

## UPDATED: COVID-19 Immigration And Travel Ramifications

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March 19, 2021

### U.S.-CANADA BORDER CLOSURE

*MARCH 19, 2021 UPDATE: On March 18, 2021, the **Department of Homeland Security announced** that the border between the U.S. and Canada would remain closed to nonessential travel through April 21, 2021.*

On March 18, 2020, the United States and Canada announced that all non-essential travel between the U.S. and Canada will be temporarily suspended.

- Travel between the U.S. and Canada is NOT advised.
- Only Essential Travelers who travel between the US and Canada for employment are still be permitted to travel between the U.S. and Canada.
- No formal guidance has been provided by the CBP as to who is considered to be an Essential Traveler when traveling **from Canada to the United States**. There is unofficial guidance that if an individual has a valid US working visa (such as a TN, H-1B, or L-1), or a commuter green card, that the individual is permitted to commute. This guidance could change at any time if CBP receives additional directions.
- Essential trade and commerce will continue to allow the supply of goods between the U.S. and Canada.
- **Immigration, Refugees and Citizenship Canada** has clarified what qualifies as essential travel: "*Travel for the purpose of obtaining immigration services is non-essential. If you are in Canada, and are seeking to travel to the border in order to make an application for a work permit, study permit or permanent residence, you are asked to consider Federal and Provincial guidelines for self-isolation and social distancing. **Do not travel to the border for these services until further notice.** If you are currently in Canada as a visitor, student or worker, you can apply online to IRCC to extend your temporary resident status. By doing so, you can continue to stay, study or work in Canada while your application is being processed. This is referred to as implied status, and as long as you apply before your current document expires, your current immigration authorizations and conditions remain unchanged. In-Canada services are available through Immigration, Refugees and Citizenship Canada.*" Additional information is available at <https://www.canada.ca/en/immigration-refugees-citizenship.html>.
- **U.S. Citizens, Green Card holders, or those who have a visa in hand can be denied entry to Canada at a land port of entry** if the travel is considered to be "**non-essential travel.**" **U.S. citizens** can also be barred from entry if they have been in a recent hot spot in the past 14 days or if they show symptoms upon arrival. **This measure does not include or apply to Canadian Citizens, Permanent Residents, or First Nations, including family members.** All travelers are required to self-isolate if allowed entry into the country.

### TN VISA RENEWALS IN CANADA AND MEXICO

- As all posts in Canada and Mexico have canceled **nonimmigrant** visa appointments; employees who hold TN status expiring in the next 30 days will NOT be able to process for a TN status renewal at the port of entry or a TN visa renewal at a Consular post outside the United States. Both Canadian and Mexican citizens will be required to renew their TN nonimmigrant status (and the TD status of dependent family members) by filing a petition with the U.S. Citizenship and Immigration Service. As long as a petition is timely filed before the employee's current status

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expires, the employee may lawfully remain in the U.S. and continue employment in the U.S. for up to 240 days while the petition remains pending.

- As Mexican nationals must hold a TN Visa in order to return to the United States after international travel, Mexican nationals with an expired TN visa should NOT depart the United States, even if they receive a TN approval through USCIS, as they will be unable to obtain a TN visa to return to the U.S.
- Canadian nationals do not require a TN visa to return to the United States. However, if the Canadian national departs the United States and the U.S.-Canada border closes, the Canadian national may not be able to return to the United States until the travel ban is lifted.
- *Separately, please also note that Canadian nationals will also be unable to process for L-1 status renewals at the Port of Entry during this time. They will likewise be required to apply to extend their L-1 nonimmigrant status (and the L-2 status of dependent family members) by filing a petition with the U.S. Citizenship and Immigration Service. As long as a petition is timely filed before the employee's current status expires, and they have not used all of their time in L-1 status pursuant to the applicable statutory limit, the employee may lawfully remain in the U.S. and continue employment in the U.S. for up to 240 days while the petition remains pending.*

## **INTERNATIONAL TRAVEL BANS**

### **International Travel Into the United States:**

- U.S. Citizens, Lawful Permanent Residents, and their family members arriving from an impacted area are only permitted to fly to one of 13 designated U.S. airports and must self-quarantine for 14 days after arrival to the United States.
- Foreign Nationals of any country, with qualifying travel to any of the following countries, are prohibited from returning to the US if they visited any of the following countries within 14 days prior to their intended arrival to the U.S.: China, Iran, Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom. Additional information is available at <https://www.dhs.gov/news/2020/03/17/fact-sheet-dhs-notice-arrival-restrictions-china-iran-and-certain-countries-europe>.
- There are currently no prohibitions on domestic travel within the United States.

