

Insights, News & Events

USING B-1 VISAS CAN BE A \$10 MILLION MISTAKE FOR YOUR COMPANY: EMPLOYER TAKEAWAYS FROM RECENT SETTLEMENT

Insights

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A company that tried to use B-1 visas as inexpensive workarounds instead of H-1Bs learned the hard way that such a tactic could end up costing you dearly after it agreed to a nearly \$10 million settlement with the federal government. This settlement is a great learning lesson for your organization as you plot out your foreign worker strategy. What can you take away from this situation so that you don't fall into the same immigration trap?

First Things First: The B-1 Visa, Explained

The temporary B-1 visa (or obtaining B-1 status through the Electronic System for Travel Authorization or ESTA) is often seen as a popular alternative to H-1B, L-1, and TN visas for individuals that only need to be in the U.S. for short period of time. This is especially true in recent years as many foreign workers abroad have had struggles obtaining employment visa appointments.

Among its attractive features: fees for B-1s are only in the \$200-\$300 range, and there is no limit to the number of such visas. In contrast, fees for H-1Bs range between \$4,000 and \$6,000 each and are famously difficult to obtain through the H-1B visa lottery.

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However, it's important that companies keep in mind the restrictions for the B-1 visa and make sure that it is not being abused by applicants because there can be harsh consequences when it is used inappropriately or in a questionable manner. While B-1 visas are sometimes more readily available and less expensive to obtain, individuals in B-1 status are extremely limited in the business activities that they are allowed to perform or participate in while in the U.S. difficult to obtain. In fact, B-1 visas generally do not permit visa holders to perform paid labor while in the United States.

Recent Settlement Highlights B-1 Dangers

A whistleblower complaint against an Indian company with U.S. operations in New Jersey resulted in an investigation by various immigration entities within the U.S. Department of Homeland Security, Department of State, and Department of Labor. The investigation resulted in allegations that L&T Technology Services underpaid fees to the U.S. government because it had obtained B-1 visas instead of H-1B visas for its foreign workforce.

The company recently agreed to pay over \$9.9 million in order to resolve these allegations. While it denied liability in this matter and the settlement was reached without a determination that the company was liable, the nature of the resolution demonstrates that even allegations of B-1 visa misuse can be a costly proposition.

"When companies apply for work visas, they must follow the rules and pay appropriate fees, just like workers," [said a DOL representative in a statement announcing the settlement.](#) "We will continue to work with our law enforcement partners to vigorously pursue those who circumvent worker visa programs."

What Should Your Organization Do?

In order to minimize the chances of you falling into the same trap as the company forced into a \$9.9 million

settlement, you should make sure you are fully aware of the strict limitations related to the B-1 visa.

- Individuals planning to enter the U.S. to study, perform skilled or unskilled labor, or enter the U.S. to engage in a vocation for which they will be paid by a U.S. employer are likely not eligible for a B-1 visa.
- Examples of short-term activities that may be allowed by someone in B-1 status include negotiating contracts, attending meetings, consulting with business associates, or participating in conventions, conferences, or seminars.
- Under limited circumstances, individuals may be allowed to enter the U.S. to install, service, or repair equipment purchased from a foreign company, and to train U.S. workers to perform those services. In these situations, the individual entering the U.S. must maintain their foreign residence and intend to return, and not receive compensation from a U.S. employer/business.

If your company is considering bringing someone in for short period under the B-1 visitor program, you should make sure that their activities in the U.S. are limited to only that permitted as a B-1 visitor. Additional productive work activity, even for a short period of time, can result in the employee being denied entry to the U.S. And, as evidenced by the recent settlement, it can also expose your company to considerable liability.

Conclusion

If your organization would like to use B-1 visas to bring foreign workers into the U.S. and have questions regarding whether the planned business activities fall within those allowed in this nonimmigrant status, contact your FP attorney, the author of this Insight, any one of our [Technology Industry Group](#) or [Immigration team attorneys](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.

