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Beyond the Wall—Immigration, Employers, and the Trump Administration (Part 1)

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When we consider which of the Trump administration's policies will have the biggest effect on businesses and employers in the U.S., our sights are initially focused on those heavy hitting topics that were most uncertain as 2016 came to a close—the fates of the Affordable Care Act and the white collar overtime regulations, in particular.

Immigration policy may take a bit of a back seat—especially considering how much of the immigration conversation has focused on border security and targeting illegal immigration (both important topics, but topics with which we'd like to think the average employer isn't struggling with on a daily basis).

Yet, there are several immigration topics "beyond the wall" that employers will want to keep an eye on, particularly as the Trump administration identifies the issues that will receive executive and agency priority in the initial days after the inauguration.

Increased Enforcement, And Not Just at The Border

While the Trump administration is expected to bring a pro-business stance and an employer-friendly agenda to federal agencies, immigration enforcement will be the divisive outlier.

Employers should not only anticipate increased workplace audits and document inspections from Immigration and Customs Enforcement (ICE), but may also see the return of higher profile and heavily punitive actions such as workplace raids and worker detention. These high profile actions may also be highly publicized in efforts to make an example of businesses and workers that thwart the new administration's vigilance.

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Mandatory E-Verify

Currently use of the federal Employment Eligibility Verification (E-Verify) system is only required for certain federal contractors and in a patchwork of states. About half the states have some form of law that addresses E-Verify, but these laws differ as to the employers to which they apply. Some states require all employers to participate, some only public employers, some public employers and contractors, some only contractors, etc.

We are likely to see legislation making the use of E-Verify mandatory for all employers—or at least employers of a certain size—nationwide. Though previous attempts to make E-Verify mandatory have failed, these efforts have been part of broader, comprehensive immigration reform bills. Pursuit of mandatory E-Verify in a stand-alone legislative measure may be more successful.

E-Verify is free to use. Employers who wish to learn more about the system, or who wish to enroll, may do so at https://www.uscis.gov/e-verify/.

Changes to Employment-Based Visas

Though much of the immigration dialogue throughout the presidential election has focused on *illegal* immigration and undocumented workers, changes to legal immigration options are also likely.

Guest worker visa programs such as the H-1B have been pegged for changes ranging from reform to "overhaul" to complete elimination. In 2016, United States Citizenship and Immigration Services (USCIS) received over 236,000 H-1B petitions—more than 3.5 times the annual allotment of 65,000 visas, which are then distributed by random lottery (not the most optimal circumstances on which to base skilled employment and relocation).

Now, in efforts to encourage companies to prefer U.S. workers for these skilled worker positions, we may see increased prevailing wage requirements for H-1B workers or requirements that positions be offered to U.S. workers first. System reforms to reduce fraud and abuse are also likely—for example, audits and verification steps that would eliminate the use of duplicate petitions to increase chances of an employee winning a coveted slot in the visa lottery.

Changes to these visas would primarily affect the tech sector and large outsourcing firms, which typically receive about 30% of the total annual allotment of H-1Bs.

For more potential changes to legal immigration options and programs under the Trump administration, as well as a list of "Dos and Don'ts" for employers when preparing for such changes, read part 2 of my article.

Related Resources:

- Immigration Topical Analysis
- Visas Topical Analysis
- *Which Employer Mandates Are on Trump's Chopping Block?*

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- *One Form, Two Form, Here's A New Form: More Details On the New I-9*
- *It's Time to Cozy Up to the New I-9*
- Training: Immigration and Hiring—What Supervisors Need to Know

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