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Alerts

Executive Summary - Recent Presidential Action on Immigration System Reform

November 24, 2014
Employment Practices Alert

Last week, President Obama outlined his plans for Presidential action relating to U.S. immigration system reform. Setting aside the significant process and procedural controversies, following is a brief summary of some of the most important aspects proposed in this action which may affect your company and your employees. Our Hinshaw Immigration group is closely monitoring the developments and is ready to field all inquiries which you may have regarding this evolving topic.

Impact on Workers (Employees)

The action proposes to provide legal work authorization and international travel authorization for millions of people who are currently undocumented and/or working without authorization in the U.S. Many will have questions for their employers about process and procedure. They should be advised to beware of scams by notarios and other unscrupulous providers of immigration services soliciting money for immediate action or filings; there currently is no process or procedure in existence, but procedural details are expected to be published within the next several weeks. The benefits are expected to be available for various individuals within 90 to 180 days, depending upon classification.

Impact on Employers

- First and foremost, the flood of new work authorization documents will result in existing undocumented workers openly revealing their status to their employers; employers need to be prepared with internal policy decisions regarding Form I-9 re-verification and related issues.
- The action proposes to provide work authorization for spouses of H-1B workers where none had previously existed; this will be beneficial to the families of H-1B workers employed by you.
- Clarification and possible simplification of other programs such as the L-1B nonimmigrant visa classification, PERM (permanent labor certification process – the first step toward employment-based permanent immigration) and the immigrant visa backlog calculations are also expected.
- Of particular note, it is expected that the significant existing wait time to file for adjustment of status benefits which is endured by certain foreign-born employees who are the subject of long-pending employment-based permanent residency proceedings will be drastically shortened. One way to accomplish reduction in the delays in their ability to file for adjustment of

Service Areas

Immigration

Labor & Employment

status to permanent residency may be to detach the filing eligibility date from the immigrant visa availability tables published by the Department of State or otherwise modify adjustment of status filing eligibility. This would have a positive impact on your employees and their families, who will be able to enjoy the related benefits (such as unrestricted work authorization and relief from the need for U.S. visas). The potentially negative impact for employers will be the resultant increase in employment portability of these workers; employees who have an adjustment of status application pending with USCIS for more than 180 days are permitted to stop employment with the petitioning employer and move to another employer without impacting their ongoing permanent residency proceedings. Under the law as it existed prior to the Presidential action, workers were still obligated to remain employed by the petitioning employer until at least 180 days following the filing of the adjustment of status application, but that filing date was tied directly to the Department of State's backlogged Visa Bulletin calculations and therefore has often been delayed for several years following the start of the process. The predictable result will be that many workers may expedite leaving their employment with the petitioning employer after that employer has made a significant financial investment in that individual's permanent residency process with the expectation of continued employment. This could slow employers' eagerness to sponsor workers for permanent residency in the future.

- Finally, workers who have graduated with U.S. degrees in Science, Technology, Engineering or Math (STEM fields) will have access to expanded post-graduation Optional Practical Training periods which should provide practical relief from the problem of the H-1B Cap (quota) phenomenon. In recent years, the Cap has often resulted in the unfortunate but necessary exit from the U.S. by U.S.-educated workers whose H-1B petitions were not lucky enough to be picked in the annual lottery. This change is a clear advantage to employers and workers alike, as it will allow U.S.-educated professionals to work and remain in the U.S. longer and provide expanded opportunities for their long-term employment in and contribution to the U.S. rather than being forced to establish careers outside the U.S. due to visa unavailability and arbitrary quota limitations.

These are some significant basics of the program as we currently understand them. Please feel free to contact your regular Hinshaw attorney with questions.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.