

Senator Charles Grassley (R-Iowa) Questions, Prods Microsoft on Inclusion of H-1B Workers in Layoffs

Grassley says it's 'imperative' that U.S. workers get job priority over visa holders in cutbacks

By: Patrick Thibodeau

January 23, 2009 ([Computerworld](#)) [U.S. Sen. Charles Grassley \(R-Iowa\)](#) told [Microsoft Corp.](#) this week that U.S. citizens should get priority over H-1B visa holders as the software vendor moves forward on its [plan to cut 5,000 jobs](#).

"These work visa programs were never intended to allow a company to retain foreign guest workers rather than similarly qualified American workers, when that company cuts jobs during an [economic downturn](#)," Grassley wrote in [a letter](#) sent Thursday to [Microsoft CEO Steve Ballmer](#). The letter asked Microsoft to detail the types of jobs that will be eliminated and how those cuts will affect the company's H-1B workers.

"It is imperative that in implementing its layoff plan, Microsoft ensures that American workers have priority in keeping their jobs over foreign workers on visa programs," Grassley added.

In some respects, it was a letter that Grassley, a [vocal critic of the H-1B program](#), could have sent to any number of IT vendors that have announced layoffs recently. But Microsoft has been an outspoken proponent of increasing the annual cap on H-1B visas — primarily through its chairman, [Bill Gates](#), who has spoken in support of raising the cap in speeches and in testimony before congressional committees, [most recently last March](#). Grassley's letter noted as much.

Gates, in his appearance last year before the House Committee on Science and Technology, said that the current cap of 65,000 H-1B visas, plus an additional 20,000 set aside for foreign workers with advanced degrees from U.S. universities, "is arbitrarily set and bears no relationship to the U.S. economy's demand for skilled professionals."

It's uncertain what, if anything, the new Congress will do about the H-1B cap. The next filing period for H-1B applications begins April 1, and demand is again expected to [exceed the cap limit](#) even though the economy is in recession and unemployment is on the rise.

During the election campaign, [President Barack Obama](#) voiced support for the H-1B program, although that was well before the current economic crisis took hold. Obama has yet to announce any detailed H-1B plans, but his Cabinet nominees include supporters of a cap increase, such as Janet Napolitano, now secretary of the Department of Homeland Security. Google Inc. CEO Eric Schmidt, who was part of Obama's transition team, has been [critical of the current cap](#).

Microsoft didn't respond this afternoon to a request for comment about the letter sent by Grassley, who last fall released an internal report by the U.S. Citizenship and Immigration Services agency documenting [large amounts of fraud](#) in the H-1B program.

For Immediate Release From Senator Grassley's Website:

January 23, 2009

Grassley Works to Ensure American Workers are Priority

WASHINGTON – Senator Chuck Grassley today said that in a time of economic downturn, American workers must be a top priority for American companies. Grassley reiterated those words after he sent a letter to Microsoft urging the company to make efforts to retain qualified American workers during the recently announced lay-offs.

Microsoft employs thousands of people through the H-1B visa program. This temporary work visa program allows American companies and universities to employ temporary foreign guest workers who have the equivalent of a U.S. bachelor's degree in a job category that is considered by the U.S. Citizenship & Immigration Services to be a "specialty occupation." The

purpose of the h-1b program is to help companies hire foreign guest workers on a temporary basis when there is not a sufficient qualified American workforce to meet those needs. However, the program is not intended to replace qualified American workers.

In October 2008, U.S. Citizenship and Immigration Services released an internal report that found the H-1B program has more than a 20 percent violation rate. The fraud identified in the report included jobs not located where employers claimed, H-1B visa holders not being paid the prevailing wage, forged documents, fraudulent degrees, and shell businesses. In one instance the H-1B position described by the employer was “business development analyst.” However, it turned out that the H-1B visa holder would be working at a laundromat doing laundry and maintaining washing machines.

Grassley has been a leader in the effort to improve the H-1B visa program. In the 110th Congress, he introduced a comprehensive H-1B and L visa reform bill with Senator Dick Durbin that would give priority to American workers and crack down on unscrupulous employers who deprive qualified Americans of high-skill jobs. He has also asked questions of both American and foreign based companies about their use of the H-1B visa program.

Here is a copy of the text of Grassley’s letter

January 22, 2009

Mr. Steve Ballmer

Microsoft Corporation

One Microsoft Way

Redmond , WA 98052-6399

Dear Mr. Ballmer:

I am writing to inquire about press reports that Microsoft will be cutting approximately 5,000 jobs over the next 18 months. I understand that the layoffs will affect workers in research and development, marketing, sales, finance, legal and corporate affairs, human resources, and information technology.

I am concerned that Microsoft will be retaining foreign guest workers rather than similarly qualified American employees when it implements its layoff plan. As you know, I want to make sure employers recruit qualified American workers first before hiring foreign guest workers. For example, I cosponsored legislation to overhaul the H-1B and L-1 visa programs to give priority to American workers and to crack down on unscrupulous employers who deprive qualified Americans of high-skilled jobs. Fraud and abuse is rampant in these programs, and we need more transparency to protect the integrity of our immigration system. I also support legislation that would strengthen educational opportunities for American students and workers so that Americans can compete successfully in this global economy.

Last year, Microsoft was here on Capitol Hill advocating for more H-1B visas. The purpose of the H-1B visa program is to assist companies in their employment needs where there is not a sufficient American workforce to meet their technology expertise requirements. However, H-1B and other work visa programs were never intended to replace qualified American workers. Certainly, these work visa programs were never intended to allow a company to retain foreign guest workers rather than similarly qualified American workers, when that company cuts jobs during an economic downturn.

It is imperative that in implementing its layoff plan, Microsoft ensures that American workers have priority in keeping their jobs over foreign workers on visa programs. To that effect, I would like you to respond to the following questions:

- * What is the breakdown in the jobs that are being eliminated? What kind of jobs are they? How many employees in each area will be cut?
- * Are any of these jobs being cut held by H-1B or other work visa program employees? If so, how many?
- * How many of the jobs being eliminated are filled by Americans? Of those positions, is Microsoft retaining similar ones filled by foreign guest workers? If so, how many?
- * How many H-1B or other work visa program workers will Microsoft be retaining when the planned layoff is completed?

My point is that during a layoff, companies should not be retaining H-1B or other work visa program employees over qualified American workers. Our immigration policy is not intended to harm the American workforce. I encourage Microsoft to ensure that Americans are given priority in job retention. Microsoft has a moral obligation to protect these American workers by putting them first during these difficult economic times.

Sincerely,

Charles E. Grassley

United States Senator