

SUMMARY

Navigating Employee Visas

Many U.S. companies rely on foreign workers to fill critical skills gaps and advance innovation. Under the current federal administration there is a broad effort to reduce immigration, which creates challenges for employers who rely on the visa process to attract and retain the necessary talent to run and expand their businesses.

Littler's 2025 Employer Survey found that 58% of U.S. employers are concerned about potential staffing challenges due to immigration-related regulatory changes, while 70% expect enforcement from Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) to have a significant or moderate impact on their workplaces. Adopting best practices for attracting, hiring and retaining foreign-born employees can help employers navigate the changing worker visa landscape and reduce risks to their business operations.

WHAT IT IS

U.S. companies can sponsor foreign workers through employer-based visas, which include the H-1B visa for highly-skilled workers in specialized occupations; the L-1 visa for transferring workers to different roles within a company; the O-1 visa - known as the 'genius visa' - for individuals with extraordinary abilities in the sciences, arts, film, education, business, or athletics; the J-1 Exchange Visitor Visa for foreign workers who will be part of a specific project and will then return to their home country; and the TN visa for Mexican and Canadian professionals. H1-B visas are the primary pathway for highly skilled workers from outside the United States to work long term in the U.S.

In addition to the visa process that brings individuals selected by a company to the United States, some immigrants who independently arrive in the U.S. are granted Employment Authorization Documentation (EAD) while their applications for residency or citizenship proceed through legal channels. Individuals with current EADs as well as Green Card holders are allowed to seek employment in the United States.

The U.S. Department of State is responsible for allocating visas while the Department of Homeland Security through its U.S. Customs & Immigration Services (USCIS) manages the application and determination process. The Office of Immigration and Customs Enforcement (ICE) is responsible for enforcement.

Over the past year, significant changes have been made to foreign worker visa application processes, rules and requirements that increase the cost, time and complexity of obtaining employment-based visas. Additionally, changes to enforcement of immigration rules and labor laws are resulting in more federal audits of U.S. companies where noncompliance with immigration rules is suspected and a significant rise in workplace raids carried out by ICE. Together, these changes create new risks and liabilities for U.S. businesses that rely on or seek to expand their domestic workforce with skilled foreign workers.

Relevant federal directives released in 2024 and 2025 include:

- Executive Order 14161 requires federal agencies to improve the screening and vetting process for foreign nationals and mandates a review of existing visa programs.
- The America First Trade Policy calls for a review of existing trade agreements, including the U.S.-Mexico-Canada Agreement, which could affect TN visas.
- A Presidential Proclamation issued on June 4, 2025 blocks or restricts entry to the U.S. for citizens of 19 countries, including those with visas.
- A Presidential Proclamation issued on September 19, 2025 requires payment of a \$100,000 fee for new H-1B visa holders from outside the United States.
- In December 2025, DHS amended regulations governing the H-1B work visa selection process replacing the long-standing random lottery with prioritization of visas to higher-skilled and higher-paid individuals.
- A Department of Justice memo on "Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement" calls for civil and criminal prosecution of employers found to be in violation of foreign and immigrant employment rules.
- As of January 21, 2026, visa processing will be indefinitely halted in 75 countries.

WHAT IT DOES

As a result of these changes, businesses should expect the visa application process to take longer, cost more, and require additional evidence for why a foreign worker is needed. This is due to a combination of increased scrutiny of applications and reduced staffing at agencies responsible for processing applications. Businesses should also expect a higher rate of rejection.

Companies with international offices should plan for an impact on their foreign employees' abilities to obtain timely work authorization or nonimmigrant visas necessary to enter the U.S. for meetings and trainings.

Best practices can be adopted that reduce a business's risks associated with changing immigration rules, processes and policies, including:

- **Consult with Immigration Attorneys:** An attorney with expertise in immigration law can help businesses stay up to date on regulatory and policy changes and provide consultation on, or manage, the visa application process.
- **Proactively evaluate talent needs and develop strategic talent pipelines:** Identify areas where foreign workers are critical and explore H1-B visa alternatives; develop alternative business strategies or recruiting pathways that do not rely on foreign talent coming to the U.S.
- **Establish a comprehensive I-9 compliance policy:** Train HR and Legal teams on Form I-9 compliance and record retention rules; utilize USCIS's I-9 Employment Eligibility Verification tool (<https://www.uscis.gov/i-9>); and, routinely conduct internal audits to ensure compliance and correct errors.
- **Establish an Immigration and International Employee Policy:** Develop clear policies on sponsorship processes, timelines, compliance requirements, costs, and alternative visa strategies as well as an employer-sponsored green card policy. Plan for increased budgets to HR and Legal to ensure up-to-date compliance with federal law and policies. Include recommendations on employee social media use and international travel.
- **Work closely with employees on visas to ensure compliance:** New rules and policies require that individuals in the U.S. on a visa not participate in "anti-American" activities, such as protests or posting political content on social media. These actions can now be grounds to revoke a visa or green card.

- **Develop a response plan in the event of an ICE raid:** Assign and train a designated employee or group to lead the ICE raid response and consult an attorney to ensure the plan follows all relevant laws.

WHO USES IT

Amazon	Google
Meta	JPMorgan Chase
Microsoft	Cisco

WHERE TO FIND OUT MORE

[Outsolve](#)

[SHRM](#)

[Employment Practices Solutions](#)

[Corporate Compliance Insights](#)

[USCIS](#)

[Forbes](#)