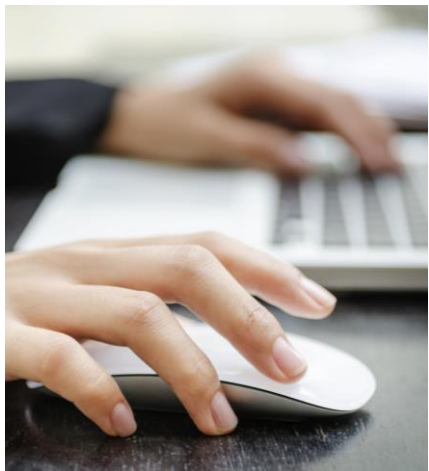
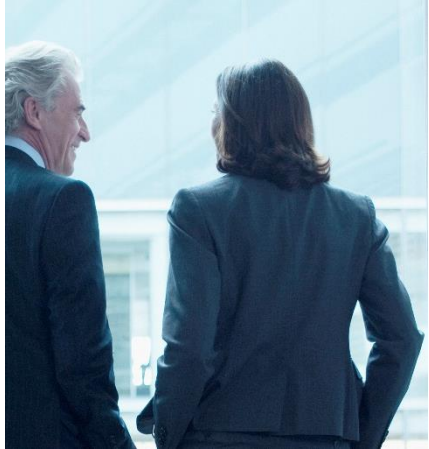


Immigration: I-9 and E-verify Compliance in the Trump Era



Eric Ledbetter, Partner

- Labor & Employment,
- Immigration,
- Research Institutions & Higher Education,
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Immigration, I-9 and E-Verify for Employers in the Trump Era

Presented by: Eric Ledbetter, Partner

Business Immigration Updates

- H-1B lottery update
- Temporary suspension of Premium Processing
- New(ish) I-9 Manual published on 1/22/17
- New(ish) regulation implemented on 1/17/17 to modernize immigration for high skilled workers
 - 60 day grace period
 - Reform Employment Authorization Document (EAD) process
 - Improve Green Card portability
 - Improve Priority Date retention

Trump Executive Orders – The Travel Ban 2.0, Executive Order 13780

March 6, 2017 Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States" revokes the January 27 order. Stopped in federal litigation before it started.

- Travel ban on people coming from Iran, Libya, Syria, Somalia, Sudan, and Yemen for 90 days, beginning on March 16, 2017
- Ordered DHS, DOS and the Director of National Intelligence to review the information needed from each country to determine immigration benefits
- Called for "enhanced vetting procedures" and to "rigorously enforce" all current rules
- 120-day halt to refugee admissions, subject to exceptions
- Suspended visa interview waiver program

What should you do?

- Know your employees
- Consider your action plan
- Do you have a travel policy or practice? How do you communicate it?
- Should current employees travel if they need a new visa?

Executive Order on Interior Immigration Enforcement

Executive Order signed 1/25/17; implementing memo signed 2/20/17:

- Prioritizes enforcement/deportation among the various immigration agencies
- **Narrows use of prosecutorial discretion (called parole authority) – "no longer exempt classes or categories of removable immigrants" (except DACA and cases involving national security or extreme humanitarian need)**
- **Reinstates USCIS authorization to issue Notices To Appear in Immigration Court**
- **Expands 287(g) partnerships with local police to facilitate removals**
- Removes privacy protections for non-citizens and non-permanent residents
- **Calls for 10,000 more Immigration & Customs Enforcement (ICE) officers**
- Establishes Victims of Immigration Crime Engagement (VOICE)
- Establish formal programs to collect more fines and fees from undocumented individuals
- Increases Expedited Removal (deportation without hearing in front of judge) in certain situations

White House Memo Regarding Business Immigration

- **Review** all immigration regulations related to *business immigration*
- Reform or terminate the current **Deferred Action for Childhood Arrivals (DACA)** program
- Propose new regulations to **reform business visa programs** to protect American workers:
 - Add more requirements to the H-1B and L-1 processes
 - Change H-1B lottery allocation process – i.e., by wage level or skills
 - More worksite audits/visits (L-1, O-1, TN, E in addition to more H-1B site visits)
- Establish an **immigration commission** to make immigration policy
- **Reform F-1/J-1 work options** (OPT, CPT, and EADs for recent college graduates to work as interns)
- Clarify (limit) what are acceptable activities in the US on **B-1 visas**
- Incentivize more employers to use **E-Verify**
- Reform the Visa Bulletin and **how green cards are made available**
- Propose new **E-2** regulations to conform with current law

