

RECENT BUSINESS IMMIGRATION LAW CHANGES

In recent months there have been major changes in immigration law affecting both small and large employers. In today's diverse workplace, many employers hire foreign nationals for skilled, technical, and professional positions in various sectors, including health care, hospitality, technology, and research and development. Employers need a basic understanding of the process for ensuring that applicants and employees who are foreign nationals have a legal right to work in the United States. Employers must also keep abreast of constantly changing immigration laws that may restrict their ability to hire foreign nationals for certain positions and impact the employment eligibility of existing employees.

Electronic Completion and Storage of I-9 Forms

On October 30, 2004, President Bush signed a new law that permits employers to electronically store I-9 forms. This measure also allows the use of handwritten or electronic signatures in completing those forms.

Under the law, employers have the option of using an electronic I-9 format, but they must still review original documentation to confirm each individual's identity and employment eligibility. Furthermore, employers must continue to retain I-9 forms for three years from the date of hire or one year after date of termination, whichever is later. Converting to an electronic I-9 completion and storage system is expected to substantially reduce the volume of paperwork for large employers.

This law takes effect April 30, 2005, unless the Department of Homeland Security issues final regulations for prior implementation.

J Waiver Program For Physicians

On December 3, 2004, President Bush signed legislation extending the "Conrad 30" J-1 waiver program for foreign-born physicians. Under the program, J-1 physicians pursuing graduate medical training in the United States are exempted from the requirement that they return to their home countries for two years following the J-1 program.

To be eligible for the waiver, J-1 physicians must agree to work for three years in an area designated by the U.S. government as having a shortage of healthcare professionals. This program has been extended several times, and the new law extends it until June 1, 2006.

H-1B Visa Changes

On December 8, 2004, President Bush signed the Omnibus Appropriations Bill, which includes changes to the H-1B visa category. H-1B visas are often used by businesses to employ professional workers in specialty occupations. These changes take effect on March 8, 2005.

Filing Fees. The law imposes a new fee on employers filing petitions on behalf of H-1B workers; this fee is intended to fund training for U.S. workers. For employers with 25 or fewer full-time employees, the fee is \$750; for those with more than 25, it has increased to \$1,500. This fee is in addition to the current \$185 filing fee as well as the \$1,000 fee for expedited (15-day) processing. Failure to include the appropriate filing fee with the petition will cause the petition to be rejected and returned to the employer or its legal counsel.

Some employers are exempt from this new fee. These include institutions of higher education and related non-profit organizations, non-profit and governmental research organizations, employers filing for a second extension of stay for an H-1B worker, primary or secondary education institutions, and non-profit entities engaged in curriculum-related clinical training of students.

The new law also imposes a \$500 "fraud" fee for employers filing either an initial petition for an H-1B or L visa or for a change of status petition. The fee will also be charged for an alien filing a visa application abroad for an L Blanket Petition. This new fee is intended to fund anti-fraud investigations.

H-1B Cap Exemption. The new law exempts some individuals graduating from a U.S. college or university from the H-1B visa cap, which for FY 2005 is 65,000. Specifically, the first 20,000 H-1B petitions filed on behalf of individuals who have earned a master's degree or higher from an institution of higher education will not be subject to the H-1B cap.

Prevailing Wage Calculation. Finally, the new law changes the prevailing wage rate calculation. Under present law, employers are required to pay H-1B employees at least 95 percent of the average wage for the position in the geographic area where the employee works. The new law mandates that employers pay 100 percent of the prevailing wage rate.

L-1 Visa Changes

The Omnibus Appropriations Bill also changes the L-1 visa category, used by employers to transfer employees from foreign to U.S. entities of the same employer.

L-1B Visa Holder Restrictions. The new law prohibits placement of L-1B "specialized knowledge" workers "primarily" at the work site of a third-party employer under two conditions: first, if the visa holder is controlled and supervised by an unaffiliated employer; and second, if placing the visa holder at the site is part of an arrangement to provide labor for the third party and not connected to providing a product or service involving specialized

knowledge specific to the employer.

These new restrictions are designed to prevent "job shops" from using the L-1B category. They apply to initial, extended, and amended petitions filed on or after the effective date of the law. They will take effect on June 8, 2005.

L-1 Blanket Petitions. There are also changes in L-1 Blanket Petitions. These petitions are often used by large employers to transfer foreign nationals from foreign to U.S.-related corporate entities. Under the new law, all initial L-1 Blanket Petitions filed on or after December 8, 2004, will require the beneficiary to have been employed by the related foreign corporate employer for at least 12 months. Previous law required six months of employment with the foreign corporate employer.

Filing Fees. As with H-1B petitions, there will be an additional \$500 "fraud fee" for initial L-1 petitions and change of status petitions.

Please contact us if you would like to discuss how these immigration law changes affect your company or institution.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

N | P Employment Group

CHARLESTON 843.577.9440

George Finnan
Molly Hughes

CHARLOTTE 704.339.0304

Alex Barrett
Beth Langley

COLUMBIA 803.771.8900

Mike Brittingham
David Dubberly
Susan Edwards
John Emerson
Vickie Eslinger
William Floyd
Joan Hartley
Jamie Hedgepath
James Leventis
Regina Lewis
Angus Macaulay
Susi McWilliams
Nikole Mergo
Sue Odom
Sam Painter

GREENSBORO 336.373.1600

Alex Barrett
Brian Clarke
Dan Koenig
Beth Langley
Peter Pappas
Bill Wilcox

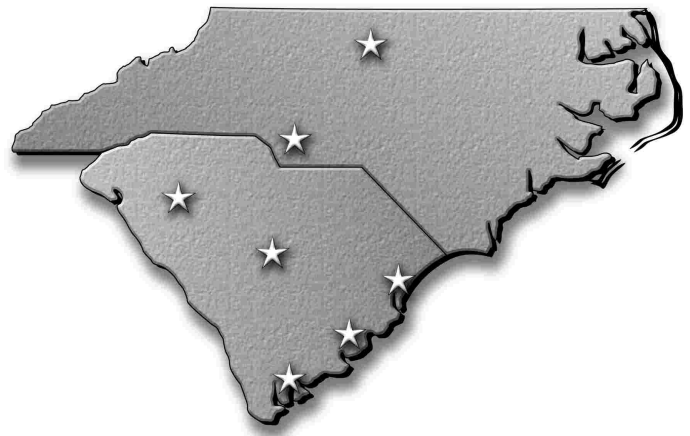
GREENVILLE 864.370.2211

Grant Burns
Leon Harmon
Rusty Infinger
Will McKibbin
Michael Pitts
Tom Stephenson

HILTON HEAD 843.689.6277

Melissa Azallion

NEXSEN | PRUET ADAMS KLEEMEIER



The Carolinas Law Firm