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Immigration Under the Trump Administration: Five Things to Expect in the First 90 Days

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The first Trump administration brought significant changes to U.S. immigration policies, which had profound impacts on businesses and individuals alike. Donald Trump has shared plans for closing the U.S. borders and enforcing mass deportations for undocumented immigrants almost immediately after taking office in January. Below are five major impacts to immigration policy we saw as a result of Trump's first term, and what we can expect for his second term.

- 1. Extreme Vetting:** The administration introduced stringent vetting processes for visa applicants, with the stated aim of enhancing national security. This led to longer processing times and increased scrutiny of applicants' backgrounds. The U.S. Department of State, whose Bureau of Consular Affairs oversees the issuance of U.S. visas, has yet to recover from staffing shortages resulting from the first Trump administration, while geopolitical conflicts continue to grow in size and severity, drawing limited resources away from visa processing. Like under the first Trump administration, visa applicants – and the U.S. companies that employ them – can expect extremely long wait times for visa interview appointments, more frequent administrative processing delays, and much higher visa refusal rates. Foreign workers may be less able to travel internationally for work due to the risk of being unable to return to the U.S.
- 2. Hiring and Onboarding Delays:** Slow adjudication and consular operations, coupled with heavy scrutiny, caused significant delays in hiring and onboarding international employees. Businesses faced challenges in maintaining their high-skilled workforces due to these prolonged processes since such (legal) foreign workers are the cohort most affected by delays and increased scrutiny of work visa applications. Only the H-2 visa category for seasonal and temporary workers seems to have been unaffected by these delays. In fact, the number of available H-2 visas doubled under Trump, and applications maintained an average approval rate of over 98 percent. Given this history, employers should plan for delays in onboarding high-skilled foreign workers as well as decreased ability to recruit such candidates to the U.S., though the ability to recruit short-term and seasonal labor should remain steady.
- 3. Business Disruption:** Border closures, visa bans, skyrocketing processing times, and denial rates under the first Trump administration exacerbated the staffing issues faced by companies during the pandemic and recovery. Year-plus processing times caused foreign nationals working legally in the U.S. to lose their work authorization and, in some cases, their jobs as employers struggled to navigate the changing adjudication standards. Employers in highly scrutinized industries like construction, manufacturing, food service, hospitality, and agriculture can expect increased immigration enforcement activity, including raids. Raids, in particular, have a chilling impact on recruitment and hiring even of *authorized* workers, including workers permanently authorized to work in the U.S. – like U.S. citizens, permanent residents, and asylees. In 2022, a federal court ordered ICE to pay more than \$1 million to victims of the agency's raid of a meatpacking plant in Tennessee, after determining ICE agents used racial profiling and excessive force to illegally detain workers

without regard to their actual status – lawful or unlawful – in the U.S.

4. **Increased Costs:** The cost of sponsoring employees for visas and green cards increased due to additional documentary requirements and higher denial rates. Businesses had to allocate more resources to manage immigration-related expenses. Under the incoming administration, employers can expect a return to those high immigration costs and then some. Since Biden took office, denial rates for H-1B visa applications have hovered between 2 – 3 percent; under Trump, H-1B denial rates were more than triple that, ranging from 8 – 15 percent.
5. **Uncertainty:** In the first Trump administration, sudden policy changes, reduced service levels, and uncertain decisions created concern among employees and businesses. Companies had to adjust their expectations and factor in events that created disruptions impacting all levels of their business, including employee onboarding, production, and service delivery. We expect the impacts of the areas outlined above will lead to a significant number of additional uncertainties for both employers and employees that could impact workforce morale and productivity in anticipation of what could come.

