

Blog Post

Suspending Entry for Temporary Workers: What Employers Need to Know

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By [Rachel L. Perez](#)

On Monday, President Trump issued a Proclamation restricting certain foreign workers from entering the U.S. through the end of 2020, claiming it is necessary to curb the “economic contraction resulting from the COVID-19 outbreak.” The ban specifically targets work visas that many American employers rely upon to fill U.S. labor shortages. With the stated purpose of reducing competition against Americans for jobs in the U.S. economy, the Proclamation restricts visa issuance to certain H-1B professional specialty occupation workers, H-2B seasonal non-agricultural workers, J exchange visitors, and executives and managers under the L nonimmigrant visa program. The Proclamation excludes healthcare industry workers, foreign nationals providing medical research at United States facilities to combat COVID-19, and those supporting the U.S. food supply chain during the economic recovery, among other temporary workers. The temporary worker suspension becomes effective on June 24, 2020, at 12:01 AM Eastern Standard Time and will remain in effect through December 31, 2020.

Employers are alerted that the Order also extends [Presidential Proclamation 10014](#) issued on April 22, 2020, which suspended Green Card applicants from entering the United States, as well as the issuance of certain immigrant visas (Green Cards) at U.S.

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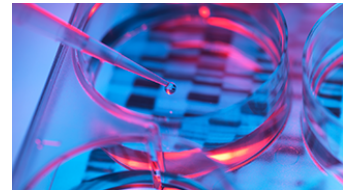
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Consulates and Embassies overseas. The travel suspension and visa restrictions in place as a result of Presidential Proclamation 10014 are now extended through December 31, 2020, effectively immediately. Foreign nationals with pending Adjustment of Status Applications to permanent residence continue to be exempt from this travel restriction. Employers should keep in mind that the travel ban restricting entry of certain foreign nationals from Schengen countries remains in effect.

Employers should be aware that the latest Proclamation does not have an immediate impact on foreign national employees who are currently inside of the United States in H-1B, H-2B, J, or L status. The Proclamation also does not affect those who are outside of the United States and in possession of a valid H-1B, H-2B, J, or L nonimmigrant visa on the Order's effective date, or those who hold an official travel document, such as an advance parole document. Foreign workers employed in the United States under other temporary worker visa classifications including, but not limited to, E-2, E-3, TN, O-1, and P-1, are not subject to the travel restriction. Despite these exemptions, employers should strongly encourage foreign national employees on temporary work visas to avoid international travel given the potential for misapplication of the Presidential Proclamation and in light of ongoing coronavirus health concerns.

The Presidential Proclamation suspends the issuance of visas for the following foreign national workers seeking entry to the United States:

- H-1B nonimmigrants and any H-4 foreign national accompanying or following to join them;
- H-2B nonimmigrants and any H-4 foreign national accompanying or following to join them;
- J nonimmigrants participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any J-2 foreign

national accompanying or following to join them;
and

- L nonimmigrants, and any L-2 foreign national accompanying or following to join them.

The Proclamation affects only those individuals outlined above if they are:

- Outside of the U.S. on the effective date of the Proclamation;
- Not in possession of a valid H-1B, H-2B, H-4, J-1, J-2, L-1A, L-1B, or L-2 nonimmigrant visa on the effective date of the Proclamation; and
- Not in possession of a valid and official travel document, such as a transportation letter, boarding foil, or advance parole document, on the effective date of the Proclamation, or issued thereafter.

The following foreign national groups are exempt from the suspension and travel restriction:

- U.S. lawful permanent residents.
- Spouses and children under 21 of U.S. citizens.
- Those whose entry is essential to providing temporary labor or services to the United States food supply chain.
- Those whose entry would be in the U.S. national interest.
- Foreign nationals with temporary employment-based visas that are valid on the effective date of the Proclamation, whether applied for at the U.S. Consulate or Embassy or from within the U.S., including nonimmigrant workers with valid H-1B, H-2B, J and L visas.

The Proclamation calls on the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security to establish standards to better define categories of foreign nationals whose entry would be in the U.S. “national interest”, including those

that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. Consular officials have discretion to determine if a foreign national falls within one of the exempted categories outlined above.

While the Proclamation specifically targets H, J, and L foreign nationals, the Order appears to have ambiguous application to Canadians nationals who are outside of the United States and exempt from obtaining H, J, or L visas at U.S. Embassies or Consulates overseas. Employers should contact experienced immigration counsel if looking to hire a Canadian temporary worker through the H, J, or L visa programs.

Given the heightened visa restrictions affecting foreign labor, employers should expect increased government investigations of Labor Condition Application violations under the H-1B visa program, as well as audits of labor certified permanent residency petitions for advanced degree professionals and skilled workers. To avoid adverse consequences in the workplace, employers should ensure that temporary foreign workers remain inside of the United States, maintain continuous and uninterrupted employment authorized status, and timely apply to extend such status as early as possible.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the

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