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DHS Strikes Again! - But With Less Than Meets The Eye - January 5, 2016 matloff

There is yet another proposal by DHS to please employers, foreign workers and foreign students. See the Breitbart account, DHS' "summary" and the actual proposal.

The proposal is yet another outrageous attempt of the Obama people (and before them, the Bush people) to take the law into their own hands, bypassing Congress and thus the Constitution. Though, contrary to the Breibart headline, the actual impact on American tech workers would be small (details later below), it's quite amazing that the White House has the gall to make this proposal, in light of recent scandals.

I have one scandal in particular in mind, the one discovered by the local press at Wright State University. I discussed this in blog posts here, here and here, but a summary is as follows.

Basically, private industry is setting up shop near/on university campuses as an end-run around the H-1B cap. University workers are exempt from the cap, so the strategy is for the private company to contract out work to the university, who hires the H-1Bs, yet still with the private company playing the main role in supervising the work. As a bonus, the prevailing wage for the job is figured on academic levels, so the company attains salary savings too. The work is called "research," and though there may indeed be university researchers who publish some papers on the work, it's a mainly a great way for industry to save on labor costs.

Wright State was engaged in such activities, and though for the most part both Wright State and the private firm were likely in technical compliance with the law, it certainly made for bad press for the university, especially when it was found that some of the university administrators seemed to have overstepped their bounds. Two were fired.

This setup is surprisingly common. I mentioned in a previous post that for instance, that Intel

has several such centers. And needless to say, this approach is highly popular with universities, as they get fat commissions (known as overhead) for the companies sponsoring the research. Just today a reader called my attention to this one at the University of Illinois. There the details are given for one of the arrangements for hiring students:

Indirect hire at an hourly rate through Research Park Internship Program: Under this program, the intern is a student that is regarded as an employee of the University and performs work or services for the company as an independent contractor without any employment relationship between the company and the student. The University of Illinois is responsible for all human resources services and the student is on the University's payroll. The company pays an hourly wage to the student plus an overhead charge on all student wages to the University for administrative services. The company retains ownership of the work product. Contact Megan Puzey in the UI Office of Corporate Relations at mpuzey@illinois.edu.

Did you catch that part about the company having ownership of the work product? And of course, UIUC here points out that the companies can definitely hire international students. Also, though this document was about hiring students, in the Wright State case full-time workers were being hired, and this is probably common.

Plug "university research park" into Google, and you'll find lots of other examples of such cooperative entities.

The DHS proposal would simply tweak policy on these setups. Indeed, DHS said that they are merely codifying policy that they had been using informally. But it is BAD policy to begin with.

This is only one of many aspects of the new proposal, most of which clarify current DHS practice. One of the provisions having the most consequence to foreign workers would allow many who are currently waiting for a green card to "jump the gun" and enter the labor market essentially as a free agent, rather than waiting the years until their visa comes up. They only will get an Employment Authorization Document (EAD), and must still wait for the green card itself (and its role as a first step toward chain migration of others), but they are free to leave the employer who sponsored them for the green card.

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The impact on Americans would be quite small, because these foreign workers are ALREADY working in the U.S. — for the employers who sponsored them. So, for those who view these workers as taking jobs that Americans could have filled, they are ALREADY doing so, and thus there would be no real net loss to the Americans. On the contrary, I've repeatedly emphasized that one big reason tech employers like hiring foreign workers is that the workers become immobile during the years the green card is pending. The DHS change would slightly reduce this attraction to employers (though again, only slightly).

All in all, the impact on American workers of the new DHS proposal would be minor. It pales in comparison with what DHS has been doing with OPT, which has been quite harmful. In fact, Satya Ganti, the foreign worker profiled in the press accounts of the Wright scandal, had already been working the U.S. for 29 months, under exactly the DHS OPT policy which was recently vacated by a court, pending fixes to be made by DHS. That case, currently hanging in the balance, will have far greater impact, one way or the other.

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