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FEDERAL JUDGE STRIKES DOWN TRUMP'S $100K H-1B FEE, BUT EMPLOYERS SHOULD PROCEED WITH CAUTION

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Federal Judge Strikes Down Trump's $100K H-1B Fee, But Employers Should Proceed With Caution

Employers that rely on the H-1B visa program got significant relief on Monday when a Massachusetts federal judge vacated the Trump administration's $100,000 H-1B application fee, ruling that the president lacked the authority to impose it. But with an appeal almost certainly on the way and a conflicting ruling already on the books from another court, employers would be wise to treat this decision cautiously, not as the final step in the process. What should employers know about this significant development?

What Happened?

US District Judge Leo Sorokin of the District of Massachusetts sided with a coalition of 20 states that sued to block the September 2025 proclamation that added a $100K supplemental payment requirement on top of all existing fees for new H-1B petitions (which before the proclamation ranged from roughly $960 to $7,595). The states argued the fee would devastate their ability to hire teachers, university faculty, researchers, and healthcare workers.

Judge Sorokin agreed, finding that the proclamation exceeded the president's delegated authority under the Immigration and Nationality Act and, critically, that the

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$100,000 payment is a tax that only Congress has the power to impose.

Why the Court Called It a Tax

The central question in the case was whether the payment requirement constituted a tax, a penalty, or something else. The administration argued that it was a lawful "restriction on entry" authorized under INA Sections 212(f) and 215(a), which give the president broad authority to suspend or restrict the entry of noncitizens when their entry would be detrimental to the national interest. Judge Sorokin disagreed.

Drawing on the Supreme Court's landmark 2012 Affordable Care Act decision, the court concluded that the $100,000 payment is neither a penalty (which requires punishment for unlawful conduct, and hiring H-1B workers is plainly lawful) nor a legitimate regulatory fee (which must be tied to the cost of administering a service, and the government conceded this payment was not). By process of elimination, the court found it is a tax.

The judge said that the proclamation overstepped legal bounds because Congress has the exclusive constitutional power to tax, and nothing in the INA clearly delegates that taxing power to the president.

Judge Also Finds Administrative Procedures Act Violation

Beyond the taxing power issue, the court found that the administration violated the Administrative Procedure Act's (APA's) notice-and-comment requirements by rolling out the policy almost overnight without giving affected employers or the public any opportunity to weigh in. Judge Sorokin found the agencies failed to adequately explain their reasoning, consider alternatives, or assess the policy's consequences, and lacked a valid emergency or foreign-affairs justification for bypassing the process.

Similarly, the court held that the policy was arbitrary and capricious because it failed to consider the impact on sectors like healthcare and education that had long relied on H-1B workers.

The Conflict in the Courts

But this is not the only federal court to have weighed in on the $100,000 fee.

- Late last year, a federal judge in Washington, DC reached the opposite conclusion in a challenge brought by the US Chamber of Commerce and the Association of American Universities, ruling that the administration was within its authority to impose the fee. That case is currently on appeal before the DC Circuit, which heard arguments in March and could rule at any time.
- A separate challenge brought by a nurse recruiting firm and a labor coalition is also pending.
- The result is a split in decisions, which substantially increases the chance that this issue ultimately lands before the Supreme Court.

What This Means for Employers Right Now

Judge Sorokin's ruling vacates the policy in its entirety, but the administration has every incentive to appeal and to seek to halt the ruling. That means an appeals court could even reinstate the fee requirement while litigation continues. Because the legal landscape could look very different as soon as this week or six months from now, employers should act cautiously as a result of Monday's ruling.

- If you have been sitting on H-1B petitions because of the fee, you should consult with your FP immigration counsel immediately about how to proceed.
- The same holds true if you paid the $100K fee on one or more petitions, as there may be recoupment or refund options available.
- Document your workforce planning decisions made in reliance on the fee. If the fee is reinstated on appeal, that record could matter for demonstrating reliance interests in future legal or regulatory proceedings.
- Cap-exempt employers (universities, nonprofit research organizations, and government research organizations) should be aware that the vacatur applies broadly. While your industries may have been disproportionately harmed by the fee, you remain subject to all pre-proclamation H-1B requirements.

Conclusion

Fisher Phillips will continue to monitor developments in this litigation and provide updates as the appeals process

unfolds, so make sure you are subscribed to Fisher Phillips' Insight System to receive the most up-to-date information directly to your inbox. Contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Immigration Practice Team to discuss what this ruling means for your pending or planned H-1B petitions.