

Trumpeting a New Day: Immigration Law in 2017



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U.S. employers are struggling to understand the impact of a Trump presidency on their businesses. Employers who value immigrant labor are rightfully concerned. When Mr. Trump goes to Washington, we can expect a number of substantive changes to employment-based immigration. What changes could President Trump enact without the help of Congress?

Rescind various executive orders. He has promised to eliminate President Obama's Deferred Action for Childhood Arrivals program, which provides a basis for certain undocumented immigrants who came to the U.S. as children to remain in the country and obtain work and travel authorization. There are approximately 745,000 undocumented immigrants who are enrolled in the original DACA program. If DACA is eliminated, the impact will be substantial and create havoc among longtime undocumented residents who have grown up in the U.S. and joined the workforce.

Withdraw or renegotiate NAFTA. The treaty provides that the president may withdraw by providing a six-month notice to Mexico and Canada. The president-elect has

promised to withdraw the U.S. from NAFTA, which not only facilitates free trade with Canada and Mexico but also allows certain professionals who are Canadian or Mexican citizens to obtain TN status for employment in the U.S. Exiting NAFTA would bring an end to TN status for many professionals in the U.S.

Suspend or delay immigration from certain regions. While no longer calling for a ban of all Muslims, Trump continues to call for more screening and "extreme vetting" for all Muslims. It is likely that visa processing may slow, especially for applicants from certain countries. This would likely create delays and make business objectives difficult to achieve.

Suspend or revoke proposed or recently finalized federal regulations. The new administration could instruct departments to cease or suspend all rule-making activity. Therefore, some recently proposed rules could be scrapped. The Trump administration will likely turn to rule-making in its attempts to fulfill its promises to protect U.S. workers.

Increased worksite enforcement. While employers nationwide have experienced less compliance enforcement activity since 2012, one should anticipate increased I-9 audits, inspections and raids, and post-petition approval site-inspections going forward.

Renewed emphasis on the "culture of no" in immigration-related agencies. USCIS rewards denials and states that the agency's officers and adjudicators will not be disciplined nor would their careers

be jeopardized by denying a petition or an application for a benefit. However, a mistaken approval of a benefit for an employer or an employee may land that adjudicator into serious trouble. As such, the agency values denials over approvals. This culture of no has resulted in the ever-increasing issuance by USCIS of unnecessary, costly and over-burdensome requests for additional evidence and notices of intention to deny or to revoke already approved employment-based petitions.

Among other legislative reforms, one should anticipate changes to the H-1B visa program. Some ideas offered include arbitrarily increasing the prevailing wage required to be paid to an H-1B beneficiary and/or requiring the U.S. employer to prove that no U.S. worker is available for the job by testing the labor market. Either one of these changes to the H-1B program will have a profound impact on U.S. employers. One can also anticipate E-Verify will be a mandatory program for all employers.

One cannot know for certain what changes a Trump administration brings with it. However, one can be assured that we are likely to see fewer opportunities at increased costs for employers and employees wishing to participate in employment-based immigration.

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What happens when good people remain silent?



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Is the silence of good people resulting in bad things? A message of hate and bigotry is being openly and proudly advanced by those who want to use intolerance as the answer to any number of social and economic problems.

In 2016, we lived through a presidential election that targeted immigrants and the Islamic faith. We watched states revive efforts to legitimize discrimination against the LGBTQ community. We watched tensions build between minorities and police. We watched in horror as innocents across the globe were slaughtered because of their heritage or faith.

Here at home, there are websites that list – chronologically – the racist acts of the incoming president, who calls himself "the least racist person you have ever met." Defenders of Donald Trump say he is not personally bigoted and does not subscribe to racist or anti-Semitic thinking.

The larger question, though, is how will these renewed racial tensions and the use of hate-speech and outright bigotry by others impact an already divided nation? Will 2017 be a launching point for renewed racial conflicts, or will it reinvigorate a modern civil rights movement?

On Jan. 27, I will be joined by Mike Thompson of WOSU to reflect on the 2016 Presidential Election and the use of hate speech in the modern era. We will be two of many speakers examining the media, the minority experience and civil rights in the new era at the annual MLK Jr. Memorial Civil Rights Symposium sponsored by the Columbus Bar Association.

If you'd like to join us, registration is available at www.cbalaw.org.

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