

Bolstering the Semiconductors CHIPS Act With Foreign STEM Workers

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The nation's semiconductor chip shortage has far-reaching implications for industries ranging from consumer electronics to national security. The [Creating Helpful Incentives to Produce Semiconductors for America Act](#) (CHIPS Act) aims to address this shortfall. It provides substantial investments in semiconductor research, development, and manufacturing capabilities within the United States, fostering innovation and job creation.

The CHIPS Act's increased production will bring employment concerns related to staffing, immigration, and diversity, among others. In the highly competitive and rapidly evolving technology industry, attracting and retaining top talent with expertise in STEM (science, technology, engineering, and mathematics) fields is essential. Foreign national talent, combined with the availability of various U.S. visas, will play a crucial role in supporting the goals of the CHIPS Act.

Robust Hiring Initiatives

A [Semiconductor Industry Association](#) indicated that the industry must fill 115,000 jobs by 2030 to meet the goals outlined in the CHIPS Act. Meeting these ambitious numbers will require companies to ramp up hiring significantly in the sector. Many of these roles will require a two- or four-year degree in engineering or computer science. Early research has indicated there are simply not enough U.S. students in the pipeline. Therefore, many companies likely will need to turn to foreign nationals and recruit and retain international students to bridge the hiring gap.

Foreign Talent in Technology Industry

Innovation knows no borders, and the technology industry is inherently global. To maintain leadership in semiconductor technology and related fields, U.S. employers will seek to leverage the global talent pool. Foreign nationals (including scientists, engineers, and researchers) have long contributed significantly to the technological advancement of the United States, and tomorrow will be no different.

Expertise and Innovation: Foreign national workers bring diverse perspectives, experiences, and expertise to the technology sector. They often possess specialized skills and knowledge crucial to the development and production of cutting-edge semiconductor technology. A 2021 report conducted by the [American Immigration Council](#) showed that more than one out of every five (22.7 percent) STEM workers in the United States was born in another country.

Bridging Skill Gaps: The semiconductor industry is highly specialized, requiring a workforce with a deep understanding of materials science, electrical engineering, and computer science. Utilizing the pool of highly skilled foreign national workers in the United States enables companies to fill critical skill gaps and contribute to the development of next-generation technologies.

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U.S. Visas and CHIPS Act

To attract and retain foreign national talent in the technology industry, various U.S. visa programs are available, among other options, including the following:

- *H-1B Visa*: The H-1B visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, such as technology-related fields. This visa program is vital for technology companies looking to hire foreign experts in areas like semiconductor design, artificial intelligence, and data analytics.
- *O-1 Visa*: The O-1 visa is designed for individuals with extraordinary ability or achievement in their respective fields. Some foreign nationals in the technology industry qualify for this visa due to their exceptional contributions and accomplishments.
- *J-1 Visa*: The J-1 visa program facilitates educational and cultural exchange by bringing foreign researchers, scholars, and students to the United States. This program fosters international collaboration and knowledge sharing, benefiting the technology industry's innovation and research efforts.

These visa programs not only facilitate the entry of skilled professionals, but also align with the goals of the CHIPS Act. However, they are limited in their reach due to statutory eligibility requirements and numerical limits. Accordingly, immigration reform to expand visa and green card programs ultimately may be required for the CHIPS Act to fulfill its promise to drive advancements in semiconductor technology and strengthen the nation's position in the global tech ecosystem.

Potential Employment Law Risks

The rapid growth in hiring across the semiconductor industry to meet the goals of the CHIPS Act is not without legal risks. Hiring and interview processes can lend themselves to claims of discrimination from those who do not land interviews or receive job offers. Foreign national candidates may claim they were rejected due to their national origin, race, or ethnicity.

While technology companies will likely turn to seek foreign talent to meet the ambitious CHIPS Act, companies should ensure their hiring programs focus on identifying the most talented candidate, regardless of protected characteristics. This is particularly true in light of the increased challenges to employer diversity, equity, and inclusion initiatives and job actions, including hiring programs, following the [U.S. Supreme Court's 2023 decision](#) in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College/UNC*.

To hire at the necessary scale, some employers may turn to software solutions to automatically rate, rank, or score candidates early in the process — delivering only the most qualified applicants to human eyes for review and consideration. This approach follows the trend of increasing the use of artificial intelligence in human resources practices. These screening tools also can present increased risks of potential adverse impact, however, and are a priority of the Equal Employment Opportunity Commission's [Strategic Enforcement Plan Fiscal Years 2024-2028](#).

In addition to the greater scrutiny on hiring programs, there is rising interest in

removing the “adverse action” requirement from plaintiffs’ *prima facie* case in discrimination claims. The U.S. Supreme Court heard arguments in *Muldrow v. City of St. Louis*, in which the Court considered whether discrimination itself could be sufficient harm for a claim under Title VII of the Civil Rights Act, regardless of whether the plaintiff suffered any monetary impact. Proponents of the change have noted that nothing in the law requires plaintiffs to prove they suffered an adverse action to sustain a claim. Rather, the mere fact that their race, national origin, or some other protected category was a factor in the adverse employment action is enough to make a claim of discrimination. With this issue under review by the Supreme Court, the law may move in this direction. Thus, it will be even more important to review hiring initiatives to avoid any potential inference of discrimination, even if an individual cannot point to a tangible adverse action in support of their claims.

Please contact a Jackson Lewis attorney with any questions.

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