

Practice Update

Executive Orders Impacting Immigrants in the Workplace

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Employers are advised to restrict international travel for employees who are not U.S. citizens. This is particularly so for employees from the seven countries targeted by President Trump's January 27 Executive Order restricting immigration, even if they have a dual passport.

Last week a federal judge in Seattle issued a nationwide injunction blocking the immigration order. The order had suspended immigration from seven predominantly Muslim countries (Iran, Iraq, Libya, Somalia, Sudan, Syrian and Yemen), barred Syrians indefinitely, and cut in half the number of refugees the U.S. had pledged to accept. On Sunday, the 9th Circuit court of Appeals left intact the injunction until it can consider detailed arguments this week. The dispute is likely to wind up in the Supreme Court.

Initially, the travel restriction included all the foreign nationals from those seven countries regardless of the type of visa or whether they were Legal Permanent Residents, i.e, green card holders. However, the White House clarified later that green card holders would be considered for entry or return to the United States on a case by case basis and would be subject to scrutiny.

Even though the Department of Homeland Security

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has stopped enforcing the President's order for the moment, the President has broad authority over foreign nationals and national security. If the President's order is ultimately upheld, not only could the same travel restrictions be restored, but President Trump could include other foreign nationals on the list. The American Immigration Lawyer's Association has issued an alert indicating that travel restrictions may be expanded to include nationals of Colombia, Venezuela and the Philippines, among others.

While much attention has been focused on the refugee ban, two other executive orders are likely to have far-reaching consequences for employers. The "Border Security and Immigration Enforcement Improvements" Executive Order, issued January 25, 2017, not only provides for construction of the border wall, but also contemplates expanded deportation and detention of individuals on "suspicion" of violating immigration law. The "Enhancing Public Safety in the Interior of the United States" Executive Order issued the same day announces "new interior enforcement priorities that have the effect of making every undocumented immigrant in the United States a priority for removal," to "punish sanctuary jurisdictions" (which are not defined) and to increase immigration prosecutions, according to the American Immigration Lawyers Association.

With the Administration's heavy focus on illegal immigrants, employers should anticipate increased I-9 scrutiny. In seeking to ensure compliance, employers must be careful to ask only for information specified in the I-9 form, as even a well-intentioned request can result in a lawsuit for discrimination.

Another action that may affect employers is the appointment of a new Immigration and Customs Enforcement. ICE has two departments, one tasked with searching for individuals who have been ordered removed from the United States and

detaining them, and one tasked with employment verification compliance and conducting “raids.” As a candidate, Trump vowed to combat illegal immigration and the most likely vehicle is through worksite enforcement. An immigration officer may enter an employer’s premises to look for one individual and arrest others who are undocumented.

To minimize disruption to the worksite as the new Administration policies take effect, employers should:

1. Restrict travel of any foreign national employee outside the U. S.
2. If travel is necessary for business purposes, be prepared to continue operations in the U. S. during the employee’s absence if they are not allowed to return for an extended period of time.
3. Recommend that your employee consult with an immigration attorney to determine if they can apply for US Citizenship.
4. Review I-9 forms to make sure that they are in order. An Immigration Attorney can audit them to ensure compliance if necessary.
5. Contact an Immigration attorney if you are visited by Immigration and Customs Enforcement.

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