

COVID-19 Travel Bans Dropped and Vaccine Requirements Issued

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President Joe Biden issued a Presidential Proclamation on October 25, effective November 8, revoking country-specific suspensions and limitations on entry. The Proclamation suspends and limits the entry by air travel of certain individuals who are not fully vaccinated against COVID-19, with limited exceptions.

The suspension and limitation apply to those noncitizens who are nonimmigrants, who are not fully vaccinated against COVID-19, and who are traveling to the U.S. by air. The Proclamation does not apply to U.S. citizens, U.S. nationals, U.S. lawful permanent residents, immigrants, and those individuals not traveling to the U.S. by air. Further, the Proclamation exempts a number of nonimmigrants, such as:

- Persons on diplomatic or official foreign government travel.
- Children under 18 years of age.
- Persons with documented medical contraindications to receiving a COVID-19 vaccine.
- Participants in certain COVID-19 vaccine trials.
- Persons issued a humanitarian or emergency exception.
- Persons with valid visas, excluding B-1 (business) or B-2 (tourism) visas, who are citizens of a foreign country with limited COVID-19 vaccine availability.
- Members of the U.S. Armed Forces or their spouses or children (under 18 years of age).
- Sea crew members traveling with to a C-1 and D nonimmigrant visa.
- Persons whose entry would be in the national interest, as determined by the Secretary of State, Secretary of Transportation, or Secretary of Homeland Security (or their designees).

A full description of the exemptions can be found in the Presidential Proclamation.

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Fully vaccinated nonimmigrants should confirm their COVID-19 vaccine and proof of vaccination are acceptable to board a flight to the U.S. Additionally, all air passengers older than two (regardless of citizenship or vaccination status) must show a negative result of a COVID-19 viral test or documentation of recovery from COVID-19 prior to boarding a flight. Additional information regarding an air traveler's proof requirements can be found here.

U.S. land border restrictions are also lifted. Starting November 8, DHS will also allow fully vaccinated non-citizen travelers from Mexico and Canada who have appropriate documentation to enter the United States via land ports of entry (POE) and ferry terminals. Non-citizen travelers should be prepared to: (1) provide proof of COVID-19 vaccination and (2) verbally attest to their reason for travel and COVID-19 vaccination status during a border inspection.

Croatia Becomes the 40th Country Member of the Visa Waiver Program

On September 28, the Secretary of Homeland Security, in consultation with the Secretary of State, designated Croatia as the 40th country eligible to participate in the Visa Waiver Program (VWP). The VWP allows eligible citizens, nationals, and passport holders from VWP participating countries to apply for admission to the U.S. at U.S. ports of entry as nonimmigrant noncitizens for 90 days or less for business or pleasure without first obtaining a nonimmigrant visa. A participating country must meet various requirements to be considered for designation in the VWP. Currently there are 40 VWP designated countries.

The Electronic System for Travel Authorization (ESTA), an automated system that determines the eligibility of visitors to travel under the VWP, will be updated no later than December 1, 2021, to allow citizens of Croatia to apply under the Program. Authorization through ESTA does not determine whether someone is admissible to the U.S.; the Customs and Border Protection officers determine admissibility upon travelers' arrival. ESTA authorizations are generally valid for two years and can be renewed. Additionally, all travelers must have an e-passport to use the VWP. Travelers with

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valid B1/B2 visas should continue to use their visa for travel to the U.S.

DHS Issued a Memorandum Ending Mass Worksite Operations and Refocusing on Employer Accountability

The Department of Homeland Security (DHS) shifts its focus away from immigration raids at worksites to creating policies that focus on employer accountability. On October 12, the DHS Secretary issued a memorandum seeking to prevent worker exploitation and highlight workplace violations such as the payment of substandard wages, unsafe working conditions, facilitating human trafficking and child exploitation.

The DHS noted that its worksite enforcement efforts have an impact on the well-being of individuals and the fairness of the labor market. To this end, it will no longer conduct mass worksite operations and will refocus its workplace enforcement efforts to accomplish the following goals.

- Reduce the demand for illegal employment by delivering more severe consequences to exploitative employers and their agents;
- Increase the willingness of workers to report violations of law by exploitative employers and cooperate in employment and labor standards investigations; and
- Broaden and deepen mechanisms for coordination between the DHS and the DOL, the DOJ, the EEOC, the NLRB, and state labor agencies.

The DHS also requests the development of agency plans to mitigate the fear that victims of, and witnesses to, labor trafficking and exploitation may have about dealing with law enforcement in an investigation. Finally, the DHS seeks recommendations on how E-Verify can be further strengthened to ensure it is not misused as a tool of exploitative labor practices. Given this shift to employer accountability, employers should review their policies and compliance with Employment Eligibility Verification requirements.

USCIS Reaches H-2B Cap for First Half of FY 2022

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On October 12, U.S. Citizenship and Immigration Services (USCIS) announced that it received enough petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2022. U.S. businesses can use the H-2B program to employ foreign workers for temporary nonagricultural jobs. Currently, Congress set the H-2B cap at 66,000 per fiscal year, with 33,000 for workers who begin employment in the first half of the fiscal year (October 1 to March 31) and 33,000 (plus any unused numbers from the first half of the fiscal year) for workers who begin employment in the second half of the fiscal year (April 1 to September 30). This annual cap does not apply to any cap-exempted H-2B petitions, which USCIS will continue to accept.

For more information, please contact Katie Collier, Irina Strelkova, Michelle Xu or any attorney with Frost Brown Todd's Immigration practice group.

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