### **International Travel Into Canada:**

- The Public Health Agency of Canada is recommending that travelers avoid all non-essential travel outside of Canada. All travelers who return to Canada from international travel will be subject to a mandatory 14-day quarantine.
- International students and workers who are outside of Canada and the United States **will not be permitted to board an aircraft to return to Canada**, unless they are the spouse, common-law partner or dependent child of a Canadian citizen or permanent resident. Additional information regarding Canada's COVID-19 travel policies is available at <https://travel.gc.ca/travelling/advisories>.

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## **CBP CLOSES TRUSTED TRAVELER PROGRAM**

Effective **March 19, 2020**, U.S. Customs and Border Protection (CBP) has temporarily suspended operations at Trusted Traveler Program enrollment centers nationwide, continuing until at **least May 1, 2020**.

- This temporary closure includes all public access Global Entry enrollment centers, NEXUS enrollment centers, SENTRI enrollment centers and FAST enrollment locations.
- Global Entry mobile enrollment events are also paused until further notice.
- Conditionally-approved applicants who seek an enrollment center interview will need to reschedule after May 1.
- CBP will continue to monitor the situation in order to resume enrollment centers interviews as soon as possible

Additional information can be found at <https://www.cbp.gov/newsroom/national-media-release/cbp-temporarily-closes-trusted-traveler-program-enrollment-centers>.

## **USCIS FIELD OFFICE CLOSURES**

Effective March 17, 2020, USCIS has suspended all routine face-to-face services with applicants at **ALL** USCIS offices in the United States **until at least April 1, 2020**.

- All USCIS field offices, asylum offices and Application Support Centers (ASCs) are included.
- All adjustment of status interviews, naturalization ceremonies and biometric collection appointments are canceled and will be rescheduled as soon as services resume.
- USCIS will send new appointment notices to individuals impacted by closures.

## **U.S. CONSULAR POST CLOSURES**

As of March 17, 2020, all Consular posts throughout the world have canceled all nonimmigrant visa appointments for at least 30 days or until further notice. **India** has canceled all nonimmigrant and immigrant visa appointments. Applicants who have paid the MRV fee can apply the fee towards a future visa interview appointment scheduled within one year of payment of the MRV fee. Some posts continue to process immigrant visa appointments on a limited basis.

- **Mexico:** Applicants with **nonimmigrant and immigrant** visa appointments will receive cancellation notices by e-mail. **Emergency travel appointments are available** on a **very limited basis** by requesting an emergency appointment.
- **Canada:** The Consulate General in Montreal continues to process immigrant visas but depending on staffing capacity and host government restrictions, may need to reduce routine immigrant visa appointments. Applicants will be notified by the post as quickly as possible should it be necessary to reschedule. **Emergency travel appointments are available** by following the guidance at [https://ais.usvisa-info.com/en-ca/niv/information/faqs#need\\_earlier\\_appt](https://ais.usvisa-info.com/en-ca/niv/information/faqs#need_earlier_appt).
- **India:** As of March 13, 2020, all immigrant and nonimmigrant visa appointments scheduled on Monday, March 16, 2020, onward have been canceled. Once the posts are able to resume regular consular operations, appointments will be made available and individuals will be able to reschedule. Further information is available at <https://in>.

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usembassy.gov/alert-cancelling-of-immigrant-and-nonimmigrant-visa-appointments.

- **China:** As of February 3, 2020, all routine immigrant and nonimmigrant visa appointments are canceled. Routine visa services will resume as soon as possible. **Emergency appointments are available** by following the guidance provided at <https://www.ustraveldocs.com/cn/cn-niv-expeditedappointment.asp>.

### **MAINTENANCE OF NONIMMIGRANT H-1B STATUS DURING COVID-19:**

As an increasing number of U.S. employers are offering or requiring employees to work from home for a temporary period, H-1B employees must be sure to continue to maintain their status during the COVID-19 outbreak.

