

# IMMIGRATION CONSIDERATIONS FOR FOREIGN NATIONALS DURING COVID-19

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The current COVID-19 health crisis is impacting companies and individuals around the world, and presents unique challenges for temporary foreign workers in the United States. This includes employees in H1B status or some other temporary status which must be periodically extended in order for the employee to maintain work authorization.

Some initial guidance has been provided from federal agencies, which is certain to be updated over the coming days and weeks. For now, individuals should keep certain points in mind:

## **Work From Home Policy**

H1B employees can work from home as long as their duties remain substantially the same as that which was reported on the H1B petition, and as long as they continue to receive the same pay for the same number of hours per week as they normally receive. Additionally, H1B workers can work from home if they live within normal commuting distance (about 50 miles) from their normal worksite. However, if there are material changes to an H1B employee's duties, wages, or hours per week, or if the employee's home is more than 50 miles from their normal worksite, a new Labor Condition Application (Form 9035) with the Department of Labor must be filed, and an amended H1B Form I-129 petition with USCIS.

## **Temporary Furloughs or Layoffs**

A temporary furlough for most employees means the suspension of work without pay. A company may need to rely on a temporary furlough in order to get through these uncertain times. But for H1B employees, a furlough cannot include the suspension of pay. According to the terms of the Labor Condition Application that was filed for each H1B employee, the employer must fully compensate its H1B employees, even during "nonproductive" times that are imposed by the employer. Note, however, that if the employee initiates a period of nonproductive time, to take care of an ill family member, for example, and the employer has not mandated such a break from employment, then the employee's pay can be suspended (not including any pre-existing paid time off agreement).

If a company needs to lay off some or all of its employees for a period of time, keep in mind that for an H1B employee, a layoff is a termination. If that individual is not working under the terms of the Labor Condition Application and H1B petition, then he or she cannot remain in H1B status.

## **Suspension of Routine USCIS Services / Closure of US Consulates Abroad**

On March 18, 2020, USCIS announced the closure of all of its field offices in the U.S. until further notice. These offices handle in-person procedures such as green card interviews, naturalization oath ceremonies, InfoPass appointments, and biometric appointments.

On March 20, 2020, the U.S. Department of State announced the temporary suspension of all routine visa services at all U.S. Embassies and Consulates around the world, including appointments for nonimmigrant work visas. This means that H1B employees who have an approved petition but have

not yet entered the U.S. will be temporarily unable to get the required visa foil in their passports to allow entry to the United States.

The USCIS has not announced any current or anticipated changes to the functioning of its five service centers in the U.S., which review and make decisions on petitions such as those for new H1B employees, or change of status petitions. In addition, USCIS remains available for emergency services for limited situations. Employers can contact USCIS Customer Service directly with specific requests for assistance.

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*If you have any questions on the above information or need a consultation regarding your specific case, please do not hesitate to contact attorney, Lakshmi Lakshmanan ([lakshmi@laxmilaw.com](mailto:lakshmi@laxmilaw.com)).*