

What is all this Talk about Immigration Reform? It's Coming: An Overview of the Proposed Comprehensive Immigration Reform for America's Security and Prosperity (CIR ASP) of 2009 as It Relates to Employers

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CIR ASP (the "Act") will be presented to Congress in early 2010. The purpose of this article is to provide an overview of segments within the proposed Act which will most likely affect you as an employer. While these areas will surely be subjected to heated debate and eventual modification or even stricken, it is a good idea to know what lies, in part or whole, just over the horizon. Forearmed with this knowledge, it is also a good time to contact your Congressman about any questions or reservations concerning this proposed legislation.

Title II: Employment Verification

Title II requires the use of E-Verify for employers to confirm each new hire's authorization to work. Use of E-Verify will eventually be required for all workers and all new hires. Rolled out in phases, it will first be made mandatory for large employers and those in critical infrastructure. Civil penalties for employers who fail to comply will increase and there will be serious criminal penalties for knowingly hiring aliens who are not employment-authorized. Since criminal penalties currently include imprisonment, large fines even levied on individual executives and managers, and debarment, it is hard to imagine how those can be increased. Debarment is the prohibition of employers from participating in government contracts, grants and agreements. There will also be increased privacy safeguards for employees being "e-verified" by limiting data that can be collected and stored in the government database. There are anti-discrimination provisions forbidding employers from using E-Verify to discriminate against applicants or employees due to their nationality. Also, employers will be prohibited from terminating employment due to tentative non-confirmations, using E-Verify to screen applicants prior to hiring, or using the system selectively. The implementation of a national identification card will also be prohibited.

Title IV: Earned Legalization Program

In all likelihood, this section will be the most hotly contested as it addresses legalization of immigration status of probably over 12 million undocumented or illegal aliens in the US. This Title will authorize the implementation of a program providing conditional nonimmigrant status for six years for

undocumented immigrants and their spouse and children in the US. These undocumented aliens will then be provided with employment and travel authorization and will be protected from removal. Any existing bars due to undocumented status will be waived except as they relate to national security or are criminal in nature.

To obtain this conditional nonimmigrant status, the alien must establish his or her presence in the US on the day the Act becomes effective and remain in the US continuously thereafter. The alien must then pay a fine of \$500 (children and those that entered the US before age 16, have resided in the US for at least 5 years and are 35 years old or younger are exempt), register with the federal government and attest to contributions through employment, education, military service or other volunteer/community service (except if a minor, elderly or disabled). The alien must have paid all taxes, meet an English and civics requirement, as well as pass a medical exam, and, if applicable, establish registration under the Selective Service program. The federal government will then complete background criminal and security checks on the alien. The alien will be ineligible for legal status as a result of a serious criminal conviction, persecution of another or the commission of a serious crime abroad. There will be a penalty of up to five years' imprisonment for willful falsification of information in the application process.

Following the six years of qualified conditional residence, the conditional nonimmigrant, his or her spouse and children are eligible to apply for permanent residence and eventual US citizenship. The immigrants and their dependents who adjust from conditional nonimmigrant visa status to permanent resident status will not have to wait for a visa number to become available since they would not be counted against any numerical visa cap. There will be a defined appeal process for any decisions denying permanent resident visa status.

However, the federal government must work on the tremendous backlog of individuals waiting for both employment-based and family-based permanent resident visas, also called green cards. Thus, there can be no green cards issued before six years after the date of enactment unless existing backlogs have first been cleared up.

Finally, certain individuals will be eligible for accelerated permanent resident status upon graduation from high school and completion of two years of college, military service or employment. They also will be eligible for citizenship three years after permanent resident status is granted if they also meet an English proficiency requirement. The states will be permitted to determine their own residency requirements for in-state tuition purposes.

Title V: Workforce-Related Legislation

Title V establishes the American Worker Recruit and Match System to match qualified individuals with job opportunities in industries that have traditionally relied heavily upon unauthorized labor. This will be set up by each State Workforce Agency as a job-search engine permitting both employers and prospective employees to post and be matched.

This section also establishes a Security and Prosperity Account funded by fines in the earned legalization program. The Security and Prosperity Account will fund a new federal agency, the Commission on Immigration and Labor Markets, issue grants to states for adult and dislocated workers' employment and training activities, fund E-Verify, provide dislocated workers with national assistance, reduce United States Citizenship and Immigration Service visa backlogs, and fund border security. The Commission will establish employment-based immigration policies through research on the economic impact of immigration, and recommend to Congress and the President appropriate

methods to determine the level of employment-based immigration.

Under this Title, employers will be required to provide the Secretary of Labor the identity of all recruiters working on their behalf and any possible violations. Employers will be liable for the illegal actions of a recruiter they use and may be subject to civil penalties.

In terms of current employment-based nonimmigrant visas, the H-1B visa program will be largely overhauled with a goal to protect US workers. The US Department of Labor will be authorized to investigate possible fraud and increase penalties for violations, as well as conduct annual audits for heavily reliant H-1B employers. Before hiring an H-1B worker, the employer will have to have completed strict recruitment requirements to first attempt to hire US workers. L-1 visa participants will be subject to audit, and penalties can be assessed for violations. The H2-B worker program will require more recruitment efforts of American workers and employers will be prohibited from participating in the program if they have conducted mass-layoffs in the past year. The permanent resident investor visa program, known as the EB-5 program, will become permanent with up to 10,000 visas available annually under more liberal guidelines in terms of location.

Title III: Visa Reform

Title III deals with general visa reform, some of which will affect US employers directly or indirectly. Not every section is dealt with here, only salient ones for employers and their employees. Unused employment-based and family-sponsored permanent resident visas from 1992 through 2008 will be recaptured for use, increasing the number of visas available and addressing backlogs such as nurses' visas. Any unused visas each year will be available the next fiscal year. Immediate relatives will be exempt from the annual cap on the number of permanent resident visas authorized for their particular country of origin. Permanent US residents will be entitled to bring in spouses and children stranded overseas on an immediate basis.

If you have a nonimmigrant skilled worker for whom you have petitioned for an employment-based green card, the employee can file for adjustment of status even if a visa is not currently available. For a \$500 filing fee, the employee will be provided with ongoing employment and travel authorization

The unlawful presence bar which can subject an individual who overstays his visa to up to 10 years' wait outside the US will be more easily waived upon a demonstration of hardship for the individual's US citizen or lawful permanent resident family members. Children of Filipino World War II veterans are to be exempt from annual numerical limitations, potentially alleviating the backlog of Filipino nurses awaiting visas. Some highly skilled workers will be exempt from the employment-based annual immigrant visa cap in three year increments while the application for permanent resident visa status is pending.

Conclusion

To summarize, employers will generally face more government involvement in the hiring process, including mandatory E-Verify registration. Previously undocumented workers would legally join the workforce which will assist employers who complain that there are jobs for which they cannot find US workers. Sanctions against employers will increase for immigration violations. We have another federal agency and eventually 12 million potential US workers or citizens. Title I, dealing with border security, detention and enforcement not covered here, proposes allocation of significant resources, advanced technologies and training to those initiatives.

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