

## President Trump Issues Executive Order on Employment-Based Visa Reform and Compliance Enforcement

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April 19, 2017

On April 17, 2017, President Donald Trump signed an **executive order**: “Buy American and Hire American.” The hiring aspect of the order focuses on reviewing the current employment-based visa programs and considering ways to alter immigration laws.

Although substantive changes to the employment-based visa programs have yet to be made, the executive order expresses an intention to reform the current immigration system in the United States. The order directs the departments of Homeland Security, Labor, State, and Justice to propose revisions to current immigration programs, and propose changes to the programs and regulations, and to issue new agency guidance for implementation.

### H-1B Program

The executive order specifically directs agencies to evaluate the H-1B visa process in order to determine how to increase wage minimums to promote the hiring of U.S. workers. For example, it suggests reforming the H-1B visa program with a system that would allocate priority to the most-skilled or highest-paid foreign workers. This is consistent with recent **guidance** issued by USCIS indicating that Computer Programmer positions that are paid entry-level wages may be ineligible for H-1B employment.

### Compliance and Enforcement

The order also calls for new rules and guidance to protect the interests of U.S. workers through prevention of fraud or abuse. This follows heightened compliance and enforcement initiatives issued recently through the coordination of various government agencies.

- On April 3, 2017, U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security initiated a new **focus** for its Fraud Detection and National Security (FDNS) site visit program on H-1B dependent workers as well as for H-1B employers that place foreign workers at third-party worksites. USCIS also encouraged the reporting of H-1B employer fraud and abuse to the Department of Labor’s Wage and Hour Division or by contacting U.S. Immigration and Customs Enforcement (ICE).
- On April 3, 2017, the Department of Justice **issued** a warning to H-1B employers cautioning against citizenship discrimination and displacement of U.S. workers through hiring of foreign nationals.
- On April 4, 2017, the Department of Labor **announced** that it will increase investigation and audit efforts with H-1B employers to ensure Labor Condition Application (LCA) and wage compliance. It also contemplates considering future changes to the LCA process and refers to USCIS’ guidance for reporting H-1B fraud and abuse.

### How Does This Executive Order Affect Employers?

Guidance issued over the past few months suggests a move towards heightened compliance and enforcement as well as a preference towards a merit-based immigration system for issuance of employment-based visas. Changes will likely require legislation or completing the federal rule making process, both which may take several months. Other changes may be implemented at a faster pace through guidance issued by the various government agencies. At this time,

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employers should work closely with their Miller Canfield immigration attorney to determine a strategy for continued compliance with current immigration laws and enforcement.

We will continue to monitor developments related to the executive order and will update you with any important developments.