

Insights, News & Events

IMMIGRATION DAY IN D.C.: NEW EXECUTIVE ORDERS AND HOMELAND SECURITY CHIEF HERALD CHANGING TIMES FOR EMPLOYERS

Insights
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In the span of a single day earlier this week, President Joe Biden signed three Executive Orders on immigration while the Senate confirmed Alejandro Mayorkas as Secretary of Homeland Security – actions that will eventually have an impact on many workplaces around the country. February 2 marks another pivotal milestone in the Biden administration’s efforts to hit the reset button on the overall attitude of American immigration policy. The Executive Orders seek to promote the fair, humane, and efficient administration of our immigration system, in full recognition of the social and economic value that immigrants bring to our country, while Secretary Mayorkas’s role as head of DHS will bring about sweeping changes in the way in which the federal government handles immigration matters. By taking these clear and purposeful initial steps, the Biden administration took another step in its considered plan to move carefully and deliberately while undertaking the enormous task of revisiting, and potentially overhauling, our broken immigration system. What do employers need to know about these pivotal actions?

Executive Orders Are Next Step In Immigration Policy Transformation

Service Focus

Immigration

We expected the new administration to take immediate and sweeping steps to reverse much of the Trump administration's efforts on the immigration front, and the Biden team has already begun to deliver on its campaign promises. On his first day in office, President Biden issued a series of Executive Actions, Presidential Memoranda, and Proclamations that began this work. This week, the work continued with three additional Executive Orders.

90-Day Plan Kicked Off By Executive Order

The Order most relevant to employers seeks to “restore faith” in the U.S. legal immigration systems, and strengthen integration and inclusion efforts for new Americans. It creates a task force through the White House Domestic Policy Council to develop greater collaboration between federal, state, and local governments on welcoming, supporting, and integrating immigrants into communities, thereby seeking to restore trust in legal immigration in the United States. Specifically, this Order directs the Secretary of State, Attorney General and Secretary of Homeland Security to conduct a review of existing agency regulations, policies, procedures, and guidance documents and to make a plan within 90 days to ensure that agency actions encourage and support full immigrant participation in society and to more effectively and efficiently deliver immigration benefits.

Those provisions under this Executive Order that will have the most impact on employers and their workforce include the review of the **Public Charge rule** and improvement of the **naturalization process**.

The Order calls for immediate review of agency actions on **Public Charge** inadmissibility. Immigrant and nonimmigrant workers are subject to the Public Charge rule through the processing of various visa applications. The Trump administration implemented stringent policies that made the process more burdensome, and sometimes problematic, for certain foreign nationals. Since the Public Charge rule was established by regulation, it cannot be revoked by

Executive Order. Therefore, the EO calls for a review by the Secretary of State, Attorney General, and Secretary of Homeland Security to consider and evaluate the current effects of this rule in light of the Order's overall policy of promoting integration, inclusion and citizenship. The review must identify appropriate agency actions to be taken to address the effect on the integrity of the U.S. immigration system and public health. Further, it must recommend steps to be taken to clearly communicate current public charge policies, and any proposed changes, to reduce fear and confusion among impacted communities.

The Order also sets forth President Biden's policy on **naturalization** through improving accessibility and the functioning of the naturalization process, reducing processing times, and developing a national strategy for promoting naturalization. The EO established a Naturalization Working Group that must submit to the president within 90 days a strategy outlining the steps the federal government should take to promote naturalization, including the potential development of a public awareness campaign.

Other Executive Orders

The other two Executive Orders are expected to have little direct impact on employers. One calls for the establishment of an interagency task force for the reunification of families, charged with identifying and reuniting children separated under the Trump administration's zero-tolerance policy and making recommendations for additional services for these families.

The other Order mandates the creation of a comprehensive regional framework to address migration and asylum. Among the many goals of this Order are: establishing a comprehensive strategy for addressing the root cause of migration in the region; working to strengthen and expand the asylum systems and resettlement capacity of Central and North American countries; and restoring the American asylum system to provide the safe and orderly

processing of asylum seekers at the U.S. Border, including rescission of the “remain in Mexico” policy implemented by the Trump administration.

Items Not Addressed By The EOs

The three Executive Orders address many areas of immigration as President Biden reviews and examines the immigration system currently in place. Of note, however, there are certain items anticipated that have not yet been addressed by the Executive Orders signed to date. Specifically:

- President Biden has not addressed the visa bans implemented under and extended in the final days of the Trump administration. Although now scheduled to expire on March 31, these bans continue to impair and disrupt business travel for nonimmigrants in H and L visa categories and employment-based immigrants, and also impacts reunification of immigrant processing for family-based immigrant visas.
- There is no mention of any review or change to the Trump administration’s health insurance proclamation. Although the proclamation is temporarily enjoined by court action, it is technically still in place. It currently denies entry into the U.S. to family-based immigrants who are unable to demonstrate they will be covered by certain insurance products within 30 days after entering the country or alternatively, have the financial resources to pay out-of-pocket for “reasonably foreseeable medical expenses.”

New Homeland Security Secretary Confirmed

On the same day as the three Executive Orders were signed, the Senate confirmed Alejandro Mayorkas as the new Secretary of the Department of Homeland Security. An immigrant from Cuba who graduated from Loyola Law School in 1982 and practiced law in both government and private practice for many years, Mayorkas is the former Director of the United States

Citizenship and Immigration Services, serving from 2009 to 2013. He also held the role of the Deputy Secretary of Homeland Security from 2013 to 2016.

Under Mayorkas's leadership, and given his extensive experience in immigration, we expect to receive guidance in the coming days, weeks, and months to implement the policies and procedures set forth in the Biden Executive Orders.

What's Next?

Employers and stakeholders are encouraged to stay tuned, as the Biden administration moves forward at a deliberate and considered pace to closely examine our immigration system. Fisher Phillips strongly recommends that employers continue to stay in contact with their immigration counsel and [sign up to receive Fisher Phillips Legal Alerts](#) in order to follow further developments in the ever-evolving immigration landscape. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Immigration Practice Group](#).

This Legal Alert provides an overview of specific developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.