



Cost-Effective Immigration Solutions?

Insights

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In today's tight economy, human resources professionals across every type of industry are feeling pressure to cut unnecessary costs and stretch already thin budgets. For those employers who have foreign-national employees on the payroll, this can mean investigating how to retain valuable foreign talent and expertise without having to incur any unnecessary expense. The most effective long-term way to minimize immigration-related expenditures is to ensure that the immigration status of all your foreign-national employees is kept current at all times.

U.S. immigration law can be especially unforgiving when foreign nationals fail to extend their visas before their current status expires. Missing an important immigration deadline can have expensive consequences, such as forcing the foreign national to return home to wait for a new visa to be issued, or having to pay a hefty fee for expedited processing.

In other instances, failure to plan appropriately can force the foreign national to switch into a less desirable visa category, or to forgo applying for permanent residence. It's important for employers to design a specific strategy for each foreign-national employee, ensuring that the long-term goals of both the company and the employee are achieved in a cost-effective and expeditious manner.

Here are some additional points that can assist you in making cost-effective decisions regarding your foreign-national employees.

I-9 Compliance & E-Verify

Even employers that have no foreign-national employees have an opportunity to save money by streamlining their corporate compliance measures. For example, federal law requires employers to complete a Form I-9 before any new employee can begin work. The I-9 form verifies that the employee has authorization to work in the United States. Initial completion of the form can be time-consuming for both you and your employee, not to mention your duty to monitor when the employee's work authorization documents will expire.

Fortunately, there are now cost-effective software programs that assist with proper completion of the I-9 form, store the forms electronically (which is permitted by federal law), and remind you when the employee's documents will expire. Besides saving time, these programs can prevent your

company from being fined by the government for non-compliance with I-9 regulations. These fines range from \$110 to \$1,100 per violation on the I-9 form.

Electronic I-9 storage solutions can also ensure compliance with new regulations, which require certain employers to use the E-Verify system to check the work authorization of newly hired employees. E-Verify is a web-based program established by the U.S. Citizenship and Immigration Services (USCIS) that verifies the employment eligibility of newly-hired employees using information contained in the Social Security Administration records and other government databases.

Currently, seven states have laws requiring all or some employers to use E-Verify. Additionally, a new federal regulation due to take effect on May 21, 2009, will require some employers doing business under contracts with the federal government to use E-Verify. Those employers eager to streamline compliance with E-Verify should consider use of an electronic I-9/E-Verify compliance program and should investigate whether only certain branches or offices of the company actually are required to use E-Verify. Employers should also train staff on the proper operation of E-Verify, so as not to run afoul of federal regulations governing what actions may be taken when E-Verify indicates that an employee lacks authorization to work in the U.S.

Decisions in Hiring

Because such a large portion of the current U.S. labor force is foreign born, it is common for employers to receive resumes from job applicants who currently hold a temporary work visa, or who have applied for permanent residence but are awaiting approval. You may strongly desire to hire such individuals because of their talent and expertise, but feel uncertain about the potential immigration-related costs of doing so.

It's important at this stage, before the individual has been offered employment, to consult with immigration counsel to understand the company's future immigration-related obligations if this candidate is hired. It may be that the individual's "green card" application is pending and will be approved in a matter of weeks, but it may also be the case that the individual's green card case was not properly filed and their work authorization is in jeopardy. Moreover, some temporary work visas limit how much cumulative time an individual may spend in the U.S. in that status. To ensure that hiring the candidate will be economically worthwhile, you will want to ensure that sufficient time is remaining on the visa or that it can be extended.

Cost-minded Visa Strategies

One way to immediately save thousands of dollars each year is to file immigration visa petitions in batches, where possible. Several categories of visas allow the petitioning employer to sponsor a group of employees in one application. Besides the immediate savings of having to pay only one filing fee, preparing several individuals' documentation at once can also save time for you and your employees.

The L visa in particular has a unique procedure by which the company can gain pre-approval to have employees apply for the visa directly at a U.S. embassy or consulate abroad. This relieves the

employees apply for the visa directly at a U.S. embassy or consulate abroad. This relieves the company of having to pay a domestic filing fee for each petition. The L visa is used to transfer managers, executives, and employees with specialized knowledge from a parent, subsidiary, or affiliated company abroad. For those immigration filings that require the employer to conduct specified recruitment steps, such as placing newspaper classified advertisements for the position, using the same ad for multiple employees can result in significant cost savings. Successfully filing a petition on behalf of multiple beneficiaries takes planning and coordination between the employer and immigration counsel, however.

While there are many different types of temporary work visas, it is also possible for an individual to enter the U.S. as a permanent resident based upon his or her prospective employment in this country. As a general rule, applying for permanent residence based upon employment requires more documentation and is a lengthier process than obtaining a temporary work visa. But temporary work visas have a limited period of validity and must be renewed periodically. It can therefore be more cost-effective in the long-term to sponsor a future employee for permanent residence and bypass bringing the individual into the U.S. on a temporary work visa. The decision to seek permanent residence up front will depend on your long-term goal for the employee, as well as the time frame of how quickly you need the individual in the U.S.

Recouping Immigration-related Costs

Some employers prefer that their foreign-national employees pay for all costs associated with obtaining legal immigration status in the U.S. This is not always driven by the bottom-line, but can also be an attempt to ensure fairness among all employees, regardless of immigration status. Some visa categories, such as the H-1B visa for professionals, *require* the employer to pay a specific portion of the government filing fees. But federal law does permit the creation of a contract between the employer and a foreign-national employee regarding payment of immigration-related costs by the employee.

Because of the complexity of immigration regulations on all these topics, including those governing these so-called "stay agreements," it's always advisable to seek the advice of immigration counsel. not only to ensure that contracts are drafted in such a way as to be legally enforceable, but to ensure you do not run afoul of immigration rules when trying to save costs.