

Blog Post

Navigating Immigration Challenges Under the Second Trump Administration: What Employers Need to Know

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As President-elect Trump's administration prepares for a second term, employers should anticipate intensified changes to U.S. immigration policies and procedures. These changes are expected to significantly impact various immigration categories, including nonimmigrant and immigrant employment-based processes, hiring practices, and compliance responsibilities. The administration is likely to push forward with stricter enforcement, increased procedural challenges, and policies aimed at reducing foreign labor reliance. Employers should begin preparing now for these imminent changes, particularly in areas such as: E-Verify and I-9 compliance, H-1B, TN, EB-1-EB-5, F-1, H-4 EAD, DACA, TPS, and other nonimmigrant and immigrant visas and work authorization processes.

1. Increased Entry Restrictions to the U.S.

What to Expect: The administration is expected to tighten entry restrictions, reintroduce travel bans for certain countries, and institute rigorous security screening procedures for foreign nationals. Employers should anticipate longer wait times for employment visas and increased scrutiny, including biometric data collection and extensive background checks. Countries previously affected by travel bans may face similar restrictions, potentially impacting

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both work-related and personal travel for foreign workers.

Employer Action — Effective Workforce

Planning: Employers should prepare for delays in onboarding foreign workers, especially those from countries under heightened scrutiny, by monitoring potential travel restrictions. Employers should also implement an effective workforce plan to manage any disruptions caused by delays due to increased entry restrictions.

2. Stricter Employment-Based Visa Requirements and Processing Delays

What to Expect: Reflecting the administration's "Buy American, Hire American" initiative, there is an anticipated push to reduce reliance on foreign labor, particularly skilled workers. This will likely extend beyond the H-1B program to impact employment-based immigrant visa categories such as EB-1, EB-2, EB-3, and EB-4. Employers who rely on foreign talent for both temporary (nonimmigrant) and permanent (immigrant) positions may face increased challenges in sponsoring workers through employment-based visa programs.

Employers can expect heightened scrutiny of both nonimmigrant and immigrant visa petitions, including stricter evaluations of job duties, qualifications, wage compliance, and recruitment, when applicable. This may lead to increased Requests for Evidence (RFEs) and other challenges from USCIS, with additional documentation required to verify that positions qualify as specialty occupations, for instance, or align with prevailing wage requirements. For immigrant visa categories, processing delays are likely, and the adjudication process may be more rigorous, leading to longer wait times and more documentation required to support PERM labor certifications and employment-based green card petitions and applications. These changes could result in increased burdens for

employers seeking to sponsor foreign workers for both temporary and permanent roles.

Employer Action — Focus on Compliance and Specialty Occupation Requirements: Employers should proactively reassess job descriptions for both temporary and permanent positions to ensure they meet the criteria for specialty occupations and labor certification requirements. It's crucial to maintain detailed documentation supporting wage levels and job qualifications to mitigate RFEs and delays. Employers should also anticipate longer processing times for both nonimmigrant and immigrant visa petitions and prepare for potential disruptions in workforce planning. Given the upcoming policies, consulting with immigration counsel to stay updated on changes and to strategize for compliance will be key to managing these challenges effectively.

3. Uncertainty Surrounding Continuation of Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS)

What to Expect: The Trump administration is poised to intensify efforts to end programs like Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), which currently provide work authorization (EAD) to thousands of foreign nationals. These changes could significantly impact industries that rely on these workers.

DACA alone has allowed over 500,000 individuals to live and work in the U.S. The termination of the DACA and TPS programs would remove work authorization for many employees, potentially leading to workforce shortages in industries that depend on these workers. Legal challenges are likely to delay the execution of such policies, but uncertainty remains a key factor.

Employer Action: Employers should identify employees who rely on DACA or TPS for work authorization and explore alternative visa options where feasible. Companies should also prepare for

the possibility of sudden workforce gaps and develop retention strategies for employees who will be impacted by these changes. Tightening employment eligibility verification processes will be critical for compliance.

4. Impact on H-4 EAD Program

What to Expect: The administration is likely to re-activate efforts to rescind the H-4 Employment Authorization Document (EAD) program, which permits certain spouses of H-1B visa holders to work in the U.S. If the H-4 EAD program is rescinded, many spouses of H-1B holders will lose their work authorization, which could reduce household incomes and affect the satisfaction and retention of H-1B workers. The loss of H-4 EADs may make U.S. employment less attractive to skilled foreign workers.

Employer Action: Employers should be prepared for the potential impact on H-4 EAD holders by exploring alternative visa options for spouses and implementing retention strategies to maintain H-1B workers. Clear communication with affected employees will be necessary to mitigate the potential negative effects on morale and retention.

5. Enhanced Compliance and Increased Enforcement

What to Expect: The Trump administration is expected to ramp up enforcement measures across various visa programs. This will likely result in heightened scrutiny of E-Verify and I-9 compliance, Labor Condition Applications (LCAs), and Public Access Files (PAFs), with penalties for non-compliance becoming more severe.

Employers may face increased audits by the Department of Labor (DOL), U.S. Citizenship and Immigration Services (USCIS), and Immigration and Customs Enforcement (ICE). This scrutiny will extend to wage compliance, employee eligibility

verification, and adherence to visa-specific requirements.

Employer Action: Employers should conduct internal audits to ensure that all immigration documentation, including E-Verify and I-9 forms, PAFs, and LCAs, is complete and up to date. Regular training for human resources teams on compliance practices and effective document retention strategies will help mitigate the risk of penalties. Employers should also consider investing in technology to streamline the I-9 process and improve overall compliance with evolving regulations.

6. EB-5 Investor Program Compliance and Potential Delays

What to Expect: While the EB-5 Investor Visa Program may not face direct opposition from the Trump administration, the program is likely to see slower processing times and increased scrutiny. This will affect both employers and investors who rely on the program for immigration purposes.

Expect significant backlogs and procedural hurdles in the EB-5 program, which may delay project timelines. While the Trump administration could potentially influence a more favorable view of the program, stricter compliance measures and enforcement are still expected.

Investor Action: Regional programs and investors involved in the EB-5 program should stay informed of regulatory changes and work closely with immigration counsel to navigate any potential delays. Preparing for possible adjudication slowdowns will be key to setting expectations.

Ensuring Compliance Preparedness: As the Trump administration enters its second term, employers who depend on foreign talent must anticipate ongoing challenges. To stay compliant, businesses should closely track potential policy shifts, strengthen their employment eligibility verification

practices — including reviewing I-9 and E-Verify, and conducting internal audits if, one hasn't been completed in the past year — and ensure equitable treatment of U.S. and foreign workers alike. Employers in industries with significant foreign worker reliance, including both skilled and unskilled labor sectors, must adapt their recruitment strategies to navigate heightened scrutiny and enforcement.

It is advisable to file extensions for pending petitions and consider upgrading to premium processing well in advance of any administration changes. Additionally, exploring alternative long-term immigration options before policy adjustments take place is critical. Collaborating with skilled immigration counsel will be key to managing workforce disruptions, ensuring compliance, and preparing for the challenges ahead.

Akerman will keep you informed with ongoing updates about the incoming administration. Should you have any questions regarding this notice or any immigration matters, please reach out to your designated immigration advisor at Akerman.

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