

**March 17, 2020**

# **COVID-19 Immigration Considerations for Employers**

## **Related Practices**

COVID-19 Resource Center  
Immigration  
Labor & Employment Relations

Employers implementing Novel Coronavirus (COVID-19) protocols should consider U.S. immigration requirements for their foreign national employees. Remote work arrangements, layoffs, and shortened internship programs may pose challenges for employees working pursuant to E-3, F-1, H-1B, and J-1 immigration statuses. Employees waiting for work visas or those with pending immigration cases may also be affected. In addition to travel restrictions, USCIS office and U.S. Consulate closures will likely increase processing times for immigration cases.

Even employers without sponsored foreign national employees should consider Form I-9 processing requirements. All Form I-9 documents for new hires and for reverification must be performed in person. The employee must present the original document(s) to the employer representative. Current government instructions state that employers may not complete the Form I-9 document review process via Skype or other electronic method.

While the situation remains fluid and we do not know how various government agencies will enforce applicable rules, employers are advised to consider the issues below.

### **H-1B Workers**

H-1B work authorization covers specific work locations, with each worksite address listed in the Labor Condition Application (LCA) connected to the case. Although there is some flexibility in the rules for “short term placements” such as working from home occasionally or visiting a client site, all worksites where the H-1B employee will spend more than 10 consecutive business days should be “covered” for H-1B purposes, including home “worksites.” If your H-1B employees need to work from home for more than two weeks, we recommend that they post their existing certified Labor Condition Application (LCA) at their homes. By posting at their home address, they will cover that location as an authorized H-1B worksite, assuming they live within a normal

commuting distance of the worksite location listed on the LCA.

In addition to worksite rules, employers must also consider H-1B “benching” rules if employees will not be paid during COVID-19 related shutdowns. Under the “benching” regulations, whenever an H-1B employee is not performing work or not in productive status *due to a decision by the employer*, the employee must still continue to receive the wage listed in the LCA filed for the H-1B petition, even if U.S. workers are not paid during such times.

Note that the H-1B worksite and benching rules also apply to E-3 and H-1B1 visa holders.

### **F-1 OPT and STEM OPT Workers**

There are limits to the amount of unemployment allowed for F-1 international students working pursuant to Optional Practical Training (OPT) and STEM OPT status. OPT workers may have up to 90 days of unemployment during their one-year OPT period without losing status. F-1 OPT workers must notify their Designated School Official of any period of unemployment during their one-year OPT authorization.

STEM OPT workers are allowed an additional 60-day unemployment period, so they may have a total of 150 days of unemployment during their three-year OPT period without losing status. *Employers* must notify the STEM OPT worker’s Designated School Official if terminating the worker before the end of his or her STEM OPT authorization.

### **J-1 Interns and Trainees**

J-1 interns and trainees must notify their J-1 Program Sponsor if terminating their J-1 program early. J-1 visa holders have up to 30 days to depart the United States following their termination date.

### **Employees with Pending Immigration Cases and International Travel Plans**

USCIS offices nationwide are limiting or cancelling scheduled appointments. Individuals with upcoming interview or biometrics appointments should contact their attorney for guidance.

Many U.S. Embassies and Consulates have closed worldwide, and we expect such closures will continue. Individuals with visa appointments or those who are planning to travel should plan for visa appointment delays and/or rescheduling. The Department of State website contains useful information on COVID-19 related closures and travel advisories that can be found on [travel.state.gov](https://travel.state.gov). Links to U.S. Embassy and Consulate websites can be found on [usembassy.gov](https://usembassy.gov).

Please contact Kelly Fortier, José Olivieri, or Kelly Rourke with questions or concerns.

### **Related People**

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