Short-term Impacts

- **Policy Changes and Executive Orders:** The previous Trump administration used executive orders, proclamations, and internal policy changes to implement these policies swiftly, causing confusion and making strategic planning difficult. The policy announcements and political nominations already proposed by the incoming administration indicate that the administration will seek to implement their restrictive immigration policy priorities as swiftly as possible after the transition in January 2025.
- **Travel Bans:** Travel bans implemented under the previous Trump administration prevented foreign nationals abroad from entering the U.S. It also deterred foreign nationals legally present in the U.S. from departing, due to the fear of being unable to return. Companies had to plan to ensure employees were not stranded outside the U.S. while expending substantial resources bringing stranded workers back to the U.S. or arranging for legal employment in other countries to mitigate losses.
- **Increased Scrutiny:** Immigration filings faced high scrutiny, with no deference given to previous approvals. Documentary requirements increased and denial rates rose significantly – exceeding 30 percent for some work visa categories.

Long-Term Changes

Employers should expect the administration to take a restrictive approach to immigration. With Republican majorities in Congress, there is also a strong possibility that conservative immigration legislation will be passed. This means the policies and practices that affect employers the most could wind up enshrined in law, limiting the ability of future administrations to eliminate or reverse them. Even so, there are steps companies can take to mitigate the impact of these shifts in U.S. immigration policy.

Strategic Planning for the Uncertain Future of U.S. Immigration

It is critical for companies to understand not just how their business is affected by changes to immigration policy, but also their compliance obligations under U.S. immigration law and regulations.

U.S. immigration laws govern who can, and who cannot, enter the U.S., reside in the U.S., and work in the U.S. This includes regulations that require employers to verify the employment authorization of every worker they hire. With the incoming administration's increased focus on immigration compliance, here are some strategies to ensure that your organization is prepared:

- **I-9 and E-Verify Compliance:** Employers should examine and update (or create!) their employment authorization verification policies and procedures, including ensuring that anyone responsible for recruiting, hiring, and onboarding workers has been trained. While the E-Verify program remains voluntary at the federal level, there is no reason to believe that it will remain that way and, regardless, many states have made use of the program mandatory for employers in those states. Companies should find out whether they are subject to mandatory E-Verify laws in any state where they have even a single employee.
- **Foreign Worker Population:** Employers should take stock of their foreign worker population, both those who are working on employer-sponsored visas and those who maintain their own work authorization. This will help employers assess the potential impact to their workforce of the potential shifts in immigration policy and adjudications practice; and take proactive steps to mitigate the impacts of those changes, such as filing renewals early, identifying lower-risk work visa options, and starting the green card sponsorship process for essential foreign workers.
- **Immigration Enforcement Readiness:** While ICE raids are probably the most visible method of immigration law enforcement, federal agencies engage in many more methods of auditing and enforcement. This includes I-9 audits as well as FDNS site visits used to audit employer compliance with work visa requirements; inquiries from the U.S. Department of State seeking to verify information provided by employees during U.S. visa applications; Wage and Hour audits by the U.S. Department of Labor; and even immigration discrimination investigations by the U.S. Department of Justice. An increased focus on immigration compliance means that companies may see a corresponding increase in these sorts of enforcement mechanisms. Companies should examine and update (or create!) policies for handling on-site compliance and enforcement activities and ensure that relevant employees are trained on those processes.
- **Antidiscrimination Training:** With all the talk of immigration restrictions and bans, employers can lose sight of the antidiscrimination requirements that apply to them. The U.S. Immigration and Nationality Act, our principal immigration law, prohibits employers from discriminating against workers on the basis of their citizenship status, immigration status, or national origin, during recruitment, hiring, or termination. The law also prohibits employers from requiring some workers to provide more or different proof of work authorization, regardless of whether they are U.S. or foreign workers. While increased scrutiny and enforcement of immigration regulations may make employers wary of employing foreign workers, it is essential that companies ensure that they, or their employees, do not violate anti-discrimination laws. Companies should examine and update (or create!) an antidiscrimination policy and ensure that any employees involved in recruiting, hiring, onboarding, and termination are aware of and trained on these antidiscrimination obligations. Additionally, state agencies charged with enforcing anti-discrimination laws may increase focus on national origin discrimination as an antidote for perceived overreach by federal agencies; thus, it is imperative for companies to understand their legal obligations and to address concerns about discrimination promptly and effectively.

If you have any questions about this alert or potentially impending changes, please reach out to [Meredith C. Doll](#), [Melanie C. Walker](#), or a member of Baker Donelson's [Immigration Group](#).