

Legal Update Article

New Executive Order Takes Aim at Hiring Under Federal Contracts

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The “[Aligning Federal Contracting and Hiring Practices With the Interests of American Workers](#)” Executive Order directs federal departments and agencies to conduct audits of federal contracts awarded in Fiscal Years 2018 and 2019 to determine if U.S. job opportunities or the economy have been adversely affected by the use of temporary foreign workers in the U.S. or abroad.

Signed by President Donald Trump on August 3, 2020, the Executive Order bypasses Congress and is the Administration’s latest [attempt to reduce legal immigration](#) by making it harder for certain foreign nationals to enter the U.S. legally and harder for employers to hire foreign nationals. The “Buy American Hire American” Executive Order, signed April 2017, set goals that ultimately led to [policy changes](#) limiting employers’ ability to hire workers in H-1B status, among other results. H-1B denial rates have [increased steadily](#) since then. The COVID-19 pandemic crisis provided the Administration another opportunity to restrict legal immigration with [bans on entry of immigrants and certain nonimmigrants](#), including H-1B workers. These policies and orders have discouraged employers from trying to hire H-1B workers. Despite economic data showing that immigrants bring innovation and money into the economy in taxes and consumer spending, the Administration continues to try to blame H-1B workers for the current economic downturn.

The Administration’s previous attempts to limit the ability of staffing companies and contractors to hire H-1B workers have been [beaten back](#) in court. The new Executive Order deals with hiring temporary foreign workers and outsourcing. However, the multiple executive orders restricting immigration have actually encouraged outsourcing by U.S. companies in certain industries, particularly those heavily reliant on STEM talent. When companies cannot hire enough talent in the U.S., they turn to foreign workers. If they cannot bring those workers into the U.S., they send the work, and even move their companies or divisions, abroad. Indeed, many [countries have benefitted](#) economically from their more open immigration policies at the expense of the U.S.

The new Executive Order is vague and, like many earlier executive orders, focuses on reporting and directs the Secretaries of Labor and Homeland Security to take action to ensure all employers who are federal contractors or subcontractors are adhering to existing H-1B [Labor Condition Application](#) requirements.

It is hard to know what these vague requirements regarding assessments and adherence to current regulations will produce. Perhaps it is a step toward limiting the ability of federal contractors and subcontractors to hire foreign nationals or outsource work. If that is the aim, it may end up being another misguided attempt. Trying to get companies to change their business models is not likely to lead to more effective procurement or help the economy.

Employers with federal contracts should prepare for possible investigations by the agencies and executive departments that must provide reports by December 1, 2020.

Jackson Lewis attorneys are available to help you determine next steps and will provide updates as more details become available.

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