



Executive Action on Immigration

- On November 20, 2014, the President announced a series of executive actions on immigration reform. Among the measures he announced are several actions that will affect employers in significant ways.
 - Modernizing, improving and clarifying immigrant and nonimmigrant programs to support businesses and high-skilled workers.
 - Expanding DACA Benefits.



Modernize the Employment Based Immigrant Visa System

- The executive action directs immigration agencies to develop recommendations for improving the current visa number system. The goal of this initiative is to reduce backlogs by modifying the method in which the government accounts for visa numbers. While the details of this measure have not been determined, two possible ideas for reducing wait periods are:
 1. Recapturing unused visa numbers from prior years; and
 2. Exempting dependent spouses and children from the numerical limitation placed on the number of green cards issued each year.

Reform the Employment-Based Immigrant Visa System

- The executive action establishes a “pre-registration” system for foreign workers seeking a green card. Specifically, workers with an approved immigrant petition will be able to pre-register to obtain the benefits of a pending adjustment of status application while waiting for a visa number to become available. Pursuant to these benefits, the worker may:
 - Seek a promotion from their current position;
 - Change jobs or employers if certain criteria are met; and
 - Obtain employment authorization and travel permission for dependent family members.
- This initiative is projected to impact approximately 410,000 individuals. U.S. Citizenship and Immigration Services has been directed to issue guidance and regulations to implement this initiative, but no deadline has been placed on this directive.



Reform “Optional Practical Training” for Foreign Students and Graduates from U.S. Universities

- Current regulations provides F-1 students 12 months of OPT.
- STEM students can qualify for an additional 17 months.
- The President has called for an extension of time period and use of OPT and to expand the degree programs that are eligible for OPT.



Reviewing the PERM Program

- The current PERM program for hiring foreign workers requires the sponsoring employer to obtain certification that there are not sufficient U.S. workers available to accept the job opportunity in the area of intended employment. The process for certification requires employers to test the labor market by utilizing several recruitment practices that may not be reflective of real-world recruitment.
- The Department of Labor, which oversees the PERM program, has been directed to issue guidance aimed at reforming the labor market test to reflect modern recruitment practices.



Promote Research and Development in the U.S. through the National Interest Waiver and expanded use of “parole”

- The National Interest Waiver (NIW) permits foreign nationals to by-pass the labor certification process and job offer requirement if their skills are in “the national interest.”
- The NIW program is underutilized and the President has called for USCIS to issue policy guidance to clarify the NIW standards and promote its greater use.

Expanded Use of Parole Authority

- Immigration law permits the granting of “parole” or lawful entry into the U.S. to pursue an interest of “significant public benefit.”
- The president has called upon DHS to grant parole status to inventors, researchers, and founders of start up enterprises who may not yet qualify for a National Interest Waiver, but who have been awarded substantial U.S. investor funding or who otherwise hold the promise of innovation, and job creation.
- Qualifying individuals will be able to temporarily pursue research and development of promising new ideas and businesses in the U.S. rather than from abroad.
- The regulations will include income and resource threshold requirements and beneficiaries will not be eligible for public benefits or access to tax credits under ACA.



Greater Consistency in the L-1B Program

- The L-1 Visa is for Intracompany transferees.
- Available to either Executives/Managers (L-1A) or persons with “Specialized Knowledge” (L-1B).
- The L-1B program has suffered from vague guidance and inconsistent interpretation of the term, “specialized knowledge.”
- The president has called for clear, consolidated guidance to improve consistency and enhance employer confidence in the program.

Expansion of DACA benefits

- Deferred Action for Childhood Arrivals provides the opportunity to apply for work authorization and a social security card for certain young people who came to the U.S. illegally as children.
- This is a two year grant, renewable every two years.
- It is not a path to permanent residence or citizenship, but rather a reprieve from being subject to removal.
- **REQUIREMENTS**
 - Were under the age of 31 as of June 15, 2012;
 - Came to the United States before reaching your 16th birthday;
 - Have continuously resided in the United States since June 15, 2007;
 - Were physically present in the United States on June 15, 2012;
 - Are currently in school, have graduated or are an honorably discharged veteran; and
 - Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.



Expansion of DACA benefits

- The president proposes to extend DACA benefits to young people who came to this country before turning 16 years old and have been present since January 1, 2010 (up from June 15, 2007) and extending the period of work authorization from two years to three years.



Deferred action for parents of U.S. citizens and lawful permanent residents

- Have continuous residence in the United States since January 1, 2010;
- Are the parents of a U.S. citizen or lawful permanent resident born on or before November 20, 2014; and
- Are not an enforcement priority for removal from the United States, i.e. recent arrival, those with criminal backgrounds, or threat to national security, border security, or public safety.



What will the expansion of DACA mean for employers?

- Newly eligible DACA beneficiaries may already work for you, and may have presented fraudulent documents at the time of hire. Employees may now come forward with valid documentation to correct previously presented fraudulent documents for purposes of the Form I-9. and/or they come forward and present new documents and a new identity.
- Review your I-9 compliance plan, especially regarding reverification.
- Conduct an internal audit prior to the implementation of the executive order.



What will the expansion of DACA mean for employers?

- There may be an increase in new hires with temporary work authorization. Now is a good time to look at your policies and procedures for ***re-verify*** expiring work authorizations.

Employment Authorization for Certain H-4 Nonimmigrants

- In May 2014, the Department of Homeland Security (“DHS”) released a proposed rule that permitted H-4 dependents to seek employment authorization if the principal H-1B nonimmigrant worker was either:
 - The beneficiary of an approved immigrant petition; or
 - Granted an extension of their authorized period of stay in the United States based on a pending application for permanent residency.
- The president has called for H-4 dependents to be permitted to obtain work authorization. It is unclear whether the executive action will modify the DHS’s proposed rule and allow all H-4s to obtain employment authorization.
- This initiative could extend employment authorization to approximately 97,000 H-4 visa holders, and 30,000 individuals each year thereafter.



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