobs and keep them here."

Emphasis on traditional education is supplemented beyond ninth grade with a student's choice of one of three distinct career academies. Each one has a focus that allows students to explore occupations and careers that fit their individual interests, but the education is grounded in project-based learning.

"We want them to experience enough to make a decision while they are still in high school," added Spelts. "No need to spend the time and money in two years of college on something that won't benefit them."

One career academy is Career and Tech Education. Within that pathway will be Building Construction, as well as Welding and Machining and the Automotive Lab. Components of the building construction lab will include "the sandbox," an outdoors lab which, for example, will allow students to learn about installing underground plumbing and building footings complete with a bridge crane to move materials around the lab.

The new 280,000 square foot Rock Ridge High School is scheduled to open in fall 2023.

in liquidated damages. Liquidated damages are a rare remedy in prevailing wage cases and DLI's decision to order this penalty is a welcomed step in the face of egregious violators.

- MNDOT determined that VanVickle Masonry misclassified bricklayers on the MNDOT Walker Truck Station Campus Improvement Projects and underpaid workers by \$2,940.

In addition to wage recoveries and penalties, FCF's efforts often result in other forms of compliance success. For example:

- FCF successfully worked to have prevailing wage properly applied to the Maplewood Fire Station, an approximately \$10 million project that had gone out for bid without prevailing wage requirements despite the city's prevailing wage ordinance.
- FCF worked with the project owner in Olmsted County to address prevailing wage concerns that were raised during FCF's investigation. As a result the County withheld \$429,000 in payment for some time until the decision was made to refer the matter to DLI.

Federal Davis-Bacon Prevailing Wage Rates

These rates are the minimum rates to be paid on federally funded projects. Check these rates at:

<https://sam.gov/content/wage-determinations>

There are Davis-Bacon rates for these types of construction: Building, Highway, Heavy, and Residential. Federal Highway rates should match the Minnesota Prevailing Wage rates for Highway work. The other types of construction have rates determined by a federal survey. The latest Building rates were last determined by a survey in 2018. Heavy and Residential rates were last determined by survey more than 10 years ago. Any rates that were determined to be union rates are automatically escalated each year, but only if the latest CBAs are submitted to:

WHD_CBA_UPDATES@DOL.GOV

Federally funded projects are not as common as state funded projects in Minnesota, so most people don't monitor federal rates as often. It is important to review these rates and make certain you understand them if you are involved in federally funded projects. A current issue FCF is investigating is why federal highway rates don't match the Minnesota Highway rates.

Call FCF at 651-797-2726 if you need assistance reviewing the federal rates. These rates can also be found by searching: 'Federal Wage Determinations'.

Maplewood Shows its Commitment to Prevailing Wage

Like many cities in the state, the City of Maplewood has a prevailing wage ordinance requiring the payment of prevailing wage rates on city construction. When the city put out the bid invitation for the new North Fire Station the project went out without prevailing wage requirements. When FCF brought this to the city's attention it began to work to correct this oversight. On Dec. 13, 2021, the City Council approved a resolution modifying the existing contracts to include prevailing wage requirements. FCF applauds Maplewood's commitment to ensure taxpayer dollars support local wage standards!



Credit: FCF-Vince Muzik

Construction Boot Camps Introduce Students to Building Trades Careers

Despite the Covid-19 pandemic, the Mankato Building Trades hosted a construction boot camp during the summers of 2020 and 2021 for high school students to introduce them to the variety of career opportunities in construction. Supported by a grant from the MnDLI, small groups of students spent two weeks with instructors from various building trades apprenticeship programs, learning what it is like to be a carpenter, laborer, cement mason or electrician. Each trade guided the students through a hands-on project, demonstrating the skills associated with each craft. A third round of the program will take place in the summer 2022.

Inspired by the success of the Mankato program, a similar program is starting in Isle, MN. Union training centers are partnering with Central Minnesota Jobs & Training Services to develop the program, which will take place in June 2022. FCF applauds the creativity and initiative of the Building Trades in continuing to foster career opportunities for Minnesota workers.