

Trumpification of Immigration: The Trump Administration's Impact on Immigration Law

Although many of President-elect Donald Trump's proposed changes to immigration law may be met with resistance (e.g., budgetary issues, legal challenges and perhaps pressure from *both* sides of the aisle), below are some of the possible impacts the Trump administration could have on immigration law in the near future (these assumptions are based on Trump campaign rhetoric as well as on some initial moves and statements made by President-elect Trump and his transition team):

1. Increased Worksite Enforcement of I-9 Audits

It is widely assumed that U.S. employers will see increased and possibly more aggressive Employment Eligibility Verification Form I-9 ("Form I-9") audits. Trump has often mentioned the need to disincentivize individuals from illegally entering and remaining in the United States. While the vast majority of employers comply with U.S. immigration regulations, it is assumed that the prospect of gainful employment is a major draw for illegal immigrants. Therefore, to help eliminate this incentive, the Trump administration may further increase the number of Form I-9 audits conducted by the U.S. Immigration and Customs Enforcement ("ICE"). This increased enforcement may take the form of more frequent and even repeat Form I-9 audits, as well as more aggressive tactics and increased penalty assessments during and as a result of these audits. Increased enforcement may even take the form of ICE worksite raids, a tactic not used for many years due to the resultant negative publicity.

Given the likelihood that—at a minimum—employers will experience more frequent and possibly more aggressive Form I-9 audits in the near future, serious thought should be given to hiring outside counsel for guidance on how best to audit Forms I-9, formulate procedures in the anticipation of an audit, and develop more stringent internal Form I-9 compliance practices and policies.

2. Increased E-Verify Requirements

There is a strong possibility that the E-Verify program will become mandatory for a greater number of U.S. employers during the Trump administration. E-Verify is a web-based system provided by the federal government which allows employers

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to determine the eligibility of their employees to work in the United States. To lessen the burden of implementing this program under a tight deadline, employers may wish to review E-Verify requirements and procedures—and possibly even enroll in E-Verify—now before it becomes mandatory .

3. Additional Restrictions on Nonimmigrant and Immigrant Employment-Based Statuses

The future Trump administration may enact additional restrictions on popular nonimmigrant visa categories, such as H-1B and L-1B visas. The additional restrictions could include a pre-filing recruitment requirement on H-1B visas (potentially something similar to what is required for the H-2B visa program) to show that there are no U.S. workers available to fill the position for which an H-1B worker is being sought. The Trump administration may also try to alter the adjudicative atmosphere at the federal agencies involved with granting affirmative immigration benefits to foreign nationals. A more restrictive adjudication environment at these agencies could result in significantly greater denial rates, Requests for Evidence, Notice of Intent to Deny, audits and lengthy adjudication times, thereby making it more difficult for employers to secure either nonimmigrant or immigrant benefits for non-U.S. workers.

4. Loss of Workers Granted Work Authorization through Executive Action

It is widely assumed that the Trump administration will attempt to eliminate the Obama administration's deferred action on childhood arrivals ("DACA") and deferred action on parents of Americans ("DAPA") programs. As part of this effort, the Trump administration may seek to either immediately eliminate the work authorization status granted to DACA and DAPA individuals, or at least prevent participants from seeking any further extension of their work authorizations. Such action has the potential to revoke work authorization for hundreds of thousands of individuals. Employers that employ a significant number of DACA or DAPA individuals may want to consider developing a contingency plan should the work authorizations of those individuals be revoked.

While it remains to be seen what changes the Trump administration will ultimately accomplish, one thing is clear—change is coming and everyone should prepare. If you have any questions about the topics covered in this e-alert, please contact Ben Kurten or your Reinhart attorney.



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