

Insights, News & Events

HOW THE TRUMP 2.0 IMMIGRATION POLICY WILL IMPACT TECH EMPLOYERS

Insights
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The breakneck speed with which the new Trump administration has implemented changes to the nation's immigration policy and various federal government agencies has certainly caused confusion for many employers. No industry has been immune from those impacts, but the high-tech sector – which has long been reliant on foreign professional skilled workers – is particularly impacted. How will these changes affect the high-tech sector's future?

Potential Upcoming Changes

Using the first Trump administration as the measuring stick, we can expect the following developments to unfold for the remainder of 2025 and beyond:

1. Increased Inspections of H-1B Worksites

The news has given extensive attention to the federal government's increased ICE (Immigration and Customs Enforcement) raids to gather and deport undocumented workers, and we've also seen an uptick in audits of form I-9s. The hi-tech sector rarely faces these kinds of issues since their workforce is mainly composed of highly skilled professionals within engineering, finance, and white-collar management.

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However, that does not mean your industry is immune from other immigration-based government enforcement actions. One particular area is USCIS (US Citizenship and Immigration Service) and its FDNS (Fraud Detection and National Security) Directorate. The FDNS investigates potential fraud committed by companies that sponsor the various USCIS work authorizations. And the most common actions are investigations confirming employers are following the H-1B employment requirements.

The H-1B is the most common type of employment sponsorship leveraged within the hi-tech industry. Many hi-tech companies from large, publicly traded organizations to small start-ups hire H-1B workers. A majority of the H-1B sponsored workers are some of high-tech's most critical engineers. With the U.S. adding 85,000 new H-1B employees to the workforce every year, there is no doubt this has been a valuable resource for high-tech employers that cannot find enough qualified U.S. workers to fulfill these roles.

The H-1B requirements mean that employers must pay their H-1B employee wages commensurate with the local wages for such positions and that such employees be actively employed. That means H-1B employers cannot reduce their H-1B employees' wages nor can they bench those employees when no work is available. Further, H-1B employees can only be employed at locations that are specifically mentioned on their sponsorship. To assign them to locations not mentioned on their H-1B petition is a strict violation of the H-1B regulations.

Much of the news regarding current administration's stance on immigration is directed towards ICE enforcement actions against undocumented workers. But FDNS should not be overlooked. We are already seeing an increased level of FDNS inspections with their officers and contractors making site visits to companies confirming their H-1B employees are in fact employed there. These FDNS inspections entail requests to see the H-1B employee's workstation, confirmation those employees are being paid their

required wages, and fact gathering to see if the H-1B work locations are truly their work locations.

With these increased site visits, we recommend companies have similar action plans for ICE visits as they do with FDNS visits. This includes having a point person to contact when the reception area is visited by FDNS, knowing what and what not to say, and coordinating with the FDNS officer/contractor regarding appropriate times to make the visit. Also, if an H-1B employer has changed addresses, then that information should be noted to USCIS to assure there is no mistake when an FDNS goes to the wrong address finding no H-1B sponsored company there.

2. Impact of Federal Government Layoffs

With mass federal government layoffs affecting almost every federal government agency, we may see a trickle-down effect impacting future immigration sponsorships. This may include two agencies that impact immigration employment sponsorship.

- **USCIS** is a fee driven agency that may not be as heavily impacted by the federal government layoffs – but it is not totally immune. Should USCIS implement layoffs, then you can expect longer adjudication times for work authorization sponsorships such as H-1B, L-1, and O-1 visas, all highly skilled professional sponsorships leveraged by the high-tech sector.
- Cuts within the **S. Department of Labor (DOL)**, which oversees the PERM Labor Certification process that leads to permanent residency sponsorships (i.e. “green cards”) is another agency that can impact the high-tech sector. The PERM Labor Certification process tests the local labor market to confirm no qualified individuals can be found to fulfill a role that the U.S. employer already has with the foreign national worker it currently employs and possesses such qualifications. Unlike USCIS, the DOL is not fee-generated when it processes the PERM Labor Certifications. With the current may layoffs within the federal government, we can foresee backlogs at the

DOL when processing PERM Labor Certification applications. That may cause a domino effect negatively impacting extending work authorizations for foreign national employees.

Two more areas the DOL manages is the Prevailing Wage Determination applications, which are prerequisite to applying for the PERM Labor Certifications and the Labor Condition Applications (LCA) that lead to H-1B sponsorship. Both, too, could be negatively impacted with slower processing times should the DOL be hit hard by federal government layoffs. We will continue to monitor this situation and advise as we see recent changes and updates.

3. Increased Scrutiny and Vetting Causing Adjudication Slowdowns

Under the Trump 1.0 administration, we saw increased vetting of all employment-based immigration sponsorship. This included USCIS's directive to review all petitions as new cases— including those requesting extensions of work authorization for the same employment with the same employer. The Trump 1.0 administration of this policy caused substantial USCIS adjudication delays lasting in some cases over a year. While the norm was in several months. Additionally, the rate of requests for additional evidence (RFE) evidence notices to provide further documentation to evidence proper work authorization sponsorship rose substantially under Trump 1.0. We expect Trump 2.0 may not be any different. The only option to speed up adjudication of those cases are to pay an additional \$2,805 premium processing filing fee that will speed up adjudication to fifteen (15) business days. That is a hefty amount, especially for those organizations that hire foreign nationals, some with tens if not hundreds of individuals each year. Further, premium processing is not available for every type of work authorization. For those that do not have the benefit of premium processing, a company and its employees may have no choice but to wait out these slower adjudication times.

These slowdowns also apply to the U.S. Embassies and Consulates around the world. Recently, the State Department has implemented policies to limit non-interview visa appointments to only those visa applicants who are renewing the same visa that expired within 12 months of their visa appointment date. Previous to the current administration, visa appointments waiving interviews was allowed for anyone applying for a visa whose last visa expired within 48 months of their visa appointment. With that change, we can expect longer U.S. Embassy and Consulate visa appointment wait times. Because of this, employees that leave the U.S. for such reasons as traveling to their home country to visit family need to apply for new visas to reenter the U.S. If their visa interview is delayed due to visa appointment backlogs, then U.S. employers may have to prepare for these employees' longer overseas stay. For such employees that are a critical component to U.S. operations, such delays could be detrimental to maintaining appropriate U.S. operations.

Conclusion

Based on the above, we recommend your foreign national workforce and company operations prepare for such potential issues. If you have any questions, please contact your Fisher Phillips attorney, the author of this Insight, or any member of our [Technology Industry Team](#) or [Immigration Practice Group](#). 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.