

TRUMP TAKES SWIFT IMMIGRATION ACTION: WHAT EMPLOYERS NEED TO KNOW

Insights

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In the hours after Donald Trump was sworn in as President, his administration started taking immediate action to reshape the country's immigration policies – and employers need to pay attention given the impact these changes will soon have on the workplace. This Insight will help you cut through the news to identify the specific changes that you need to know about.

Expect Deportation Raids to Impact the Workplace

News broke even before the inauguration that Department of Homeland Security (DHS) agents would begin conducting deportation raids in major cities starting as soon as today. News reports identified Chicago as the likely location of the initial sweep, but later reports indicate that New York, Los Angeles, Denver, and Miami could also face action in the near term.

Will workplaces be impacted? While Border Czar Tom Homan said that DHS will target public safety threats first, he also said the agency will pursue non-criminal, undocumented workers – and the employers that harbor them. Homan has consistently advocated for workplace enforcement to target undocumented workers and the businesses that hire them. As he said last year, "no one's off the table. If you're here illegally, you better be looking over your shoulder."

What Should You Do?

- **Know the difference between an DHS audit and a DHS raid** are usually initiated through a Notice of Inspection, which r

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employers to produce I-9 forms and additional records within days. Raids are highly disruptive law enforcement activities involving immediate inspections and potential detentions.

- **If subject to a DHS audit:** Contact your legal counsel immediately and gather and verify documentation before turning over before deadline, and review government findings and correct any errors.
- **If subject to a DHS raid:** Contact Fisher Phillips' new [Employers' Rapid Response Team](#) at (877) 483-7781 or DHSRaid@fisherphillips.com. While you can (and should) read and examine the warrant, don't interfere with the raid in any way. You can monitor activities, but avoid any activities that could be construed as harboring workers who don't have proper documentation. Document any seized property or records, manage any public relations fallout.
- **Read our full Insight:** For more detail on these steps, [read our full Insight](#) on the steps you can take if subject to an audit or raid.



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Flurry of Executive Orders

Immediately upon being sworn in, President Trump signed no fewer than 10 executive orders relating to immigration policy. At least five of them could impact the workplace, but you can expect more in the coming days and weeks. Here's a review of the ones you need to know about.

- **Declaration of National Emergency at the U.S.-Mexico Border:** This order enhances border security by increasing power for immigration officials at the border and beyond. The bottom line for your business: Employers across the country will face increased scrutiny regarding hiring and will soon be subject to stricter enforcement of employment verification processes.
- **Reinstatement of the "Remain in Mexico" Policy:** This policy requires asylum seekers to wait in Mexico while their U.S. immigration cases are processed. It aims to deter unlawful entry and reduce the burden on U.S. immigration facilities – and will most likely lead to fewer asylum requests.
- **Termination of the Asylum-Related Mobile App:** Related to the previous executive order, this action ends the use of the "CBP One" mobile application used to schedule asylum appointments. This shift in processing procedures

will further deter asylum seekers and most likely reduce the number of immigrants.

- **Designation of Mexican Criminal Cartels as Terrorist Organizations:** By classifying certain criminal cartels as terrorist organizations, this order will lead to heightened security measures – and could lead to potential supply chain disruptions. Businesses operating near the border or reliant on cross-border trade could soon feel the impact.
- **Ending Automatic Birthright Citizenship for Children of Undocumented Immigrants:** This is the most controversial of the executive orders. It initiated legal processes to end automatic birthright citizenship for children born in the U.S. to undocumented immigrants. While primarily a legal and social policy change, it may influence future workforce demographics and could affect long-term planning for employers regarding labor availability. Stay tuned on this one, however – it will certainly be challenged in court as running counter to the 14th Amendment. **[Ed. Note: A Washington state federal judge blocked the administration from carrying out the order across the country on January 23. His temporary order will be in place for 14 days. There are no fewer than six other courts considering the executive order, so further court rulings and appeals are inevitable.]**

What's Next?

The situation remains fluid and we expect many more immigration-related developments that will impact the workplace in the coming days and weeks. Some of the more significant developments we'll be monitoring will include:

- **Mandatory E-Verify?** Border hawks have long pushed for the mandatory use of E-Verify for all employers. This web-based tool maintained by the Department of Homeland Security (DHS) and the Social Security Administration (SSA) is used to confirm the work authorization of new hires. After gathering information from employees in the completion of the required I-9 Employment Eligibility Verification process, employers input information from the I-9 into the E-Verify site and receive near-immediate government confirmation of work eligibility. Forcing employers across the country to use the system would be quite the administrative undertaking and could not happen overnight, so stay tuned for possible developments.

- **H-1B Visa Reform:** One of the more interesting developments to monitor in the new administration will be the future of the H-1B visa program, which permits employers to hire a limited number of highly educated foreign workers in occupations requiring specialized knowledge. Especially valuable in the tech community, proponents who have the ear of the President are seeking an expansion beyond the current 85,000 visa cap – while other members of the Republican party want to end the H-1B program completely. Expect this fight to play out over the course of the next several years, but early signs about the direction of this debate may start to emerge in the near future.
- **Visa Program Scrutiny:** Another executive order calls for further enhancement, vetting, and screening across agencies for purposes of issuing visas. This bears monitoring given the possibility that it could reorder the process of recruiting and retaining foreign workers across industries.
- **U.S.-Mexico-Canada Pact (USMCA) Realignment:** Another longer-term development to monitor is the future of the USMCA – the free trade agreement that replaced NAFTA and modernized trade relations with respect to labor, digital trade, and environmental standards. A day-one executive order calls for a full review of the USMCA in preparation for a scheduled joint review of the agreement in 2026. If the U.S. chooses to pull out of the accord (which could happen over a 10-year period), it would impact American workers, farmers, ranchers, service providers, and other businesses – not to mention the availability of H-2A, H-2B and TN work visas.

What Should You Do?

Here are some core compliance areas that you should address immediately:

- **Establish I-9 Compliance:** Ensure every employee hired after November 6, 1986, has a complete and properly filled out Form I-9 on file. Use payroll records to verify that all required forms are in hand.
- **Conduct Regular I-9 Audits:** Regularly auditing I-9 forms is essential for identifying and remedying any discrepancies. Working with counsel to conduct periodic, thorough audits will help ensure your records are accurate and up to date.

- **Employee Training:** Train your managers and HR staff on how to complete I-9 forms, recognize document issues, and take appropriate action if they suspect an employee may lack proper work authorization.
- **Consider Using E-Verify:** Although not mandatory (yet), using the E-Verify system can bolster compliance and demonstrate due diligence in verifying employee work eligibility – and perhaps provide you a safe harbor or a ticket to reduced penalties if a violation is found.
- **Establish a Rapid Response Plan:** Designate a trained “raid” team to handle ICE visits, including contacting immigration and employment counsel, monitoring compliance with warrants, and tracking actions taken by ICE agents.

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Immigration Practice Group](#). Our [Employers' Rapid Response Team](#) (877-483-7781) or DHSRaid@fisherphillips.com is on call to provide immediate legal counsel when a raid occurs, assist with documentation and compliance review, and provide post-raid support and strategy assistance. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.