

U.S. SUSPENDS ENTRY OF NONIMMIGRANTS FROM INDIA: WHAT EMPLOYERS NEED TO KNOW

Insights
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Responding to the exponential growth of COVID-19 cases in India, President Biden issued [an April 30 Presidential Proclamation](#) to suspend entry of nonimmigrants who were physically present within India during the 14-day period before their attempted entry into the United States. While this proclamation does not come as a surprise given the troubling developments in India, it still will create constraint and unpredictability for both employers who have nonimmigrant employees from India and those nonimmigrants subject to the proclamation. The suspension will take effect on May 4 and does not have a set expiration date. What do employers need to know about this development?

Details on Restriction

Like the existing geographic COVID-19 proclamations suspending entry from areas such as China, the European Schengen Area, Brazil, and South Africa, this proclamation bars most non-U.S. citizens from entering the United States in nonimmigrant visa status if they were physically present in India during the 14-day period before their attempted entry in the United States. One key difference is that this proclamation clearly exempts people holding immigrant or fiancé(e) visas. This is consistent with the State Department's recent announcement on April 8 that it deems in the national interest to permit immigrant and or fiancé(e) visa holders to enter the United States.

The list of nonimmigrant statuses exempt from this proclamation is also very similar to the other geographic

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COVID-19 proclamations. Spouses of U.S. citizens and permanent residents are exempt. So are noncitizen parents or young siblings of unmarried under 21 years old U.S. citizens or lawful permanent residents. Several other essential nonimmigrant statuses, such as diplomats, NATO categories, and crew, are also exempt.

National interest exemption remains an option for any nonimmigrant who is otherwise subject to this proclamation.

What Should Employers Do Now?

In response to this development, you should consider the following steps:

- You should work with your employees to ensure travel to and from India is carefully planned, especially for those individuals needing to apply a nonimmigrant visa. You should explore the possibility of utilizing the national interest exemption if your business involves certain aspects of critical infrastructure.
- If you have employees who are noncitizens impacted by this proclamation and have a valid nonimmigrant visa matching their purpose of entering the United States, consider working with them to ensure they enter the United States before midnight on May 4. This proclamation does not apply to those aboard a flight schedule to arrive in the United States that departed prior to 12:01 AM eastern time on May 4, 2021. It is the most prudent to narrowly interpret this to mean that it only covers either a direct flight to the United States or the final leg of a U.S. bound non-direct flight.
- If you have employees who are noncitizens impacted by this proclamation and have a valid nonimmigrant visa matching their purpose of entering the United States, they can also consider going to a third country to wait out the 14-day period. However, an increasing number of countries are also implementing entry restrictions against India and many countries are already on the 14-day entry restriction list. The number of viable third countries may be quite limited.

We'll continue to monitor the situation and provide updates as warranted, so [you should sign up to receive our Insights](#) direct to your inbox. If you have questions, contact

your Fisher Phillips attorney or any attorney in our [Immigration Practice Group](#).