

TRAVEL BAN 3.0 – PRESIDENT TRUMP REVISES TRAVEL BAN

Insights
Sep 25, 2017

President Trump signed a new and revised “travel ban” over the weekend, soon after the expiration of his [second temporary travel ban](#). This latest executive order, signed on September 24, more directly targets individuals from a new list of seven countries and will create a new travel ban beginning October 18. What do employers need to know about Travel Ban 3.0?

HOW DID WE GET HERE?

This most recent action is just the latest in a series of actions that have occurred since the new administration took office in January. Most are familiar with the twists and turns that have transpired on this topic over the past several months; for a comprehensive review of the previous legal decisions on the travel ban executive orders up to this point, review the below Fisher Phillips legal alerts and blog posts:

- [The Workplace Implications Of President Trump's Latest Immigration Executive Order](#) (January 30, 2017)
- [Federal Court Blocks President Trump's Immigration Executive Order](#) (February 6, 2017)
- [President's Immigration Ban Remains Blocked](#) (February 9, 2017)
- [Return Flight: Trump Issues Second Executive Order On Travel Ban](#) (March 6, 2017)
- [Déjà Vu All Over Again? Federal Court Blocks Trump's Second Travel Ban](#) (March 16, 2017)

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- [Federal Appeals Court Rejects Trump's Second Travel Ban](#) (May 26, 2017)
- [Different Path, Same Result: 9th Circuit Becomes Latest Appeals Court To Reject Trump's Travel Ban](#) (June 12, 2017)
- [Supreme Court Partially Revives President's Travel Ban, But Imposes Limitations](#) (June 26, 2017)

One of the little-known features of the most recent executive order signed on March 6 – also known as Executive Order 13780, or “Protecting the Nation from Foreign Terrorist Entry into the United States” – was a direction to the Secretary of Homeland Security and other state agencies to conduct a worldwide review of information sharing practices between the U.S. and other countries. After the review, the Department of Homeland Security (DHS) created a new requisite baseline for information sharing between the U.S. and foreign countries in order to continue both nonimmigrant and immigrant travel between the U.S. and other countries.

The baseline included three major categories of information that must be shared in order to determine the status of those seeking to enter the country: (1) identity-management information; (2) national security and public safety information; and (3) national security and public-safety risk assessment. With these three categories in mind, the Secretary of Homeland Security issued a report which found that individuals from seven countries failed to meet the baseline: Syria, Iran, Libya, Chad, Yemen, Somalia, North Korea, and Venezuela. Upon considering this report, President Trump created a more narrowly tailored travel ban for those traveling from these seven countries.

WHAT DOES THE NEW TRAVEL BAN DO?

Unlike the prior temporary travel bans, the new ban is indefinite. With respect to the prior bans, the restriction on Sudan was lifted, but Chad, North Korea, and Venezuela were added. The travel restrictions are specific to each country and can be seen on [the attached link from the DHS](#).

For example, both immigrants and nonimmigrants from Chad, Libya, and Yemen are barred if they seek to enter the U.S. on business, tourist or business-tourist visas. The same is true for Iranian citizens, both immigrants and

nonimmigrants, but Iranian students will not be barred provided they pass heightened screening procedures. Meanwhile, immigrants and nonimmigrants from North Korea and Syria are barred, as are all citizens of Somalia.

HOW DOES THIS AFFECT EMPLOYERS?

Unless there is a credible claim of a bona fide relationship with a person or entity in the United States, those individuals who were subject to the previous ban are still considered to be subject to this ban as of September 24, 2017. For all other foreign nationals, the new travel ban will take effect on October 18, 2017.

As previously suggested, employers should advise employees from the seven countries not to take unnecessary travel. You should work with immigration counsel to identify employees who are nationals of the seven banned countries who may be affected by this order. If the employees are abroad and have not previously been impacted by the prior travel bans, they should return prior to October 18, 2017, if possible. If your employee is in the U.S. and is reaching the visa expiration date, you should extend the employee's stay in the U.S. and recommend the employee not travel abroad.

Foreign nationals in the U.S. should carry originals or clear copies of their legal authorization to be in the U.S. at all times (e.g., copies of the identifying page of their passports, visa stamps and I-94 electronic cards, Permanent Resident Cards, Employment Authorization Cards, Travel Documents, Re-entry Permits, etc.). If stopped by a U.S. Immigration and Customs Enforcement agent, or any other law enforcement officer, you should instruct your employees to be prepared to cooperate and present evidence of their U.S. immigration documentation and legal status. However, the foreign national should not sign any forms or other paperwork without consulting with an immigration attorney.

The ban, while heavily focused on national safety, does not appear to take into consideration the repercussions employers will face in terms of access to global talent. This is especially true of individuals from Iran who frequently come to the U.S. in science, technology, engineering, and mathematics (STEM) fields and remain in the U.S. on temporary professional visas.

WHAT CAN WE EXPECT MOVING FORWARD?

Despite the additions of Venezuela and North Korea, the majority of countries included in the ban are Muslim-majority. For this reason, we can expect the groups who opposed the prior travel bans (including the ACLU and various state attorneys general) to again raise legal challenges to the third travel ban.

Meanwhile, the U.S. Supreme Court has already taken action to cancel the oral argument that had been scheduled for October 10 in the case challenging the second travel ban. The Court has asked the parties to submit new briefs explaining whether they believe Travel Ban 3.0 has made that argument moot. We will continue to monitor the status of all immigration-related executive order activity, including ongoing and future litigation, and publish updates as additional actions are taken, or information is provided, by the White House or the judicial system.

If you have any questions about these developments or how they may affect your business, please contact any member of our [Global Immigration Practice Group](#), or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a specific executive order. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.