

EMPLOYMENT RESOURCES & Solutions



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Employer Compliance for Terminating H-1B Work Visa Employees

by Mitchell Wexler, Partner, and Blake Miller, Associate, Fragomen Worldwide

“We are terminating an employee on a work visa – what do we need to do?” This is a regular question employers pose to their US immigration counsel regarding due diligence for terminating an employee working on a US visa.

Each visa has its own compliance issues when the employment relationship ends. This article will specifically focus on the H-1B visa. The H-1B visa is one of the most common work visas used by companies to employ foreign nationals in a professional/specialty occupation. The H-1B visa requires filings with the Department of Labor and United States Citizenship and Immigration Services (USCIS). When an H-1B employee is terminated or quits, action must be taken with both of these agencies.

Offer Return Travel

If an H-1B employee is terminated, the employer is liable for the “reasonable costs” of return transportation to the employee’s last country of residence (costs for property or family members are not required). Many employers will provide employees with a written offer to purchase a return ticket within a reasonable period of time after the date of termination.

Withdrawing the Labor Condition Application

The H-1B requires a Labor Condition Application (LCA) to be filed with the Department of Labor. The LCA requires the employer to make several attestations, a few of which include: pay the H-1B employee the higher of the

prevailing wage or actual wage paid to similarly situated employees; provide notice of the filing to others in the workplace; and working conditions of American workers will not be adversely impacted.



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Due to these attestations and the requirement to pay the employee certain wages, the first action employers should take once the employment relationship ends is withdrawing the LCA.

Notifying USCIS of Termination of H-1B Employment

Finally, employers should notify USCIS that the H-1B relationship with the employee has ended. This is important so USCIS can update its records, including ending potential site visits by fraud investigation units based on the employee’s H-1B petition.

These three actions should routinely be taken for terminated H-1B employees, but other visa categories may require different action. We encourage employers to reach out to their US immigration attorney prior to terminating foreign national employees to discuss case-specific scenarios and ensure proper US immigration compliance.

Contact Mitch Wexler at 949.660.3530 or mwexler@fragomen.com.
Contact Blake Miller at 949.862.9492 or bmiller@fragomen.com.



BUSINESS & INVESTMENT IMMIGRATION LAW

What is the Future of the EB-5 Investor Visa Program?

by David Hirson, Esq. and Warren Oakes, David Hirson & Partners, LLP

Brief background on the EB-5 Immigrant Investor Visa Program:

- ▶ Established by Congress in 1990 with the Regional Center Program following in 1992
- ▶ Currently, foreign nationals qualify for a two-year Conditional Green Card for the applicant, applicant's spouse, and unmarried children under 21 years of age after investing \$1 million or \$500,000 (special targeted employment areas) into qualifying business ventures
- ▶ Each investor is required to create at least 10 full-time U.S. jobs. Permanent Green Cards are only issued after U.S. Citizenship & Immigration Services approves evidence of job creation.
- ▶ 90% of EB-5 applicants are from mainland China
- ▶ Qualifying business ventures include: real estate developments, charter schools, hotels, restaurants, etc.
- ▶ This Program is funded by investors' fees, with no cost to taxpayers.

The EB-5 Immigrant Investor Visa Program is an economic development program established by Congress to spur job creation in local U.S. economies. The program grew slowly in the beginning, but took-off during the Great Recession starting in 2008 when traditional sources of financing became scarce. Since then, the EB-5 program continues to fulfill its goal of creating full-time U.S. jobs in local economies. Unfortunately, this positive growth still has a fair share of growing pains as certain actors try to take advantage of the program. The EB-5 Program will become an even greater boon to the U.S. economy if it is allowed to mature and grow into a program with more established rules and regulations which curb bad actors.

Bad actors make for good news stories though and the press has recently covered some negative stories about EB-5: from the Kushner Family's company supposedly trying to use misguided influence over the future of the EB-5 program in order to finance real estate developments to individuals misappropriating EB-5 funds away from the intended project. (It is important to note that USCIS, the SEC, and other federal agencies are actively pursuing and prosecuting the small percentage of bad actors who try to misuse this program.) The EB-5 program continues to bring foreign direct investment funds into the U.S. and create thousands of jobs for U.S. workers all at zero cost to taxpayers.

Members of Congress and their staffers are currently in discussions with EB-5 industry stakeholders, and agreement appears to be drawing closer on what changes will be taking place in Congress and in the program. A new bill is expected in the near future with changes including: increased minimum investment amounts, changes to the definition and classification requirements of targeted employment areas, and greater transparency in how the program operates at every level.

The EB-5 industry is anticipating and preparing for change for the better. This is a program that benefits the U.S. and its local economies and should be encouraged to continue to do so.

Please read our other articles or contact us directly (949.383.5358 or info@hirson.com or www.hirson.com) for more information on the EB-5 program.

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The New Model of Health Care and How It Will Improve Costs for Employers

Q&A with the CEO of St. Joseph Hoag Health

Q: Does the cost of health care correlate to the patient's health?

