

Global Immigration alert

May 2024

United States

Best practices to prepare a US immigration/global mobility program for potential policy and process shifts

Executive summary

As we approach the US federal elections this November, it is a good time to take stock of your US immigration and/or global mobility program, refresh processes where appropriate, improve program efficiencies and operations, and take actions today to best prepare your company and workforce for any potential future changes in the immigration landscape.

Background and analysis

The topic of immigration remains at the forefront of American political discourse, driving discussion amongst policymakers, candidates and the electorate alike. Regardless of the election outcomes for November's presidential and congressional races, rule and policy changes may be on the horizon. Such changes may have a significant impact on your workforce and the operations that rely on foreign workers.

While the United States will see federal elections this year, it is worth noting the best practices outlined below are applicable worldwide – for any country and any election. In advance of any election, employers should stay informed and be proactive. To support the overall stability of any foreign worker program, it is essential for businesses to stay abreast of legislative and regulatory updates and consult with immigration specialists to develop flexible strategies to best prepare to navigate a potentially changing immigration policy landscape.

As we have seen in recent years in the United States, with a divided government, immigration policy changes are more likely to come about via change in regulation or policy memos versus legislation. Some policy changes can and have been implemented without prior public notice or feedback, with some taking effect upon announcement or shortly thereafter. As such, we have outlined some best practices for employers to take stock of your global mobility program, help prepare for any upcoming changes and also mitigate risk to both companies and employees. These recommendations provided below aim to support compliance and adaptability within your immigration and global mobility programs.

Some recommendations to consider are below. Prioritization and applicability will depend on your company and workforce's individual circumstances.

Individual foreign national employee-related actions and considerations

- ▶ Regularly update and review foreign national employee expiry reports, monthly if possible.
- ▶ File for extensions timely, preferably six (6) months in advance, to mitigate any processing delays and collateral document expiries (ex. driver's license, etc.) and to save on costly premium processing fees.
- ▶ Prioritize filing cases in categories that have seen recent regulatory changes or are more susceptible to sub-regulatory changes, such as DACA or National Interest Waiver EB-2 petitions.

- ▶ Plan ahead for foreign national employees who are approaching their non-immigrant visa max, starting discussions 1-2 years in advance to determine potential strategy to secure permanent status, as appropriate.
- ▶ Advise and encourage foreign national employees to obtain visa stamps promptly to avoid delays or unanticipated changes which could impact visa processing.
- ▶ Reflect on the potential impact for foreign nationals/travelers from countries that have been previously subject to travel restrictions or other restricted visa policies.

Internal processes, policies and actions

- ▶ If not already in place as part of normal operating procedure, consider developing a task force or project management plan with defined roles and responsibilities for key stakeholders to address scenarios related to immigration policy changes.
- ▶ Review and update company policies to clearly define the scope of support for foreign national employees and their dependents.
- ▶ Perform internal audits to ensure compliance, including reviewing I-9 employment eligibility verification processes, and prepare for potential government workplace inspections.
- ▶ Implement cross-training or succession planning programs to ensure that critical roles can be filled temporarily by other resources, should foreign nationals face delays in obtaining work authorization or are impacted by other logistical or administrative challenges.
- ▶ Consider remote work policies or short-term assignment options for foreign nationals who may need to work abroad temporarily, taking into account tax, legal, and other applicable compliance laws and regulations.
- ▶ Set up a protocol to efficiently communicate the effects of executive orders or policy updates with immediate or short-term consequences to both impacted employees and the broader business/company.
- ▶ Track and/or have a means of communicating with foreign nationals abroad to address policy shifts that may create obstacles to their return to the United States.
- ▶ Engage with government representatives and industry groups to stay informed and provide feedback on policy updates and development.
- ▶ Maintain a close connection with your immigration provider to receive timely legal advice and updates on policy changes.

Should you wish to discuss the above or any other advisory needs for your program, please reach out to your EY Law contacts.

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