

Hot Topics in Immigration Law – 2011

By [Pam Prather](#)

Immigration remains an issue in the forefront of U.S. political and social dialogue. Many Americans assume that the primary problem is with undocumented migrants, but the fact is that our immigration laws as they relate to legal employment and family immigration need a complete overhaul.

That is still not within sight, unfortunately.

Part of this is because the issue has become so emotional, with legal and illegal immigration issues desperately entangled, that it puts politicians on thin ice with their constituents regardless of their position on the subject. However, there have been some interesting 'piece-meal' bills and policy memos that have had some impact this year.

Fairness for High-Skilled Immigrants Act

Exciting news in recent weeks included the [Fairness for High-Skilled Immigrants Act](#), which passed the House with rare bipartisan support.

One of its sponsors (Chaffetz) stated "I am committed to fixing legal immigration. By removing per country limits, American companies will be able to access the best talent. This legislation is pro-growth, pro-jobs, and pro-family. I encourage my colleagues in the House to pass this bipartisan legislation."

The current system, where no country may be allotted more than 7 percent of employment or family visas, has long been criticized as unfair to larger, or more highly-represented countries such as India, China, Mexico and the Philippines. The proposed bill would eliminate the limit for employment-based visas and raise it to 15 percent for family visas.

With some high-skilled workers from India and China waiting nearly a decade for a Green Card, this is a great start. Not only will it have a significant and positive impact on thousands of individuals' lives, but many experts think it would create a boost to our economy. More visas means more workers, with more families paying US taxes and spending money at US businesses.

Unfortunately, when sent to the Senate, Senator Charles Grassley (R) put the bill on 'hold'. He said the bill "does nothing to better protect Americans."

When one in four U.S. companies have a foreign co-founder, does this position really make sense if job creation is a goal?

Neufeld Memo

Although it took effect in 2010, this year the [Neufeld Memo](#) continued to change the way H-1B applications are prepared for employee-contractors.

Employers who outsource their workers must continue to provide substantial evidence of the contractual agreements between their company and their vendor, and between the vendor and the end client. In most cases, the end client must refer to the worker by name, and state the length of the contract as being the same as the I-129 requested validity dates.

Needless to say (although we'll say it anyway) it is very difficult for an employer to get that kind of contract until the position is filled, and it's difficult to get the position filled without presenting the contract to the USCIS. This vicious cycle keeps – or delays – U.S. employers from filling jobs and optimizing their business practices.

This 'disconnect' between government policies and common business practices does nothing to help our economy and seems, in fact, to be quite a hindrance to its recovery.

Alabama's HB 56

This year [Alabama passed a law](#) making it a Class C Felony for undocumented aliens to transact business with state agencies. As a result, at least one utility company in Alabama posted a sign informing its customers that this prohibited them from providing water service to undocumented immigrants. Since Class C felonies are punishable by up to ten years in prison, this meant an undocumented alien could be imprisoned for a decade for attempting to use water in Alabama.

Also, based on how broadly the State defines "business transactions," it could be that **any** transaction, including paying State taxes, could result in imprisonment.

Alabama is one of several states that have passed their own stringent immigration laws. The Department of Justice is currently challenging state immigration laws in [Utah](#), Alabama, [Arizona](#) and [South Carolina](#). In addition, they are reviewing immigration laws recently passed in [Indiana](#) and [Georgia](#).

As more and more states continue to legislate on federal immigration laws, the conflict between our federal and state governments will be interesting to watch in 2012.

DREAM Act

Late last December, the [DREAM Act](#) (the Development, Relief and Education for Alien Minors Act) bill did NOT receive enough support to pass, but it continues as a source of debate on the overall immigration issue in the U.S. To be eligible for the act, undocumented students must have entered the country when they were 15 or younger and graduated high school or obtained a GED. To receive a green card, the bill required them to complete two years in the military or two years of college -- plus a 10-year waiting period. Only six years later would they be eligible to apply for citizenship.

In response to this failing at the federal level, some states are again taking immigration law into their own hands. Recently, Gov. Jerry Brown signed The [California Dream Act](#), which will become effective January 2013, into law. The law will make available state-funded financial aid to undocumented immigrant students in California. Funds include state Board of Governors fee waivers, student aid programs administered by a college or university, state aid Cal Grants

program for state universities, community colleges, and qualifying independent and career colleges or technical schools in California.

The other half of the California Dream Act was signed into law by Brown in July and allows undocumented immigrant students to receive privately funded scholarships administered at public universities and community colleges.

The California Dream Act differs somewhat from the proposed federal bill, which would have created a path to citizenship for immigrants who entered the United States illegally as children under the age of 16, had lived in the United States for at least five years, obtained a high school or General Education Development diploma, and demonstrated "good moral character," according to a White House fact sheet.

The DREAM Act has had, at times, support from both political parties. Unfortunately, most politicians today do not want to vote for any immigration bill for political reasons. If you've read the [comments](#) after any article written on the issue, you would understand why.

Immigration is currently a highly toxic and combustible issue.

As it relates to the DREAM Act, however, people should ask themselves some very fundamental questions: Is it right to deport someone who 1) was brought to the U.S. at a very young age through no choice of their own; 2) has lived in the U.S. their entire life, and knows no other country other as home; and 3) is trying desperately to become a productive member of our society?

What Lies Ahead?

Immigration will continue to be a large part of the American consciousness in 2012. Whether through pressure from the "Border States", economists, U.S. businesses, or farmers, Congress will be forced to make decisions about legal AND illegal immigration.

We should not forget that our *legal* immigration system, which is a vital part of the fabric of American history and culture, can be addressed separately from *illegal* immigration. The latter needs serious, reasonable discourse regarding the role we Americans want to play in this modern world - and how we want to approach the 11 million undocumented migrants in the US, and the continued flow across our borders.

But legal immigration needs smart reform NOW, whether comprehensive or 'piece-meal'. It would spur innovation, bolster the economy, create jobs, and provide people with a better life.

Let's make it happen in 2012.

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