

# What to Expect on Immigration from the Biden Administration

## Labor & Employment Law Update

By Jacqueline Lentini McCullough on November 25, 2020

The Trump administration has enacted more than 400 immigration policy changes. That's one change every 3.65 days the administration has been in office.

Weary from the whiplash of changes and weight of additional work, many are wondering how President-Elect Joe Biden will approach immigration policy.

Here are my thoughts on four issues affecting clients:

### **The Quickest Change Will Likely Be Better Visa Processing Times**

COVID-19 will still slow processing as many U.S. Citizenship & Immigration Services (USCIS) employees are working from home. But without the anti-immigration winds that have been blowing from the White House, USCIS staff will be free to consider petitions in a timely manner.

Look for application and petition processing times to return closer to the six to eight months they used to take, instead of the one to two years they have reached recently.

### **Student Duration-of-Status Rule Change**

For decades, student visas have been granted for a "duration of status" in a nod to the different lengths of time international students require to finish their degrees in the United States. Times vary by degree – bachelor, masters, doctoral.

Sometimes students require extra time to complete their degrees due to the need for certain classes, participation in research, and the challenges of academic rigor and studying away from home. Illness can sometimes play a role too.

On September 25, 2020, the Trump administration published a new rule in the Federal Register to change student visas to a fixed duration of not more than four years.

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The rule change would force many students to file for extensions to complete their degrees, creating much extra work and expense. The current fee to file for an extension is \$370. Some students might need to file more than once.

The change would also give the Department of Homeland Security (DHS) officials the power to deny extensions to students they deem unwilling or unable to complete their course of study. Usually academic institutions make those determinations.

The rule's comment period ended October 26, 2020. It is unclear whether this rule will move forward. Even if it does, there is hope that the Biden administration will reverse it.

### **H-1B Wage Level Changes**

On October 8, 2020, the Department of Labor issued an Interim Final Rule (IFR) entitled "Strengthening Prevailing Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States."

IFRs fast track changes as they allow rules to become final upon publication instead of waiting for the usual public comment period.

The rule aims to restrict H-1B visas to the most highly-skilled workers and raises each wage level substantially. Level 1 increased by 17 percent, level 2 rose by 24 percent.

Those increases preclude most entry-level jobs from qualifying, making it difficult for recent graduates to find work and stay in the U.S. They also increase costs to any company who use or rely on H-1B workers.

Three lawsuits are challenging the rule, led by the U.S. Chamber of Commerce, Purdue University, and ITServe Alliance. The lawsuits and the new administration may prompt some mitigation of this rule. As it has bipartisan support, I don't expect it to be struck down entirely.

### **Public Charge Rule**

On October 10, 2018, USCIS filed a public charge rule change in the Federal Register to allow immigration officials to deny green cards to immigrants on any form of public assistance, including food stamps, Medicaid, and public housing vouchers. Applicants already have to prove they are not a public charge, but the new rule expands the number of benefits DHS could use to deny a green card. Additionally, compliance with the rule requires applicants to fill out an 18-page form (I-944), prove they have health insurance, and provide reams of other financial documentation.

Numerous legal challenges have delayed the rule, which went into effect on February 24, 2020. A federal judge in New York blocked the rule on July 29, 2020, saying nothing should impede immigrants from seeking testing and treatment for Covid-19.

On September 11, 2020 the Second Circuit Court of Appeals ruled DHS could resume enforcing the rule. On November 2, 2020, a federal court judge in Chicago struck the rule down, saying the Trump administration violated the Administrative Protection Act when they created it. Yet another judge stayed that injunction while the decision is being appealed. The Biden administration may drop the appeal and let the judge's ruling that the rule was unlawfully created stand.

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