

**Related Services**

Immigration

**Message Regarding COVID-19****Legal Update**

03.16.2020

This is an astonishing, difficult and rapidly changing time for all of us as we quickly sort through how to provide continuity of business services while keeping our communities safe. By now, we all know we should minimize contact in an attempt to slow the rapid growth of the virus. This has resulted in more liberal policies for remote work and many of our clients that can have quickly moved to that plan. We have as well. Please be assured that we are working closely with our firm's emergency response team to put into place guidelines that will protect our staff without compromising delivery of our services. Fortunately, we have excellent infrastructure and IT and are doing the best we can to continue to provide excellent service to all of our clients.

One of our biggest concerns at present is that USCIS is still functioning, scheduling interviews and requiring paper filings to be made on time. We are responding as rapidly as we can and are working closely with our colleagues in the Alliance of Business Immigration Lawyers to get immediate messaging to the media and elected officials in an attempt to push for relief. In the meantime, we will inevitably experience delays while we sort logistics, but we will work hard to ensure that we do not miss critical deadlines. USCIS has already temporarily closed certain district offices for interviews and has announced a more liberalized remote work policy for its workers. ICE recently stated that foreign students will not be penalized for switching to online learning programs.

Many employers are setting policies that instruct employees returning to the U.S. from COVID-19 impacted areas that they must work from home for at least 14 days before returning to the office. In addition, clients whose employees work at third-party work locations are getting a similar directive from their end-clients. Many employers are wondering how these changes impact various immigration requirements. We don't know anything yet specifically, as DHS hasn't made an announcement, but we believe that the government will not challenge employers who have taken emergent steps due to the global health emergency that the outbreak presents. Our advice is that employers take reasonable steps to ensure immigration compliance along with the safety of its workforce and the community. Below are our initial answers to questions our employer clients are asking. Answers are subject to change if the government announces anything different:

- H-1B employees, including those who work at an employer's office or a client's worksite are not required to file an amended petition if the employee continues to work in the same capacity and within normal commuting distance of the work location specified on the Form I-129 and supporting LCA. Similarly, a new LCA is not required in this scenario.
- While a strict read of policy decisions and guidelines would suggest that an LCA posting at the home worksite is required in this instance, there is a reasonable argument that there is no requirement to post since there are no other employees in that occupation at the home worksite to whom such "notice" is required.
- L-1 employees who temporarily work from home and continue to be employed in the same capacity detailed in their approved L-1 petition do not need to file an amended petition.
- The employer's wage obligation as to impacted H-1B (and L-1) employees in the United States continues without change irrespective of whether the employee is working from home or not. The exception is where the employee has requested a bona fide leave of absence for reasons not related to the availability of work or the employer's request.
- We will continue to carefully monitor deadlines, max-outs and all other expiration dates and inform you as soon as we hear further regarding if the employee is ineligible for an extension but cannot leave the U.S. A change of status to another nonimmigrant classification, such as B-2 visitor, may be approvable for the employee and dependents if a petition can be filed before their period of authorized stay expires.
- To be safe, employers should keep documentation of "COVID-19-related" business directives (both internal and from clients in third-party worksite situations) to explain the reason(s) and dates for any actions in the event of an internal audit or other immigration compliance investigation.

The President's Coronavirus-related travel ban has now been extended to temporarily include all of Europe and many other countries. It may be prudent, if you haven't already done so, to advise no further international travel due to overcrowding at airport arrivals. This is a moving target and we will do everything we can to keep you informed.

Working together as a society will hopefully preserve needed resources for our medical community. We will be liberally utilizing technological tools to ensure that we maintain that necessary connection with our clients "where law and business meet."