



# OSHA Granted Authority to Approve Visa Applications to Aid Human Trafficking and Other Crime Victims

Insights

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Federal officials just took a big step that will allow victims of human trafficking and other serious crimes to appeal to workplace safety officials to request permission to legally remain in the United States, offering employers another pathway to aid their recruiting and retention efforts. On Monday, the Department of Labor gave the Occupational Safety and Health Administration (OSHA) the ability to certify applications for U Nonimmigrant Status and T Nonimmigrant Status visas during workplace safety investigations into the alleged abuses. According to the announcement, OSHA will be able to certify these applications “when the agency identifies qualifying criminal activities, including manslaughter, trafficking, extortion, felonious assault, forced labor and obstruction of justice.” What do employers need to know about this positive development and what should you do?

## What are “U Visas” and “T Visas?”

The Victims of Trafficking and Violence Protection Act of 2000 created “U Visas” and “T Visas,” available for certain victims of crimes who assist law enforcement or other government officials.

- “U Visas” provide legal status to victims of a defined list of “qualifying criminal activities” who possess information concerning the crime, and who are helpful to law enforcement or other government officials.
- “T Visas” provide legal status to certain victims of human trafficking who assist law enforcement in the investigation of the crimes.

## What Does This Announcement Mean?

Effective March 30, OSHA will for the first time have authority to issue certifications in support of applications for U Visas and T Visas. Previously, this authority had been granted to the Department of Labor’s Wage and Hour Division.

The certification does not provide the applicant with a U Visa or a T Visa. Rather, the certification is a required element to obtaining the visa. By submitting the certification, OSHA must certify that the individual applying for the visa is a victim of qualifying criminal activity, and is, has been, or is likely to be helpful in OSHA’s investigation of the criminal activity.

This new authority will encourage workers, who may not otherwise assist OSHA due to immigration status, to share information with OSHA and report safety and health issues. This will be of particular note during an investigation into a workplace fatality where OSHA may consider criminal penalties against the employer, as the statute requires an underlying criminal act for the visa applicant to be eligible.

The qualified criminal activity may include human trafficking, obstruction of justice, forced labor, extortion, felonious assault or manslaughter. The Department of Labor's Wage and Hour Division previously issued questions and answers on the Department's process and protocols for issuing visa certifications that provide useful insight as OSHA begins utilizing this new authority.

### **What Should Employers Do?**

If you become aware that OSHA has certified an application for a "U Visa" or a "T Visa," you should consider coordinating with your workplace lawyer to engage a white-collar defense attorney to assist in the response to OSHA's investigation. OSHA utilizing this new authority is likely an indication that it is considering referring criminal activity to law enforcement agencies.

You should also implement anti-retaliation policies and train your managers and supervisors on that policy to ensure they do not retaliate against employees who engage in activity protected by the whistleblower laws that OSHA enforces. This will help prevent allegations of obstruction of justice and witness tampering during an OSHA investigation.

### **Conclusion**

If you have any questions, contact the author of this Insight, your Fisher Phillips attorney, or any member of our Workplace Safety Practice Group or Immigration Practice Group. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox.

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