S.180 and H.R. 1303: "H-1B and L-1 Visa Reform Act of 2017"

On 1/20/17, **Senator** Chuck Grassley (R-IA) introduced the H-1B and L-1 Visa Reform Act of 2017 (S.180); cosponsored by three Democratic senators

On 3/2/17, **Representative** Bill Pascrell (D-NJ) introduced the H-1B and L-1 Visa Reform Act of 2017 (H.R. 1303)

- Reduce **fraud and abuse** in certain work visa programs
- **Replace the existing H-1B lottery** to prioritize higher salaries and non "H-1B-dependent" employers
- Increase **Department of Labor audits/investigations** of H-1B employers
- Ban companies with **50+ % of their US workforce** on H or L visas from obtaining any more H-1Bs
- Add a **prevailing wage requirement to L-1 program** (similar to the H-1B), further restrict L-1B specialized knowledge standards, and add a numerical cap to annual L-1 visas

H.R.170: "Protect and Grow American Jobs Act"

On 1/3/17, Representative Darrell Issa (R-CA) introduced the "Protect and Grow American Jobs Act," which amends the INA to revise the definition of "exempt H-1B nonimmigrant" to eliminate the masters or higher degree requirement and raise the annual salary threshold requirement.

- Raise "H-1B dependent" exemption to \$100k instead of \$60k
- Discontinue current Master's degree exemption from H-1B dependency
- Result: those employers that employ a large portion of employees (usually more than 15 percent) on H-1B visas must advertise and prove there are no Americans available for the job anytime the salary is less than \$100k

H.R. 670: "High-Skilled Integrity and Fairness Act of 2017"

On 1/24/17, Representative Zoe Lofgren (D-CA) introduced the “High-Skilled Integrity and Fairness Act,” to amend the Immigration and Nationality Act (INA) to reform the H-1B visa program, and for other purposes.

- Raise the wage at which an H-1B dependent employer would be exempt from the recruitment requirement to \$130k, and eliminate the Master's degree exemption (similar to Issa's bill)
- Increase H-1B prevailing wage requirements by eliminating the Level 1, entry-level prevailing wage (not just for H-1B dependent employers)
- Eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes (similar to Chaffetz' bill which would eliminate the per-country limit for employment based and increase the limit for family based)
- Replace H-1B lottery; instead select petitions with highest salaries first
- Set aside 20 percent of the 85,000 new H-1B visas for start-up companies with fewer than 50 employees (She happens represent Silicon Valley)

S. 128 and H.R. 496: "Bridge Act" – "Bar Removal of Immigrants Who Dream and Grow the Economy"

- On 1/12/17, Senators Lindsey Graham (R-SC), Dick Durbin (D-IL), Lisa Murkowski (R-AK), Dianne Feinstein (D-CA), Jeff Flake (R-AZ), Chuck Schumer (D-NY), and Kamala Harris (D-CA) introduced the "Bar Removal of Immigrants Who Dream and Grow the Economy," or BRIDGE Act.
- On 1/12/17, Representatives Mike Coffman (R-CO), Luis Gutierrez (D-IL), Carlos Curberlo (R-FL), Lucille Roybal-Allard (R-FL), Jeff Denham (R-CA), Zoe Lofgren (D-CA), Ileana Ros-Lehtinen (R-FL), and Judy Chu (D-CA), introduced the "Bar Removal of Immigrants Who Dream and Grow the Economy" (BRIDGE Act).
- This legislation would prevent ICE from removing so-called DREAMers or those with DACA benefits.

Top Actions Employers Should Take To Prepare

1. If company has H-1B or E-3 employees, **self-audit DOL Public Access Files**
2. Determine if company already using **E-Verify** or could use it
3. Identify when was the last **I-9 self-audit** performed
4. Prepare HR, receptionist for unannounced **site visits** by government agencies (if sponsoring work visas)
5. Consider implementing **travel plan/system** to ensure employees from designated countries are not stranded on business trips
6. Consider **advising employees regarding rights/responsibilities during re-entry** into the US
 - Can employees share sensitive company information on their phone, laptop, or workbag with CBP officers? Is a warrant ever needed?
 - Who has a right to a lawyer during entry/inspection?
7. Have an **emergency plan if immigration raid** occurs
 - What are the different types of warrants?
 - Who to notify?
 - Media relations?
 - Employee messaging?

Questions?



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