

## H-1B Visa Executive Order

By Michael H. Neifach

April 18, 2017

In the wake of the lowest number of H-1B visa petitions filed in five years (199,000), President Donald Trump has signed an [Executive Order](#) dubbed “Buy American, Hire American.” It is focused on reform of the H-1B non-immigration visa program, as well as the elimination of waivers and exceptions that are central to international trade deals.

The Order, signed on April 18, 2017, at Snap-On Tools in Wisconsin, directs the Departments of Homeland Security, Justice, Labor, and State to crack down on fraud and abuse in the immigration system, across the board, to create higher wages and rates of employment for U.S. workers.

The Order requires the departments to make proposals on what can be done to achieve the goals of ensuring that:

1. American workers are protected,
2. H-1B visas are going only to the most highly skilled workers, and
3. American workers are not replaced by “cheap labor” from abroad.

Like various reform bills [pending in Congress](#), the focus is on the perceived abuses of outsourcing firms.

Some necessary reforms envisioned in the Order will have to be legislative, but others can be accomplished administratively, including:

- Increases in fees for H-1B visa petitions;
- Changes to the wage scale to institute higher prevailing wage requirements;
- Greater focus on enforcement against gross and egregious law violations; and
- Adjusting the lottery system to give Master’s degree holders priority.

Indeed, some changes in this direction already have been made. The DHS had announced that it will be [targeting outsourcing firms](#) with more unannounced site visits to H-1B dependent employers. It also will target outsourcing firms in adjudications by considering whether employees classified as computer programmers really are eligible for H-1B status.

President Trump has stated that he would like eliminate the random lottery system altogether. Instead, H-1B visas would be awarded to the “most skilled or highest paid” applicants. This sort of priority system has been suggested by [Senators Dick Durbin and Chuck Grassley in their bipartisan bill](#), the “H-1B and L-1 Visa Reform Act.” The Durbin-Grassley system would prioritize workers with the highest wages and advanced U.S. STEM degrees. The Administration would see this type of reform as an “elegant way of solving the problem” of outsourcing.

A White House [background briefing](#) says there is a “great appetite in [the] departments and agencies to get to work on closing loopholes, shoring up [the H-1B] program, [and] dealing with long-running abuses.” While there is no specific timetable set for the reports and reforms, the expectation is that things will start to happen soon.

We will continue to provide updates on this and other workplace developments. Please contact a Jackson Lewis attorney with any questions.

### Meet the Author



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