

Immigration Issues Companies Reconsidering Bachelor's Degree as Job Requirement Must Keep in Mind

By Jessica K. Lang

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Meet the Authors



Jessica K. Lang

Principal

617-305-1228

Jessica.Lang@jacksonlewis.com

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The increasing need for talented workers in the United States has more and more employers considering eliminating bachelor's degree requirements from job descriptions.

A recognition of the value of skills and experience over formal education may be driving the trend. Companies want to break through the “paper ceiling” that keeps those without degrees from filling positions for which they are otherwise qualified. Approximately 50 percent of companies surveyed are planning to drop four-year degree requirements for some positions in 2024, partly to broaden the available talent pool. Over half of the U.S. workforce (70 million people) do not hold four-year degrees. Only 36 percent of the U.S. population over 25 years old has obtained bachelor's degrees or higher. Employers are focusing on STARs (Skilled Through Alternative Routes), recognizing and valuing skills acquired through non-traditional paths. A significant hiring challenge arises, however, from automated resume screening technologies that may disadvantage these candidates, excluding them from consideration for lack of a formal degree on their CVs.

It is important to consider certain factors that may affect hiring foreign national talent even as changes in hiring practices aim to open opportunities for a more diverse and skilled workforce. When evaluating the benefits of moving hiring practices toward a skills-based focus that underscores competency and capability, companies need to be mindful of the broader context and potential implications related to immigration as many countries, including the United States, have visa requirements tied to educational qualifications.

U.S. companies in many sectors rely on the global talent pool to fill critical positions. The H-1B visa program, in particular, is widely used by employers to bring in skilled foreign workers for positions that typically require a bachelor's degree or higher. The focus on skills alone may present challenges for employers looking to use these visa programs, as the degree requirement is a key component of their eligibility criteria in demonstrating a position qualifies for the visa. Similarly, the H-1B1 visa (for individuals from Chile or Singapore) and the E-3 visa (for Australian nationals) share the requirement that the offered position meets the criteria of requiring the “theoretical and practical application of a body of highly specialized knowledge; and attainment of a bachelor's or higher degree in the specific field.” When U.S. Citizenship and Immigration Services (USCIS) cannot make a clear determination that the position meets the qualifications, the agency will issue a Request for Evidence (RFE) and put the onus on the company to show that the position does in fact require a bachelor's degree in a specific field. For years, employers must prepare lengthy responses to these RFEs to convince USCIS that a bachelor's degree is normally the minimum requirement for the position, the requirement is common to the industry, or the position is so complex or unique that it can be performed only by an individual with a degree, the employer normally requires a degree for the position, or the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the

attainment of a bachelor's or higher degree through a particular program. Thus, if a position does not need a bachelor's degree to acquire the essential skills, it would be more difficult to qualify for the H-1B visa or other similar visa categories. USCIS has been working on clarifying what positions qualify. However, the educational component remains crucial to qualifying for the H-1B visa and for other visa purposes.

The educational requirements associated with a position also play a crucial role in the employment-based green card (permanent residence) sponsorship process. The employment-based green card process involves different preference categories based on the company's employment offer. The second preference (EB-2) and third preference (EB-3) categories typically require a job offer that demands at least a bachelor's degree with significant experience or a master's degree. If a position lacks a degree requirement, U.S. companies may be limited in their ability to provide a pathway to permanent residence for employees in roles that do not traditionally require a formal degree. However, this limitation could affect companies' ability to retain and fully integrate valuable foreign talent within their organizations. It also underscores the need for ongoing discussions and potential reforms in immigration policies to better align them with the evolving needs of industries, especially those in technology and innovation.

Without a formal degree requirement, the labor market test required as part of the PERM labor certification process (often a prerequisite for obtaining an employment-based green card) likely will present challenges and impede the process as more U.S. workers may meet the minimum qualifications for the job and nullify the justification required to hire the foreign worker instead. In navigating the green card sponsorship process, employers should carefully assess the educational and experiential qualifications necessary for the position. It is crucial to balance meeting immigration requirements with accurately reflecting the genuine job requirements for a position.

Balancing hiring needs with immigration regulations is crucial for companies seeking a diverse and globally skilled workforce. The need for organizations to stay informed about regulatory changes and work closely with experts to navigate the complexities of visa programs while maintaining an inclusive hiring approach that values skills and experience has never been clearer.

Jackson Lewis immigration and employment attorneys are available to assist you in analyzing job descriptions to meet your employment goals.

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