

What the coronavirus shutdown means for immigrant workers

BY

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Faced with indeterminate delays and circumstances changing by the day, businesses that rely on immigrant workers have been frantically communicating with their legal teams in recent weeks as the impact of [the coronavirus pandemic](#) has spread.

Diane Hernandez, a Denver-based lawyer at Hall Estill, said one university she works with was expecting a Chinese researcher to arrive March 1 to helm a large summer project. His H-1B visa was approved in December, but as his start day approached, he could not obtain the visa at the U.S. consulate in China because of the [coronavirus-related travel ban](#). Now, the researcher, his family, and the university are all on hold, waiting to see what will happen.

“There will likely be issues when he finally does enter that will have to be dealt with, specifically getting some leeway from U.S. immigration on his entry date and having missed a number of weeks or months in his H1B status,” says Hernandez, who has fielded many panicked emails from clients in the last few weeks.

The processing speed for employment visas, and immigration benefits in general, had already decelerated under the Trump administration with more requests for additional documentation and other evidence that were not typical in the decades prior.

“Even before COVID-19, many of our partners in the business community were worried about USCIS processing of work-related immigration visas. Wait times, labor certifications, and other issues seemed to spring up at every turn,” says Ali Noorani, executive director of the National Immigration Forum.

Now, further delays are expected during the pandemic response, and employers and employees alike are faced with tough decisions.

“There are all kinds of ramifications. Some companies are worried about having work available for people to do because the economy’s going downhill so quickly, and how to handle their staff in the best way,” says Susan Cohen of Mintz law firm. “On the other side, some businesses are still desperate for people, key hires that they’ve gone to great trouble and expense to retain, and now their visa is approved but they can’t get here. In some cases we’re talking about executives and top managers.”

U.S. Citizenship and Immigration Services offices for in-person interviews, biometric appointments, and other activities are

temporarily closed, but the agency service centers that handle things like the H-1B lottery process and visa adjudications are still operating.

“If they start laying people off or furloughing workers, or otherwise close the service centers where they do the adjudication that would have a huge impact,” Hernandez says.

While employment, student, and other visa applications are moving forward, they will not be issued until consulates reopen to the public and travel bans are lifted.

“For larger companies it might not be such a big deal, but for the little start-ups that have fewer than 10 employees, to not have one team member can be really detrimental. The uncertainty is really tough on employers,” says San Francisco-based attorney Jennifer Burk.

Depending on the visa category, rules can vary widely. Furloughed H-1B employees, for example, must still be paid even if they are not working as long as they are under contract. Laid off visa holders typically have 60 days to adjust their status, such as securing a different job or applying for enrolling in school, before they are required to leave the country.

From technology companies, to medical services and food production, the COVID-19 pandemic is expected to strain a wide range of industries reliant on immigrant labor.

“One area of great concern these days is coming from agricultural interests who utilize the H2A program,” Noorani says. “With harvest season looming and the State Department not conducting interviews, growers are worried about their labor supply.”

This year, USCIS implemented a brand new H-1B lottery system that pushes the old April 1 deadline for final applications out to June 30. Meanwhile, USCIS recently suspended premium processing, which allows employers to pay \$1,440 per application for a guaranteed response in 15 days, otherwise a decision can take months.

“The new June deadline might offer more time, but it could end up as a negative for employers who can’t do premium processing, are not given the option, or can’t afford it,” Hernandez says. “That will likely push approval past the October 1 start of the new visa period. Someone, who is converting from student to H-1B, for example, may run out of status before the new visa is approved and would be required to leave then come back. It’s a whole domino effect.”

USCIS has made some allowances for filings, including a March 20 announcement to accept copies of signed I-9 work authorization forms in lieu of original documents until normal worksite operations resume.

“I tell my clients to take it day by day because things are changing so fast. The best thing to do is document everything, keep track of what you’re doing and why,” Hernandez says. “I think that the government

understands how detrimental it would be to totally cease processing work visas, not just to small entrepreneurs but to big companies like [Microsoft](#) that use tons of H-1B workers.”