Top Immigration Updates for U.S. Employers during COVID-19 National Emergency

Article By
Sarah J. Hawk
Terra R. Martin
Polsinelli PC
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- Coronavirus News
- Immigration
- Labor & Employment
- All Federal

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The COVID-19 National Emergency has brought a host of challenges to employers in the United States, including travel, compliance with employment verification processes, and hiring and maintaining immigration status for foreign national employees.

In the past two weeks we have seen a flood of interim policy changes. We expect the various immigration and enforcement agencies will continue to adapt and provide further guidance.

Form I-9 Compliance for Employers with No On-Site Employees

The Department of Homeland Security (DHS) announced flexibility for verification of identification and employment authorization documents for completion of Form I-9. DHS has provided remote verification procedures to allow an employer with no employees on-site due to the COVID-19 National Emergency, to review Section 2 documents using virtual review methods such as video conference, fax or email. The remote verification policy is in effect for the next 60 days.
ICE Immigration and Customs Enforcement (ICE) has provided a 60 day document production extension for any employer issued a Notice of Inspection (NOI) for Form I-9s during the month of March 2020. ICE will determine if additional extensions are warranted at the end of the 60 day period.

United States Citizenship and Immigration Services (USCIS) has suspended in-person services at USCIS Service Centers around the country until at least April 1. This suspension includes final interviews for permanent residency and naturalization. Applicants with interview notices during this time will be automatically rescheduled. Those with InfoPass appointments or other appointments at a field office must reschedule through the USCIS Contact Center.

USCIS has suspended premium processing service for I-129 and I-140 petitions filed directly with USCIS until further notice. Form I-129 is utilized for employment-based non-immigrant petitions, including, but not limited to, the H-1B, L-1A/B, E-1, E-2, O-1, and TN statuses. Form I-140 is utilized for employment-based permanent residency applications. USCIS will continue to accept and process all applications in accordance with regular processing guidelines, including filings for those selected in the FY 2021 H-1B lottery, expected to occur before April 1, 2020.

USCIS will temporarily accept copies of original signatures. USCIS has provided employers and their legal counsel much needed relief, by accepting reproduced copies of original signatures for filing of benefit forms with USCIS, including Form I-129. For forms that require an original signature, USCIS will accept the reproduced original for the duration of the COVID-19 National Emergency. Originals of the forms must be retained and provided to USCIS at a later date if requested.

The Department of Labor (DOL) has issued a FAQ on complying with regulations related to immigration processing services provided by the DOL in light of COVID-19. Notably, companies who sponsor foreign national employees for H-1B, H-1B1 and E-3 visas may need to move their sponsored employees to a different worksite that was stated on the Labor Condition Application (LCA) included in the work visa filing. Companies must still comply with certain posting obligations but will be considered compliant as long as the posting is done within 30 days of the move. In addition, DOL is providing additional time to meet recruitment requirements for the first step of the green card process, the Program Electronic Review Management (PERM) labor certification. Companies will have temporary extensions for recruitment and filing timelines, to allow additional time for the physical posting requirement.

The U.S. Department of State (DOS) announced a temporary suspension of routine visa services at all U.S. Embassies and Consulates around the world. All immigrant and non-immigrant visa appointments will be cancelled as of March 20. The DOS will resume visa processing as soon as possible and will continue to provide emergency services as possible.

Travel Restrictions continue. Foreign national travelers who have been present in the following countries within the past 14 days are currently restricted from entering the U.S. (U.S. Citizens, Lawful Permanent Residents and their immediate family members are allowed entry to the U.S. with additional screening.)
Countries currently impacted by the travel bans include: China, Iran, Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Leichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

**Canada and Mexico travel restrictions.** Further, the U.S. has announced joint border closures with Mexico and Canada, for at least 30 days, limiting cross-border traffic to “essential travel” in an effort to reduce the spread of COVID-19. Both countries have confirmed that truck and train traffic carrying supplies are considered essential travel and will continue.

**U.S. Citizens warned to not travel.** The U.S. Department of State has issued a [Level 4: Do Not Travel Warning](https://www.dtsgov/ds/c/ds556/ds556a5561661587098.pdf) and Global Health Advisory warning United States citizens to avoid all international travel due to COVID-19.