LEGAL UPDATES

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# Trump Administration's New Immigration Actions Raise Questions

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On March 6, 2017, the Trump administration released a new Executive Order on immigration after a federal court halted implementation of the major aspects of the January 27, 2017, Executive Order on immigration. In addition, the Department of Homeland Security (DHS) has released two memoranda on immigration enforcement procedures inside the United States and at the border. In this legal alert, we answer employers' pressing questions about these recent changes.

**How will the March 6 Executive Order affect my organization?**

The recent Executive Order primarily affects organizations that employ foreign national workers. The order revives the 90-day travel ban for six of the seven countries named in the original order, including Sudan, Syria, Iran, Libya, Somalia and Yemen. Individuals from the affected countries who are outside of the United States and lacked a visa valid as of 5 p.m. January 27, 2017 – and still lack a valid visa on March 16, 2017 – will not be permitted to travel to the United States. This provision does not affect lawful permanent residents, individuals who are admitted to the United States on or after the effective date of the Order, dual nationals who travel on a passport from a country other than the six affected countries, foreign nationals traveling on diplomatic visas, and individuals granted asylum or refugee status in the United States before the effective date. The Executive Order becomes effective March 16, 2017, and is already being challenged in federal court.

At this time, foreign nationals from countries other than the six named in the order are not affected by this travel ban. However, the list of countries may be revised as DHS reviews each country's vetting procedures and information sharing with the United States over the next few months. All foreign national travelers to the United States are cautioned that they may be subject to extra screening by Customs and Border Protection, and they should plan for extra

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travel time when entering the United States or obtaining a visa (if eligible), as processes may slow in the coming months. This is particularly true for foreign nationals who use the visa interview waiver program, which allows certain pre-screened foreign nationals to avoid an in-person interview to obtain a visa. The Executive Order suspends that program.

**Will organizations see an increase in I-9 audits or investigations?**

Although the president's Executive Orders on immigration enforcement and the related DHS memoranda discuss increased immigration enforcement, we do not know at this point whether U.S. employers will see an increase in I-9 audits or investigations. Immigration and Customs Enforcement (ICE) enforces immigration laws in the employment context by auditing the employer's Forms I-9 and conducting investigations and raids, usually pursuant to a warrant to search the employer's premises.

One of the memoranda drastically expands the categories of people who are classified as "priorities for removal" and calls for hiring an additional 10,000 ICE officers. While many news outlets have reported on recent ICE raids around the country, ICE maintains these were normal enforcement actions and not part of an accelerated removal program. It is unclear how DHS will act to identify and arrest the large numbers of undocumented individuals and how long it may take, given the time and cost of adding 10,000 trained agents.

Employers should prepare for possible enforcement actions by conducting an internal I-9 audit and reviewing I-9 procedures. Employers should have a detailed plan in place in the event that ICE officers appear at their place of business with (or without) a warrant.

**What about DACA grantees?**

The memoranda preserve protections for individuals who have been granted Deferred Action for Childhood Arrivals (DACA), and these individuals may continue to work pursuant to their work cards and to renew those work cards. The president has the authority to remove protections for DACA grantees, including removing them from the United States, at any time. He has made no move to do so.

**Will the suspension of premium processing for H-1B worker petitions affect my organization?**

Premium processing is a service offered by U.S. Citizenship and Immigration Services (USCIS) that permits employers to receive a decision on an H-1B petition for a worker in 15 days. Regular processing may take six months and likely longer. Around this time of year, USCIS typically suspends premium processing of H-1B petitions to handle the influx of H-1B petitions the agency receives in April. Typically, premium processing resumes within a few weeks.

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This year, however, USCIS has announced a six-month suspension of the service for H-1B petitions. Premium processing is often used by employers that need a quick decision on a case or if the employee plans on traveling outside of the United States while the H-1B petition is in process. If your organization plans to sponsor individuals for work authorization through the H-1B program this year, those workers whose petitions are accepted for consideration may be precluded from international travel while the H-1B petition is pending. You should review the status of those individuals and their travel plans and consult with your immigration attorney to avoid business disruptions tied to these future H-1B workers' need to travel. You will likely wait months to learn whether your H -1B petition will be approved.

**Contact Us**

If you have questions about immigration or how the Executive Order may affect you or your organization, please contact Toni Blackwood, Kelli Stout or Tiffany Hutchens of Husch Blackwell's Immigration team.

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