- Employers must afford H-1B workers with working conditions "*on the same basis and in accordance with the same criteria as it affords to its U.S. worker employees*" pursuant to 20 C.F.R. §655.732(a). Therefore, if an employer allows U.S. workers the option to work from home during the COVID-19 pandemic, the employer must also afford this option to H-1B employees.
- H-1B employees cannot be "benched" if there is no work available during the quarantine, and must be paid for any unproductive time in order to maintain their status. H-1B employees placed on involuntary, unpaid leave will risk disruption of their maintenance of status.
- H-1B employees **ARE permitted to work from home**. However, if an employee works from home, LCA regulations require that LCA posting notices be posted at the employee's home before beginning work at home, and then stored in the employer's Public Access File after they are taken down.
- If the H-1B employee works from home, and the employee's home is considered to be within the same Metropolitan Statistical Area ("MSA"), a new LCA does not need to be filed for the new worksite location, but the employer should post the required notices at the employee's home for ten consecutive business days, and the posting notices must be placed in the Public Access File when taken down. A MSA is defined as the area within normal commuting distance of the place (address) of employment where the H-1B nonimmigrant is or will be employed. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., normal commuting distances might be 20, 30, or 50 miles).
- If the employee's home is outside the MSA in which his or her worksite is located, then there may be a "short-term" placement option which allows the employer to place the H-1B worker for up to 30 workdays each year at a temporary worksite, such as the employee's home. However, there are additional requirements that require that the employer pays for "*the actual cost of lodging (for both workdays and non-workdays)*" and "*the actual cost of travel, meals and incidental or miscellaneous expenses (for both workdays and non-workdays)*."
- If the employer anticipates that the quarantine will last longer than 30 workdays such that the short-term placement rule will be exhausted, and the employee cannot return to the approved worksite reflected in the existing H-1B petition, the employer will need to file an amended H-1B petition to authorize employment at the new work location which includes filing a new LCA for the home office work location.

### **COMPLIANCE WITH DEPARTMENT OF LABOR NOTICE REQUIREMENTS**

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- Employers filing H-1B petitions and PERM applications during the quarantine must comply with the Department of Labor notice requirements in both the H-1B and PERM context. Any required notice must be visible to U.S. workers, however if the entire office is working remotely due to quarantine, the notice cannot be considered to be visible to U.S. workers.
- In general, the Department of Labor uses a good faith compliance standard in enforcing both LCA and PERM regulations.
- In the H-1B context, employers who wish to take a conservative approach can provide the required notice to workers electronically, either through posting the notices on the company's intranet or, by direct email to employees. Employers can continue to place a hard copy posting at the worksite, if there are still some workers at the worksite.
- In the PERM context, there are no permissible alternatives to the hard copy notice posting requirement, which provides the required notice to U.S. workers. If time permits, employers should wait until after the quarantine to post the required notice at the work location.

### **RECEIPT OF STATE UNEMPLOYMENT BENEFITS DURING COVID-19:**

- Lawful nonimmigrants affected by COVID-19 who receive **STATE** unemployment benefits, will NOT be impacted by the Inadmissibility on Public Charge Grounds Final Rule that went into effect on February 24, 2020, as the public charge ground of inadmissibility only applies to the receipt of **FEDERAL** public benefits.

### **ICE GUIDANCE ON COVID-19:**

As of March 17, 2020, Immigration and Customs Enforcement (ICE) announced that there are no confirmed COVID-19 cases in ICE detention facilities and is screening new detainees.

- ICE has temporarily suspended social visitation, but non-contact legal visitations will continue to be permitted.
- Enforcement priorities have been adjusted to focus on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those who do not fall into these categories, ERO will exercise discretion to delay enforcement actions until after the crisis, or utilize alternatives to detention, as appropriate.
- ICE will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances during the COVID-19 outbreak. Individuals should not avoid seeking medical care because they fear civil immigration enforcement.

This is part of a series of our COVID-19 alerts providing clients with practical advice on measures they can take to navigate through these troubled times. Please contact the authors or your Miller Canfield attorney with further questions.

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*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*