



DOL's New H-1B 'Project Firewall:' 5 Steps For Tech Employers to Stay in Compliance

Insights

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Employers that rely on the H-1B visa program to bring in high skilled and specialty talent will face stricter scrutiny and heightened enforcement under a new Department of Labor effort dubbed "Project Firewall." The Trump administration initiative, announced September 19, will mean more compliance investigations, on-site visits, and reviews of job postings for companies that participate in the high skilled foreign worker program. With Project Firewall, the DOL is sending a clear message: compliance with H-1B program requirements is not optional, employer records will be closely scrutinized, and strict penalties will be imposed on violators. Here's what you can do to protect your business.

What Role Does the DOL Play in the H-1B Process?

The DOL plays a key role in the H-1B process by certifying Labor Condition Applications (LCAs), which require employers to attest that they will pay the required wage, maintain working conditions, and meet notice and posting obligations. Employers must also retain accessible digital files and related documentation for each application and associated H-1B worker. As part of its duties, the DOL investigates and audits employers for compliance with these obligations and can impose penalties if violations are found.

What is Project Firewall?

Project Firewall represents the DOL's latest response to ongoing concerns about misuse of the H-1B program. Through this initiative, the DOL is also working with other government agencies including the Equal Employment Opportunity Commission and the Justice Department to ensure compliance.

Essentially, the DOL and other agencies plan to coordinate investigations into employers, using the unique regulatory regime of each associate agency. Job postings, hiring patterns, and other business practices related to H-1B staff will be closely scrutinized by these agencies. Employers found in violation of program requirements could face significant civil penalties which can cost thousands of dollars per infraction, and even disbarment from participating in the visa program.

Why the Tech Industry Should Pay Attention

The H-1B visa program is a cornerstone for US technology companies seeking to fill professional, specialty occupation roles. The “Project Firewall” initiative follows a series of proposed regulatory changes and presidential directives, including a \$100,000 entry fee for new H-1B employment, a potential increase to prevailing wage requirements, and a restructuring of the annual H-1B “cap” lottery process to favor higher-paying roles.

These changes reflect the Trump administration’s broader goals of tightening oversight and raising the cost of H-1B program participation, given its concern that the program is being used to undercut American workers.

What Should Employers Do?

- 1. Monitor regulatory developments closely.** Guidance and more details related to the DOL’s recent announcement is expected from the administration in the coming weeks. Employers should stay informed about all updates that may affect their compliance obligations.
- 2. Communicate proactively with H-1B employees.** Keep all H-1B visa holders informed of the latest developments to ensure staffers understand the evolving regulatory landscape and its potential implications.
- 3. Ensure You are paying the required wage.** DOL regulations require employers to pay H-1B employees the higher of either the actual wage paid to similarly employed workers at the company or the prevailing wage set by the federal government. We anticipate that the DOL will be auditing employers’ records to ensure compliance with these wage rates.
- 4. Maintain accurate records.** Employers must maintain a “public access file” for all H-1B workers’ wages, as well as confirmation that notice was posted to other workers, in addition to a copy of the certified LCA. Employers should always maintain clear, accurate, and up-to-date files, as it is required by DOL regulations and also minimizes the risk of penalties or negative findings in the event of an audit.
- 5. Engage legal counsel regularly.** Work with immigration counsel to develop comprehensive compliance strategies that protect workers’ status and employment while minimizing legal exposure. Counsel can also review your H-1B records to ensure compliance and maintain privilege of the audit.

Conclusion

For support, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, another member of our Immigration Practice Group, or Technology Industry Team. We’ll continue to monitor all announcements regarding the H-1B program and will provide updates as warranted, so make sure you are signed up for Fisher Phillips’ Insight service to receive the latest news directly in your inbox.

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