

Untangling Trump's immigration policy in the business world



By Sarah C. Flannery
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(7/28/2017) -- The Trump
administration has implemented
several measures that affect

companies with multinational workforces. Here are a few of those and what employers can do to protect themselves and their workforces:

Travel ban

First off, while the ultimate fate of the administration's travel ban unveiled in March remains uncertain, the U.S. Supreme Court recently reinstated it in part, with the court's decision specifically addressing the ban's impact on foreign national employees of U.S. companies.

On June 26, the court narrowed the scope of lower courts' injunctions on the travel ban, ruling that it cannot be enforced against "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." The court further stated that a foreign national worker who has accepted a U.S. company's employment offer will not be subject to the ban if the employment is formal, documented and formed in the ordinary course and not for purposes of evading the travel ban.

Until the Supreme Court conducts its full review in October, citizens of the six countries named in the travel ban who hold U.S. work visas should not be refused admission because of the ban. That said,

the court's decision allows for discretion in determining whether the employment relationship is valid, suggesting that foreign workers from the six countries will need to show additional documentation when seeking a visa.

Increased screening, delays for visa applicants

Simultaneously with the March 6 travel ban, President Trump issued a memorandum to the secretary of state, attorney general and secretary of homeland security calling for additional vetting of visa applicants and limiting the number of daily visa interviews to allow time for the increased vetting.

Then on June 21, Trump signed an executive order that deleted a provision in a 2012 executive order requiring that 80% of temporary visa applicants be interviewed within three weeks of receiving their applications. These measures have exacerbated wait times for visa interviews at consulates and extended the time required for the consulate to return the passport with the visa in it. Temporary work visa applicants now wait three months or longer for an appointment at some U.S. consulates in Canada, for example, and more visa applicants are being selected for administrative processing (an additional background check), which can add up to 12 weeks to the visa process.

Employers should be aware of these delays because they can extend the lead time needed to get new foreign national workers to the United States, delay business travel abroad because a visa needed to

return cannot be secured before the trip and result in employees being stranded abroad without a passport while they await the consulate's processing of the visa application.

Work visa verifications

On April 3, U.S. Citizenship and Immigration Services (USCIS) announced an increase in unannounced site visits to verify information in work-sponsored visa applications. USCIS will prioritize employers whose information cannot easily be verified, those who place workers at client sites and those who are “dependent” on an H-1B workforce (highly skilled professionals in specialty fields), with IT consulting firms being a prime example.

But the site visits will not be limited to the employers and will include the businesses at which some of these H-1B visa holders work. For instance, a company using IT contractors with H-1B visas should prepare for a site visit. In this case, the host company should work closely with its IT consulting firm to ensure it has the appropriate information to respond to a site visit or documentation request.

Site visits also apply to the L-1 visa program, used by global organizations to transfer managers, executives and specialized knowledge employees to the United States. Large companies (1,000+ employees in the United States or over \$25 million in U.S. sales) and those with more than 10 transfers in the past year are eligible for blanket petitions, a type of pre-approval that makes the L-1 process more efficient. Employers with the blanket approval may

anticipate they are exempted from the increased scrutiny; however, USCIS recently conducted a site visit for an L-1 manager who recently renewed his L-1 visa and successfully completed the first step of the green card process with USCIS.

H-1B and L-1 employers should prepare for site visits by reviewing petitions to ensure they are accurate and filing amendments where necessary, and by designating who is responsible for interacting with USCIS officers. Managers and staff should be informed about the examination process, and the H-1B and L-1 workers and their supervisors should review petitions and prepare for the types of questions they will be asked.

Sarah C. Flannery is a partner and leader of Thompson Hine's immigration practice in Cleveland.

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