

With Novel Coronavirus continuing to alter the landscape for American businesses, C-suite executives, small-business owners, and non-immigrant employees have questions on how this could affect them.

1. What will happen to my foreign national's immigration status if they are stuck outside the U.S. because of travel restrictions?

Generally speaking, U.S. immigration law only applies to a foreign national when that person is physically in the country. In most situations, a person is not considered to have failed to maintain lawful immigration status if they are not physically in the U.S. The employee's absence from the U.S., however, could trigger other collateral immigration issues regarding employment with their sponsor. It is important to seek specific legal advice for each impacted case

2. I had a visa stamping appointment scheduled at a U.S. consulate, but now it has been cancelled until further notice. What do I do?

The Department of State announced that it is suspending routine visa services at all U.S. embassies and consulates in response to COVID-19. Embassies and consulates canceled all routine visa appointments as of March 20, 2020.

The Department of State compiled a list of [embassy websites for country-specific information concerning COVID-19](#). This page provides links to the COVID-19 dedicated page for each nation's embassy which includes information concerning health services, recommendations, and information concerning a reduction or temporary suspension of visa services.

Employers should check the respective post or embassy's website before foreign national employees travel abroad and before planning the transfer of employees to the U.S. Due to the ongoing situation relating to the COVID-19 coronavirus outbreak, the U.S. Embassy and Consulates have very limited staffing and may be unable to respond to requests regarding regular visa services.

Please note: it is not recommended to travel internationally until the travel advisory issued by the Department of State is lifted.

3. What issues will green card holders encounter?

Travel restrictions may cause issues for green card holders who have already been outside of the United States for an extended period of time. Extended absences from the United States by green card holders may lead to extensive questioning upon re-entry or a determination that the green card holder has abandoned their permanent resident status. Consult with an immigration expert on the timing of your return, and whether future returning resident visa requests through a U.S. consulate would be required

4. What if my H-1B employees must now work remotely from home?



Under normal circumstances, H-1B workers are restricted to working at the worksites listed on the underlying Labor Condition Application (LCA) filed with the U.S. Department of Labor. The H-1B regulations, however, allow H-1B workers to work remotely temporarily if the new worksite is within the normal commuting distance from the worksite listed on the LCA.

A new or amended H-1B petition is not required when the employee is at a new worksite for up to 30 workdays, and in some cases 60 workdays (where the employee is still based at the permanent worksite). An amended H-1B petition is only required if the employer is required to file a new LCA. Thus, a H-1B amendment would be required following exhaustion of the short-term placement, and for employees who live outside of the MSA of the LCA listed work address.

5.Can an employer furlough or lay off H-1B workers?

Employers can furlough foreign national employees on H-1B work visas, however, the company is required to pay the H-1B holder's salary even during a furlough. This is different than other employees at the company. If employers lay off H-1B workers before the end date listed on their H-1B Approval Notice, employers must withdraw their H-1Bs with USCIS. In addition, employers are responsible for offering to provide laid off H-1B workers with return transportation to their home country to be accepted within a reasonable time.

6.Does an H-1B employee have a grace period if laid off?

A H-1B employee has a 60-day grace period which begins of the last working day with their previous employer. The H-1B holder is considered "in status" during this time in which they can find another employer to file a H-1B transfer. There are some requirements to using the 60-day grace period. Speak with an immigration expert about your specific case to confirm you are entitled to it.

7.If an H-1B holder does not find a new employer during the 60-day grace period, then what?

If the holder cannot timely file a H-1B transfer case during the 60-day grace period and COVID-19 travel restrictions are still in place restricting entry into their home country, we recommend them speak with an immigration expert to request to change to visitor status in the US. The COVID travel restrictions would need to be addressed in the application. If the H-1B holder has a spouse that has their independent immigration status, such as H-1B, L-1, O-1 etc., they can look into requesting a change to dependent status of their spouse.

8.What happens to employment-based petitions that are currently pending with USCIS?

While U.S. Citizenship and Immigration Services continues to process visa petitions, all face-to-face interviews and biometrics appointments have been canceled and will be rescheduled when normal operations resume. USCIS has terminated premium processing services for all I-140 Immigrant Petitions and all I-129 Non-immigrant Petitions, including H-1B transfers and H-1B cap petitions,

which will only further exacerbate the growing backlog of cases and delay the transfers of workers. Expect delays!

9. What if our employer representative who typically signs visa petitions is working remotely without access to a printer?

On March 20, USCIS announced that it will accept forms and documents with reproduced original signatures for submissions dated 3/21/20 and beyond. For forms that require an original “wet” signature, USCIS will accept electronically reproduced original signatures. This temporary change only applies to signatures. Employers that submit documents bearing an electronically reproduced original signature must also retain copies of the original documents containing the “wet” signature. USCIS may, at any time, request the original documents, which if not produced, could negatively impact the adjudication of the immigration benefit.

Please note: USCIS will not accept electronic signatures (e-signatures) on forms.

10. Can I-9s be completed if employees are working remotely?

For employers operating remotely, DHS announced greater flexibility for complying with the Form I-9 requirements:

- Employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2 of Form I-9.
- Employers should enter “COVID-19” as the reason for the physical inspection delay in the Section 2 “Additional Information” field **once physical inspection takes place after normal operations resume.**
- Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate.
- Although DHS’ announcement is silent on how employees will complete Section 1 of the I-9, employers can presumably email the Form I-9 to the employee, have the employee complete Section 1, sign, date and email the completed Section 1 back to the employer. Once operations resume, the employee should bring the original signed Section 1 to the employer.
- Employers may utilize these provisions for a period of 60 days from March 20, 2020 OR within three business days after the termination of the National Emergency, whichever comes first. Employers will bear the burden of proof to provide written documentation of their remote onboarding and telework policy for each employee. Any subsequent I-9 audit would use the “in-person completed date” as a starting point for the impacted employees only.

This provision only applies to employers and workplaces that are operating remotely. If there are employees physically present at a work location, *no exceptions* are being implemented at this time for



in-person verification of identity and employment eligibility documentation. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis. Employers may designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf. The employer is liable for any violations in connection with the form or the verification process.