

LEGAL UPDATES

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New Executive Order on Immigration Targets Federal Contractors

In an effort to further curb the H-1B visa program, President Trump signed an executive order directing federal agencies to review the hiring practices of federal contractors and subcontractors with respect to their use of temporary foreign labor. The order specifically asks the Departments of Labor and Homeland Security to take action to protect U.S. workers from any adverse effects on wages and working conditions caused by the employment or placement of H-1B workers at job sites. Importantly, this order does not affect any current H-1B workers at this time or those employers who are seeking to sponsor employees for H-1B status.

The order requests that federal agencies assess whether in fiscal years 2018 and 2019:

1. Foreign national workers provided services on federal contracts or subcontracts and, if so, whether opportunities for U.S. workers were impacted; and
2. Work performed on contracts or subcontracts in foreign countries were previously performed in the United States and, if so, whether opportunities for U.S. workers were affected by offshoring.

Federal agencies have been instructed to submit a report of their findings within 120 days along with recommendations of actions to be taken.

What employers should do

Federal contractors and subcontractors should review current contracts to determine if they have improperly placed foreign national workers on projects where the contract specifically states that only U.S. citizens and U.S. permanent residents may work on the project.

H-1B employers also should consider reviewing their compliance with the H-1B program. The H-1B sponsorship program requires all employers to provide documentation that all employees who are sponsored for H-1B immigration status are being paid similar wages and have the same working conditions as U.S. workers in those same occupations. This information is contained in a public access file created prior to the filing of the H-1B sponsorship petition. U.S. Citizenship and Immigration Services conducts site visits of H-1B employers periodically to ensure compliance with the program. Given the administration's focus on the H-1B program, employers should review their H-1B practices to ensure they are following all appropriate documentary requirements and to ensure all H-1B workers are performing the jobs in accordance with the H-1B petition file on their behalf.

Critically, employers may still file H-1B petitions for foreign national workers. However, for those potential candidates and current employees who may be residing outside of the United States, employers are advised to take caution that this administration has barred the issuance of H-1B visas by U.S. Consulates abroad until the end of this year. This means that employers may file petitions for foreign nationals who are physically in the United States currently to allow these individuals to extend their stay in H-1B status or change their immigration status to H-1B. But those foreign nationals who are outside of the United States currently without a valid H-1B visa will not be able to obtain a visa to enter the United States until that prior executive order is lifted.

Contact us

If you have further questions or require more information regarding this update, please contact Christine Fabin, Kelli Meilink or your Husch Blackwell attorney.