



UPDATE! Employment Alert: Many Questions Regarding the Current Status of Immigration

UPDATE April 23 - President Trump signed an Executive Order on April 22, suspending the entry of some applicants for permanent residency (green cards) to the United States for a period of 60 days, with the possibility of extensions beyond that time period. For now, this only affects those outside of the US, applying to enter in permanent residency status. However, the Order also states that within 30 days of the effective date (April 23), other measures could be considered to limit nonimmigrant programs, which includes H1Bs, L1s, and other temporary workers. The Order provides a carve-out for healthcare workers, investors, members of the military, refugees, and asylees. Since US consulates abroad remain closed, it is uncertain how this Order will limit any visa processing over the next 60 days, unless the government opts to open some consulates on a limited by need basis. Please contact **Immigration Attorney Diane Hernandez** with any specific questions.

Our offices are currently receiving a high volume of questions about the administration's announcement of an upcoming temporary suspension of immigration to the United States. We are monitoring the situation and we are happy to answer any individual questions you may have about your situation or that of your employees.

It is important to remember a couple of points during this time:

- No executive order has been signed yet. President Trump has indicated via tweet and in a recent press conference that an order will be signed, but that has not yet happened. It is likely that the order is being drafted now, and will pass through the administration's legal department before being signed, possibly this week.
- The president mentioned during his daily press conference on April 21 that the duration of the proposed suspension will be 60 days, with the possibility of an extension thereafter; it will only apply to those seeking Green Cards, and will not apply to those seeking temporary work visas. The rationale of this proposal is not entirely clear, but it is likely that the administration will follow up with more explanation.

- It is possible that workers in some industries deemed critical or essential could be exempted from this latest ban. In the press conference April 21, the president indicated that farmers, for example, will not be affected by the executive order. It is possible that healthcare workers could also be exempted, although the administration has not indicated that specific industry yet.
- The executive branch at the Federal level has analogous emergency powers to protect public health as governors have at the state level, since both these executive emergency powers stem from the police power inherent to the executive under our common law tradition.
- Emergency actions issued under police power to protect public health have limits in common law; such emergency actions need to be narrow in time and narrow in scope, and they need to be closely connected to demonstrable public health concerns (examples may be something like suspending all international flights to the U.S. for two weeks, or suspending issuance of visas from specific countries with a large number of COVID-19 cases for a period of one month, etc.). Such emergency actions would likely be upheld by the courts as a legitimate exercise of police power, whereas suspending immigration indefinitely would likely not pass constitutional or common law standards.
- Apart from orders of this type, the President cannot change statutes of the United States with executive orders, including immigration statutes. Changes at this level would require congressional action. If the executive order crosses constitutional or common law boundaries, it is very likely that it will be challenged in federal courts, which could issue immediate restraining orders as they have done for other illegal attempts to use executive power.

This is a challenging time. As news arrives quickly, along with misinformation and rumors, it can be difficult for those impacted by the news. We hope that our availability to you and the knowledge that we are staying up to date with any developments during this time will offer some peace of mind. Please contact **Immigration Attorney Diane Hernandez** with any specific questions.

If you need any assistance or have any questions regarding other issues, please contact your Hall Estill Attorney directly.

Practices

- Employment-Based Immigration