

New Work Visas Suspended Under Presidential Proclamation Until End of 2020

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The day before his [previous Proclamation](#) on immigrant visa was to expire, President Donald Trump signed the “[Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak](#)” to extend his previous immigrant visa restrictions and suspend issuance of certain nonimmigrant, temporary work visas until at least the end of 2020.

The new order will be reviewed on or about July 24, 2020, and every 60 days thereafter for possible modifications, according to the Administration.

The new order applies only to those who were planning to enter the U.S. in H-1B, H-2B, or L-1 status, as well as individuals applying for J-1 visas as interns, trainees, teachers, camp counselors, au pairs, or students on summer work-study programs (not university scholars), and all of their dependents. It does not apply to anyone with a nonimmigrant visa or other travel document valid as of June 24, 2020 or after.

Key Provisions

The new order will affect those who are:

- Outside of the U.S. on the effective date — June 24, 2020, at 12:01 a.m. (EDT); and
- Do not have a nonimmigrant visa that is valid on the effective date of the Proclamation or issued thereafter; and
- Do not have another travel document (such as a transportation letter, boarding foil, or advance parole document) valid on the effective date or issued thereafter.

The stated purpose of the order is to protect American workers amid the COVID-19 economic downturn. The Administration [declares](#) that this move will “free up more than half a million jobs.”

News of the order and its possible provisions has been swirling for months and the White House received letters and phone calls from universities, as well as those in the manufacturing, technology, and consulting industries, explaining that limiting these visas will hurt, not help, the economy because immigrants will be key to the turnaround.

Those who are still allowed to enter the U.S. will be required to provide biometrics and be subject to COVID-19 screening.

Exemptions

There are exemptions to the new restrictions. It will be up to consular officers to decide who is entitled to those exemptions based on instructions from the Secretaries of State, Labor, and Homeland Security.

The exemptions include:

- Lawful permanent residents of the U.S.;
- Spouses or children of U.S. citizens;
- Individuals seeking to enter the U.S. to provide services essential to the U.S. food supply chain; and
- Individuals whose entry into the U.S. would be in the national interest as determined by the Secretaries of State or Homeland Security or their designees.

The national interest exemption includes those who are:

- Critical to the defense, law enforcement diplomacy, or national security of the U.S.;
- Involved in providing medical care or medical research in the U.S. to combat COVID-19;
- Necessary to facilitate the immediate and continued economic recovery of the U.S.; and
- Children who would “age-out” of eligibility for a visa due to the Proclamation.

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There is no guidance on how to apply for these exemptions.

Forthcoming Regulations

The Proclamation directs the Secretaries of Homeland Security and Labor to promulgate regulations to ensure that “the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers,” particularly regarding prevailing wages and the number of immigrant and nonimmigrant visas available.

The Proclamation also instructs the Secretaries to undertake investigations to ensure those who have been admitted to the U.S. on EB-2 or EB-3 immigrant visas based upon labor certifications are not disadvantaging U.S. workers.

Consequently, changes in visa and nonimmigrant visa allocations and prevailing wage levels, as well as more audits or investigations of pending or approved PERM cases, are expected.

Jackson Lewis attorneys are committed to helping employers make the best business decisions. Please contact your Jackson Lewis attorney with any questions about how these new restrictions and forthcoming regulations will affect your employees and prospective employees.

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