

How New Immigration Policies Could Affect Your Workforce

Feb 09, 2018

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Publications

With immigrants to the United States making up an important part of Tennessee's manufacturing workforce, changes in immigration laws (and their enforcement) are naturally of keen interest to the employers who must comply with them. But amid the various proposals, counterproposals, executive orders and court rulings, it hasn't been easy to keep up with where things stand now.

At our November "Tennessee Manufacturing Beyond the Box" lunch-and-learn session, Peggy Shukairy, an immigration attorney with Frost Brown Todd, provided some updates on how new policies may impact the workforce.

DACA

Under the Deferred Action for Childhood Arrival (DACA) program, approximately 800,000 people who were brought to this country as children have been able to remain in the U.S. and apply for an employment authorization document (EAD). Now, as the Trump administration winds down the program, no new applications are allowed. However, Shukairy said, that doesn't change the status of their EADs.

Do not terminate anyone with a valid DACA-based EAD, Shukairy advised. "You cannot discriminate against someone who has a valid document to work." Instead, employers should re-verify their I-9 forms on or before the DACA-based EAD expires; in some cases, she said, that EAD may run until 2020. Employers should also have a system in place to give employees ample notice of when their EAD will expire. Then it becomes the employee's responsibility to provide the necessary reauthorization documents.

H-1B Visas

President Trump's "Buy American, Hire American" executive order, issued in April of 2017, has impacted the awarding of H-1B visas to skilled foreign workers – an area that Shukairy believes will be of

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particular interest to many Tennessee manufacturers.

The H-1B visa is designed for workers in specialty occupations which require at least a bachelor's degree or its equivalent in a specific area of knowledge. Engineers and accountants, Shukairy explained, would qualify for the visa; janitors would not.

In particular, Shukairy said, the federal government is now applying much greater scrutiny to H-1B petitions that propose to pay "Level 1" wages for entry-level employees. To ensure that the job really requires a bachelor's degree and/or that the Level 1 wage is appropriate, the government is frequently requesting additional documentation. Employers, said Shukairy, now are seeing many more requests for evidence which has increased the processing time and costs for the H-1B petition. They also are receiving more site visits — especially those who employ a higher percentage of foreign workers or who have employees working offsite.

Worksite Inspections

Worksite enforcement, Shukairy said, is more of a priority overall under the Trump administration. One executive order calls for the hiring of 10,000 new agents for this purpose. "They will quadruple or quintuple worksite enforcement," Shukairy said, focusing especially on I-9 verification and conducting warranted searches when there is reasonable cause to suspect human smuggling, identity theft, or tax evasion. "They are going after criminal behavior, as the Obama administration did," said Shukairy, "*and* unauthorized workers, which is a new focus." There have been a significant number of 'collateral' arrests of individuals they think are undocumented.

To prepare themselves for the increased likelihood of worksite enforcement visits, Shukairy said, employers should have a plan in place, "just as you would have a plan in place for dealing with OSHA inspections. The plan should aim to minimize disruption to your operations while cooperating with agents. For example, if they're looking for a particular individual, plan to bring that person to the agents rather than have them go onto the plant floor."

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By way of overall guidance, Shukairy suggested, “Agencies are reviewing to guard against fraud and strengthen enforcement. This issue isn’t going to recede.”

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