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IMMIGRATION ALERT | NIXON PEABODY LLP

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## COVID-19 creates unique immigration and worksite compliance issues for employers and foreign nationals

By Rachel Winkler, John Sandweg, and Courtney New

The international response to COVID-19 is causing significant hardship for employers and foreign national workers and will prevent many employers, petitioners, and visa applicants to experience longer-than normal processing times for U.S. Citizenship and Immigration Services (USCIS)-related petitions and applications. Overseas visa applicants now face significant challenges due to international travel bans and the closure of many U.S. embassies to visa interviews. At the same time, the implementation of remote work policies creates compliance issues for employers of a foreign national workforce. Recent developments include:

- USCIS [issued notice](#) that they are suspending in-person services across the country, including at field offices, asylum offices, and application support centers effective today, March 18, 2020, through at least April 1, 2020, but may be subject to extension. This means adjustment of status (green card) and naturalization interviews, for example, will need to be rescheduled, and biometrics (or fingerprinting) appointments will be severely delayed. The suspension of biometrics will, in turn, cause delays in the adjudication of Employment Authorization Document (EAD) applications and similar immigration benefits, which have already been experiencing severe delays in processing.
- All previously scheduled USCIS appointments for fingerprints, interviews, as well as naturalization ceremonies that are impacted by this closure, will be automatically rescheduled when USCIS operations resume. Applicants and petitioners will receive a new notice indicating appointment time, date, and location.
- The Department of Labor (DOL) will continue to process [Labor Condition Applications](#) (required for H-1B visa sponsorship), as well as PERM Labor Certifications (required for green card sponsorship), but as noted below, employers will no doubt face challenges in their continued sponsorship of some foreign national workers.
- Various U.S. Department of State (DOS) embassies and consulates are suspending non-immigrant and immigrant (green card) visa adjudications in multiple locations in Europe and the [United Kingdom](#), Asia, and Canada. Individuals with immigrant visas who are now

prohibited from traveling to the United States will be eligible for extensions should those visas expire while a travel ban is in place. DOS is regularly updating [country-specific information](#) about the impact of COVID-19 on consular operations.

### **Remote work compliance issues**

While the USCIS service centers remain operational at this time, the implementation of work from home requirements will undoubtedly raise compliance questions for employers of H-1B workers. Specific H-1B Labor Condition Application requirements regarding work location and number of hours worked create complications for employees shifting to remote work arrangements. Further, the filing of an H-1B petition requires that adequate notice be provided to U.S. workers regarding the sponsorship of H-1B workers, raising the question of how to legally provide notice to an empty worksite. A similar notice requirement applies to the PERM Labor Certification, or “labor market” test required for the green card sponsorship of many foreign national workers.

Employers and/or foreign nationals facing immigration compliance issues as a result of COVID-19 should be sure to consult with immigration counsel regarding their options. While there will certainly be delays and immigration challenges, it is critical that foreign nationals continue to maintain lawful status, and that employers remain vigilant in maintaining the employment authorization of their foreign national workers.

For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney, or:

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