

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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PRESIDENT TRUMP'S EXECUTIVE ORDERS: WHAT EMPLOYERS SHOULD KNOW

With President Trump's newest Executive Order that was implemented on January 27, courts must now assess whether the order exceeded his authority as provided by section 212(f) of the Immigration Act.



ROBERT COHEN
Porter Wright
Morris & Arthur LLP

increase waiting times for visa appointments at busy posts. Thus, individuals who need to apply for a visa abroad before returning should plan sufficient time for an interview should it be necessary.

Some of the issues to be decided by the courts include:

- Section 212(f) has never been used to define a class of individuals as broad as President Trump's Executive Order. The Order identifies every citizen of seven countries, as well as thousands of individuals already approved for refugee status by the United States Government. While the Executive branch is given wide latitude, does this broad classification violate the Equal Protection provisions of the Fourteenth Amendment? Will equal protection be evaluated based upon a rational basis test or the stricter standard of strict scrutiny, which would ask whether the Executive Order is narrowly tailored to achieve a compelling governmental interest?
- Does the Executive Order create a preference for a particular religion by permitting Christian refugees to enter the country, but not others? Statements by

the President and his advisors promising a ban for all Muslims become a focus of whether there is a governmental preference of one religion over another. The Courts will determine if this preference violates the Establishment Clause of the First Amendment.

- Does the Order deprive nonimmigrant residents of the United States due process by revoking visas and therefore the right to travel, visit family and academic conferences without due process? The Court in Boston reviewed case law and determined that there was no due process interest in a visa, and the Plaintiffs in the Ninth Circuit have cited Supreme Court cases that hold due process applies irrespective of immigration status, like *Mathews v. Diaz*, 426 U.S. 67 (1976). This issue may turn on the posture of the different cases. While the plaintiffs in Boston were foreign students arriving at the airport with a foreign student visa, the plaintiffs in Seattle are alleging that the Executive Order applies to individuals already in the United States and who are now prohibited the rights to travel without due process.

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The uncertainty surrounding this Executive Order is likely to continue as this controversy is addressed by the Courts. Ultimately, the issues will likely be determined by the Supreme Court, although this could take several months, if not years. Until there is more certainty, or a final resolution, we recommend that employers cease all international travel or visa applications of their employees who are citizens of the seven identified countries to the extent possible. If travel is necessary, legal counsel should be sought at the time of the travel to determine the risk factors of exclusion upon return to the United States.

A separate provision of the Executive Order terminates the interview waiver provisions of the State Department practice regarding applications for nonimmigrant, temporary visas. The elimination of this ability to waive the interview is expected to

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SICK AND TIRED: MANAGING EMPLOYEE ABSENTEEISM DURING FLU SEASON

Flu season may be coming to a close, but it's still costing employers in a big way. According to the Center for Disease Control, the flu causes U.S. workers to miss 111 million workdays and employers to lose \$7 billion in productivity each year. To counteract these staggering costs, employers must be proactive



CURTIS MOORE
Fisher Phillips LLP

in implementing policies and procedures to promote wellness and reduce employee absenteeism during flu season.

Although providing paid sick leave is generally not mandatory at the state or federal level, employers may opt to voluntarily offer such leave to prevent the spread of illness in the workplace. During

a flu outbreak, employers are permitted to ask employees if they're experiencing flu-like symptoms, such as fever or chills, without violating the ADA's restriction on disability-related inquiries. If an employee displays such symptoms, he or she can be sent home to protect the health of other workers. Moreover, employers can host voluntary, on-site flu vaccinations to promote wellness and minimize employee absenteeism,

while avoiding the risks associated with mandatory vaccination programs.

Although the employer will bear the costs associated with paid sick leave and voluntary flu vaccines, the cost of prevention measures must be weighed against the much larger costs associated with lost productivity during flu season. Ultimately, an ounce of prevention may be worth a pound of cure.



If you or your business have been impacted by recent changes to the immigration rules, our Lawyer Referral Service can connect you with the right lawyer to help: (614) 221-0754.

Jill Snitcher McQuain, Esq.
Executive Director • jill@cbalaw.org

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DEAR READER,



*Jill Snitcher
McQuain, Esq.*
Executive Director

Legal Connections® is designed to offer you, the *Columbus Business First* reader, legal insights on issues that affect day-to-day businesses.

The Columbus Bar Association comprises some of the best legal talent in the community, offering years of experience and legal skills that can help you and your business thrive. Through *Legal Connections*, our members will offer guidance on legal issues ranging from labor and employment to estate planning to mergers and acquisitions, and everything in between. The Columbus Bar Association will help connect you with the right lawyers when you need advice on issues that matter most to you.

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WELCOME TO LEGAL CONNECTIONS,



Nick Fortine
President and Publisher

In June of 2016 *Columbus Business First*, in partnership with the Columbus Bar Association, debuted *CBA Today*. The purpose behind the bi-weekly newsletter was to help Central Ohio business leaders understand and navigate the ever-changing regulatory and legislative waters and their real-world business implications.

Legal Connections is the next generation of the concept CBA launched last year. Its design, layout and content reflect an evolution of *CBA Today* with an eye toward education and awareness, practical advice and actionable recommendations. I believe you'll find *Legal Connections* reinforces *Columbus Business First's* mission to help local executives and entrepreneurs grow their business, advance their career and simplify their professional lives.

Your feedback is welcome.

FROM CENTRAL OHIO'S BUSINESS AUTHORITY