

Immigration & Global Mobility – 10 Things You Should Be Thinking About Under The New Administration

If constant news regarding immigration policy from the new Administration is creating confusion for you and your employees, you are not alone. Now more than ever, immigration and global mobility issue-spotting is essential for companies with a global workforce. Overlooked issues can open the door for compliance concerns, which have the potential to create significant exposure for companies. In light of the recent Executive Orders issued by the Trump Administration, as well as Executive Orders expected to come, what should you as a global company be thinking about with respect to immigration and global mobility? The following 10 points are key considerations in working to avoid unwittingly creating a compliance challenge:

1. Immigration is a moving target

Immigration and global mobility remains a moving target. The first days of the Trump Administration have brought several Executive Orders having a direct impact on a company's ability to attract and retain critical talent. For example, the initial Executive Order implementing travel bans was litigated and ultimately replaced with a new Executive Order, itself subjected to legal challenges. We anticipate continued unpredictability in the U.S. immigration area, from travel bans to temporary suspension of premium processing for H-1B visas, and it is critical for companies to constantly remain up-to-date on immigration changes.

2. Increased security checks and consular delays

We are currently seeing increased security at airports and ports of entry to the United States. Companies should anticipate that increased security will continue and should prepare employees for longer wait times and increased questioning by immigration upon entering the United States. In addition, we are seeing an increase in corresponding delays for U.S. citizens traveling abroad in response to the current U.S. immigration climate. We may also see increased administrative processing/security vetting at consulates, which may increase visa processing times.

3. Data privacy

Electronic devices are subject to inspection when entering the United States and many foreign jurisdictions. U.S. Customs and Border Protection (CBP) has full authority to view information on devices brought into the United States. Failure to comply with such an inspection can result in confiscation of devices from U.S. Citizens and denied entry for foreign nationals. Employees should consider traveling with clean devices in order to protect confidential company information.

4. Business visitors

Companies use business visitor visas in both the United States and globally to facilitate rapid travel for employees to affiliate offices and/or client visits. It is critical to understand that most countries do not allow business visitors to work. We are seeing increased scrutiny of both the visa waiver program and formal B-1 visa used by business travelers to enter the United States.

Therefore, it is increasingly important to plan travel in advance and ensure that employees have the proper visa for the country being visited. Failure to do so can result in denied entry of employees as well as significant compliance concerns. In some countries visa violations can result in significant fines, or even jail time.

5. Work place compliance

The current Administration has made it very clear that compliance is a priority. Compliance concerns are not limited solely to your foreign national population. Penalties for I-9 violations have recently increased and a focus on E-Verify is imminent. We also anticipate increased site visits for those on work-authorized visas.

6. Cross border privilege

Many countries do not recognize the concept of "attorney-client" privilege and can require disclosure of confidential corporate documentation. Moreover, some foreign jurisdictions that do recognize the existence of privilege will not recognize it for in-house counsel.

7. Local employment law

Employment law varies greatly from one foreign jurisdiction to another. Companies must be prepared to understand the differences in local law in each foreign jurisdiction in which they operate and adjust local company policy and procedures accordingly. Consulting with local employment counsel can help navigate common concerns and pitfalls.

8. Permanent establishment

Allowing employees to work in foreign countries can create a permanent establishment giving rise to corporate tax obligations in those jurisdictions. It is critical to keep this in mind when considering requests from employees to work remotely. These requests are likely to increase as we see an increase in visa processing delays resulting from increased security vetting.

9. Overreaching company policy

Companies seeking to remain compliant for immigration purposes should understand that more is not always better, such as creating policies that may overstep, becoming inadvertently discriminatory.

10. Export control

The U.S. government regulates the transfer of information and technology in the interest of national security. It is very important to understand if your company information is subject to export control, and if so, to plan accordingly for traveling employees. Non-compliance can result in significant monetary and criminal penalties against companies and individuals.



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