

Executive Action on Immigration to Affect Millions

Labor & Employment Law Update

By Jacqueline Lentini McCullough on November 25, 2014

Did you watch the President address the nation live last week? On November 20, 2014, President Obama announced a series of executive actions, including cracking down on illegal immigration at the border, prioritizing deportation of felons (details of which are still unclear), and requiring certain undocumented immigrants to pass a criminal background check and pay taxes in order to temporarily stay in the U.S. without fear of deportation.

The initiatives include:

– **Deferred Action for Parents (DAP).** Parents of U.S. citizens and legal permanent residents (LPR's of any age) who have been continuously present in the U.S. since January 1, 2010, who pass background checks and pay taxes are eligible for deferred action (temporary relief from removal for a specified period of time) for a three year period;

– **Deferred Action for Childhood Arrivals (DACA)** to be revised to expand the group it encompasses to include young people who came to the U.S. before turning 16 years old, and have been present in the U.S. since January 1, 2010. It will also remove the 31 year old age cap, paving the way for about 270,000 more people to apply. The work authorization permit will also be increased from two to three years;

– **Permit Employment Authorization for H-4 Visa Holders.** Currently dependents of H-1B visa holders are not permitted to work. Regulations will be finalized in early 2015;

– **Optional Practical Training.** The length of time in OPT for Science, Technology, Engineering and Mathematics ("STEM") graduates will be expanded, although no set time frame for this increase and associated regulations have been outlined;

– **Pre-registration for Adjustment of Status.** Individuals with an approved employment immigrant petition who are caught in the quota backlogs will be able to pre-register for adjustment of status to obtain the benefits of a pending adjustment. This change is expected to impact approximately 410,000 people;

– **I-601A Waivers.** Waivers will be expanded to include spouses and children of LPRs;

-Modernization and improvement of **immigrant and nonimmigrant programs**. Details on this are unclear;

-Enhancements to the Naturalization process; and

-U and T Visas. Three more types of offenses will be added to the list of offenses that can be certified by the Department of Labor.

Preliminary estimates show that approximately 4.9 million individuals may be eligible for the initiatives announced by the President, although there is no way of knowing how many individuals will apply. USCIS won't begin accepting applications until approximately May 2015, and the new protections could be reversed by a new President. The bottom line is that the only certain provisions will have an immediate impact early next year, such as the DAP and DACA changes. Other proposed changes should be considered more along the lines of "Coming Attractions," because they require regulations to be implemented. Limited details were offered during the President's address to the nation, and in his subsequent Memoranda of November 21st. Since the President's briefing included business employment immigration reform, there is a reasonable expectation for improvements outside of the undocumented community as well.

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