

U.S. Immigration Outlook for the Remainder of 2020 - Top 10 Strategic Considerations

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U.S. immigration law remains dynamic and ever changing especially with the impact of COVID-19, Congressional gridlock and the political differences in advance of the upcoming election. This article highlights issues that will affect employers and their businesses.

1. Travel to the U.S.

It is important to review the traveler's U.S. immigration status, travel itinerary and places visited during the 14 days prior to the arrival date in the U.S..

On March 11, 2020, President Trump issued a **proclamation** limiting the entry into the U.S. of aliens, with certain exceptions, who have been physically present in certain countries. The expansion of the travel limitation included Europe, the U.K. and Ireland. Additionally as of 11:59 p.m. on May 28, 2020, the ban also includes Brazil. See the Homeland Security Coronavirus Travel Restrictions chart [here](#).

On April 22, 2020, President Trump issued a **proclamation** suspending entry of certain immigrants to the U.S. This ban is narrow and exempts U.S. lawful permanent residents; the spouse and minor children of U.S. citizens and foreign nationals seeking to enter on immigrant visas as healthcare professionals.

2. Visa Status Expirations (ability to stay in the United States)

Employers must *monitor status expiration dates* of nonimmigrant (temporary) workers that will expire during the next 12 months, and to file timely extensions as soon as permitted under the regulations.

- The USCIS *suspended premium processing* on March 20, 2020. This suspension has eliminated the ability of employers to request the USCIS issue a decision within 15 days of submission for many case types.
- In general, however, an employer can *file a visa status extension* with the USCIS up to 6 months prior to the expiration date, and for some nonimmigrants receive up to 240 days of additional work authorization pending adjudication of the extension petitions after the visa status expiration.
- We encourage employers to evaluate such cases and where appropriate, file timely extensions as soon as permitted to minimize delay and workforce disruption. The status expiration will affect a driver's license renewal. During the COVID-19 pandemic, there has been a substantial decrease in the number of petitions filed with USCIS and there have been anecdotal reports the USCIS is issuing decisions within weeks.
- Another option may be to file a change of status to another nonimmigrant category when extension is not available or appropriate.

3. Visa Expirations (ability to reenter the United States after traveling abroad)

- Many nonimmigrant (aka temporary) visas have expiration dates. During the COVID-19 outbreak, U.S. consulates have suspended operations and severely limited the ability of employers to schedule visa interviews for employees.
- At present, there are reports that some consulates now are permitting individuals to schedule visa interviews in the late summer. Please note that the U.S. consulates' procedures and processing times vary from country to country. *The key is planning and monitoring the availability of appointments, and if needed rescheduling the appointment date.*

4. Furloughs, Reduced Hours and Layoffs

- Employers with nonimmigrant employees (i.e., employees who hold nonimmigrant, or temporary status) and who initiate company-wide furloughs, reduced work schedules and/or layoffs *will affect their ability to retain such workers in lawful immigration status.*
- The type of visa status held by an employee can affect an employer's obligations. For example, an H-1B employer is required to pay the employee the actual wage as listed on the Labor Condition Application that was filed with and certified by the Department of Labor (DOL). If the H-1B employer reduces the salary below the actual wage, the DOL can impose fines and back pay. If the H-1B employer terminates the employee, the employer is required to withdraw the H-1B petition and offer to provide the employee return transportation costs to the employee's home country. The DOL also imposes additional requirements on H-1B employers who have employees working from home during the COVID-19 pandemic.
- There is the question of what impact exists from furloughs, reduced hours and layoffs on similarly situated U.S. workers.
- *The key is for employer to review and to evaluate what obligations are required by the specific visa status and take appropriate compliance measures to retain key employees and minimize adverse effects.*

5. Passport Expiration

- Each nonimmigrant is required to have passport valid for six months. Citizens of certain countries are deemed to have their passports automatically extended for six months past the expiration date.
- *Plan ahead and review the passport expiration dates for nonimmigrant employees to determine if such persons are required to renew their passports in advance of travel.*

6. USCIS Site Visits and U.S. Department of Labor LCA Investigations

- Periodically, USCIS schedules unannounced site visits to ensure **compliance** with the terms and conditions of a company's immigration petition(s). This process includes reviewing the petition and supporting documents, researching information in public records and government systems, and, where possible, interviewing the petitioner and beneficiary through unannounced site visits.
- During the last financial crisis, there was an increase in site visits and we may now anticipate an increase in the current economic downturn.
- Employers with H-1B, H1B1 and E-3 employees are required to have LCA public access files available to DOL investigators. We recommend such employers conduct a periodic review of the **public access files** to minimize workforce disruption and the imposition of fines.

7. COVID-19 immigration relief

- The USCIS has acknowledged there will be delays in filing nonimmigrant (aka temporary) status extensions and change of status applications. It is important to determine the appropriate deadline and what options, if any, there are to submit required documents at later date.
- *It is advisable to submit status extensions and change of status applications immediately to minimize the probability of any USCIS denials.*

8. USCIS Filing Fee Increases

- On November 14, 2019, USCIS proposed a significant increase in the filing fees for various petitions and applications.
- The proposed increases are included on this [chart](#).

- The USCIS has reported a precipitous drop in applications for green cards, citizenship and other programs due to COVID-19 and is set to run out of money this summer. The **New York Times** has reported recently the USCIS will see a \$1.2B cash infusion from Congress as well as fee hikes to stay afloat.

9. Abandonment and Naturalization

- Lawful permanent residents (LPRs), aka “green card” holders who remain outside the U.S. for an extended period of time are at risk of losing their green cards.
- We recommend that LPRs who have remained outside the U.S. during the COVID-19 pandemic consult with an attorney as soon as possible to evaluate what options may be available to retain their green card status.
- We also recommend that LPRs consult with an attorney to determine if they are eligible to file a naturalization application for U.S. citizenship assuming they are qualified before the USCIS may increase the filing fee from \$640 to \$1170.

10. Review visa strategy and hiring processes

- We recommend that clients periodically review their current short-term/ temporary hiring needs and long-term hiring needs and develop an appropriate strategy to retain and grow work force talent needs.
- Such planning can save time, money and resources.
- **The current political climate and upcoming election have created uncertainty concerning the hiring of temporary and permanent immigrant employees. Planning ahead and submitting petitions for such workers in a timely and thoughtful manner can maximize the ability of employers to achieve their desired objectives.**

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