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Employer Takeaways from the New Regulations "Modernizing H-2 Program Requirements, Oversight, and Worker Protections"

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On December 18, 2024, the Department of Homeland Security (DHS) released updated H-2 (including both H-2A and H-2B) visa regulations, with the purpose of modernizing the H-2 visa program.

Below are the critical changes that H-2A and H-2B employers should know:

Employers now can hire H-2 workers from any country. DHS has removed the list of countries eligible to participate in the H-2 program.

DHS has extended the H-2 worker grace period to 60 days after the end of H-2 period of employment. This means that H-2 workers now have 60 days after their employment ends to leave the country or change their immigration. During these 60 days, the H-2 worker will be considered as maintaining their status and will not accumulate a period of unlawful presence.

DHS is now providing “whistleblower” protections, comparable to that protection offered to H-1B workers, to protect those who seek to expose an employer’s violations of the H-2 visa program rules. Employers should review their obligations under the H-2 visa program to confirm compliance with all regulations. Those employers who are accused of violating program rules may face site visits or audits by DHS.

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DHS is making portability permanent for H-2B workers and removing the requirement that H-2A workers can only port to an E-Verify employer, meaning that all H-2 workers may change jobs and start working for the new employer as soon as the new employer files an H-2 petition on their behalf, rather than waiting weeks or months for the petition to be approved.

Husch Blackwell's Business Immigration and Global Mobility team offers a Resource Center with insights to help employers navigate the evolving immigration policy landscape.

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