The COVID-19 Impact on Texas Employers & Foreign Workers

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Changes to Immigration Policies & Procedures by President Trump due to COVID-19 that affect Texas Businesses and their Immigrant Employees

- 60 Day Stoppage of issuance of Green Cards for:
  - All immigrant visas for immigrants outside the U.S.
  - Spouses of LPRs and children of LPRs (outside the U.S.)*
  - Parents of USCs (outside the U.S.)*
  - Siblings of USCs (outside the U.S.)*
  - Adult children of USCs (outside the U.S.)*

- Closing of all Consulates except for emergency appointments (possibly reopen on 6/1/20)
- Closure of all USCIS offices for appointments (except for emergencies) thru 6/3/2020
- Ending of Premium processing
- *Exception: for family of U.S. Armed Service members
President Trump Executive Action on April 22nd:

Does not affect:

- Permanent Residents
- Spouses & Children of U.S. Citizens
- Investor Visa Holders
- Spouses & Children of U.S. Military
- Doctors, nurses, & researchers involved in COVID-19 fight
- Any other alien that DHS deems a national interest
Potential Upcoming Decisions that would impact Texas Businesses and their Immigrants Employees

• Supreme Court decision on DACA
• Potential 60 day ban on certain Non-Immigrant work visas (currently under consideration)
• Potential temporary suspension of OPT (Optional Practice Training) Employment Authorization
Consulate Closures

• March 20 U.S. Department of State suspended all non-necessary visa services at US Consulates worldwide. This does not affect Visa Waiver Program.

• Exceptions: H-2B and H-2As visas. Consular officers can at their discretion waive the visa interview requirement for first-time and returning H-2 applicants who have no apparent ineligibility or potential ineligibility.

• Exceptions: Air and sea crew, and medical personnel, particularly those working to treat or mitigate the effects of COVID-19.

• https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html
Border Closures

- Effective at 11:59 p.m. eastern daylight time on March 16, 2020, the entry into the United States is suspended for most individuals, other than United States citizens and lawful permanent residents.

- Shut down of travel between some countries means some B1B2 visitors and ESTA (Visa Waiver) visitors may need to extend or change their status.

- April 17, 2020 U.S. Customs and Border Protection (CBP) announced today that Visa Waiver Program travelers who have been granted satisfactory departure may apply for an additional 30-day extension of their admission period if they remain unable to depart the United States because of the novel coronavirus (COVID-19).

- Visa Waiver Program travelers may seek satisfactory departure by contacting:
  - Any local CBP Port of Entry or Deferred Inspection Site; or The U.S. Citizenship and Immigration Services Contact Center.
Suspension of Premium Processing

• March 20: USCIS temporary suspension of premium processing for I-129 and I-140 petitions due to the Pandemic.
• Serious effect on OPT F-1 students expiring this year since adjudication of H-1B cap cases without premium processing can take 7-8 months.
• Serious effect on Driver License (Texas) extensions since I-797 approval of I-129 and I-94 approval is needed.
• Serious effect on H-1B and H-4 spouses extensions past 6th year if I-140 (Immigrant Visa Petition for US Permanent residency) can not be adjudicated in two weeks (premium processing). Current adjudication time for an I-140 can be up to 8 months or more
Remote Work

Labor Conditions and Locations (H-1B)

• Rule: If not working at the worksite location or area of intended employment approved on the certified labor condition application, must file an amendment.

• Exception: Temporarily within the area on intended employment, then must prepare a posting of the Labor Condition Application (LCA) for 10 days at the new location (electronically or physical copy of LCA) prior to start of work at new location.

• Due to COVID-19: LCA can be posted within 30 days after beginning of work on new worksite location (house or apartment).
Furloughs and Employer Obligations

• Furlough: Employer required to pay H-1B employee wages certified in the Labor Condition Application (LCA).

• If Employer reduces wages: This will be considered a material change an H-1B amendment needs to be filed and approved with USCIS.

• Employer’s obligation to pay H-1B’s wages terminates only when employer notifies USCIS and withdraws the LCA with the Department of Labor (bona fide termination). If there is not a bona fide termination then employer may be liable for back wages.
I-9 Compliance During COVID-19

• Employer must inspect employee’s original identity and employment authorization documents in the physical presence of the employee within three business days after employment begins.
• On March 20, U.S. Immigration and Customs Enforcement, announced that employers taking during COVID-19 are not required to inspect original documents in person.
• Employers must inspect the Section 2 on Form I-9 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2.
• Employers also should enter “COVID-19” as the reason for the physical inspection delay in the Section 2 Additional Information field once physical inspection takes place after normal operations resume.
• Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.
I-9 Compliance During COVID-19

• These provisions may be implemented by employers for a period of 60 days from the date of this notice (March 20, 2020 at https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance OR within 3 business days after the termination of the National Emergency, whichever comes first.

• Once normal operations resume, all employees who were on boarded using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.

• Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only.
Thank you. Please stay in touch.

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