Dr. Afable: Cost does correlate to a patient's health status. Insurers are now saying, "We agree, so let's create new programs by which we, the payer, can work with you, the employer, to improve the health of your employees." And employers see a reduction in costs and an increase in productivity because their employees are healthier and happier.

At St. Joseph Hoag Health, we are partnering with health plans, broker consultants and employers to build health program solutions specifically tailored to their employee population. Our collaboration optimizes clinical outcomes and service because we are converging around the consumer. The improved clinical outcomes, or health, results in decreased costs.

Q: The new model for care seems to eliminate the misconception that health care providers want to hospitalize patients just to make money. Is this a more comprehensive approach to health care?

Dr. Afable: Absolutely. By bringing all parties together, we have a greater opportunity to innovate and find new ways to improve health, reduce cost, improve service, and enhance the overall experience for employer and employee. By continuing to innovate, we'll continue to improve outcomes. Employers are asking employees to take a more active role in their own health and it's working.



Dr. Richard Afable, President and CEO, St. Joseph Hoag Health

Q: How does this convergence around employees work in practice?

Dr. Afable: One example is St. Joseph Hoag Health's collaboration with Western Digital located in Irvine. After analyzing claims data, we discovered some common medical problems affecting the Western Digital employee population. In collaboration with Western Digital and the broker-consultant, we built an integrated on-site wellness clinic offering primary and preventative care, physical therapy, acupuncture, chiropractic and behavioral health services within the workplace. In the past, this would have hurt our financial model by reducing the number of surgeries, procedures, and imaging studies that we, as a health provider, would have done. Instead, this program has reduced the number of expensive procedures and studies. And we're happy for it, because we have alignment around our partnership. In this new business model we are rewarded for improved health among the employee population by ensuring patients are accessing care at the right place and time. Our work has demonstrated that the convergence of the employer, broker consultant and health care provider around consumer is effective.

St. Joseph Hoag Health is committed to keeping our communities healthy, and this new model is helping to make that a reality. A health plan that includes access to St. Joseph Hoag Health means access to more than 1,600 top doctors and specialists, all at an affordable price. This network includes access to Hoag, Mission, St. Joseph, St. Jude, CHOC Children's and 27 urgent care centers across the region.

Make sure your organization has access to the St. Joseph Hoag Health network of care. Contact Shelly.Summers@stjoe.org or 949.381.4777 to learn more.

St. Joseph Hoag Health



Western Digital has brought health care to their office by partnering with St. Joseph Hoag Health to create Drive Wellness Center, an integrated multi-specialty clinic designed for their employees in Irvine.



YOUR HUMAN RESOURCES SOLUTION

Beat June Gloom – Stay Home!

by Kathi Guiney GPHR, SPHR, SCP, President of YES! Your Human Resources Solution

June Gloom is more than cloudy skies. It's that feeling you get when the kids are out of school, but you're still working; the surf is up, but you're stuck in the office; and that sassy summer outfit beckons, but it still has its tags on. Yup, it's the pre-summer vacation grays. The good news is you can get away without scheduling a grandiose getaway. How?

A staycation!

You don't have to spend two weeks in Tahiti to deserve a break from work. Even if you're a VIP in your office, you can relax over several long weekends at home. But before you go, make a list of must-do tasks that may pop up during your time off. Cross-train your co-workers to handle these vital items. Never say, "I'll be around, just call me!" Staying local should not minimize your vacation time—although you should designate one person who can call you in case of an emergency.

Since no one needs to know what you're doing on your days off, consider



Kathi Guiney

keeping your plans a mystery (nix the Facebook posts until your return!). The tales of your adventures will seem that much more interesting without the local market's neon sign behind your head!

One exciting adventure to catch during your staycation...brunch! Nothing feels more decadent than brunch on a Monday. So have a mimosa, give work emails a rest and say thanks to the long weekend. Just remember, the business is not likely to fall apart between Friday and Monday. And, if in fact it might, you may want to use your time off to spiff up your resume!

Don't let those pre-summer vacation grays get you down! June Gloom is just one cloud away from June Bloom and a delightfully sunny summer vacation just minutes from your home.

Kathi Guiney
www.yeshrsolution.com
www.linkedin.com/in/kathiguineyyeshr
949.212.8788

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18401 Von Karman Avenue, Suite 255, Irvine, CA 92612
www.fragomen.com/irvine

<p>Mitch Wexler, Partner mwexler@fragomen.com T +1 949 660 3531</p>	<p>James Pack, Partner jpack@fragomen.com T +1 949 862 9443</p>
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The Cost of Not Playing It Safe

As the National Safety Council has proclaimed June as National Safety Month, it seems fitting to talk about the importance of safety in the workplace. Besides the moral obligation to keep workers safe, there is also a legal obligation – what can often become a very expensive legal obligation.

In 2016, fines for the top ten most frequently violated OSHA standards were nearly \$65 million. Effective July 1, 2017, Cal/OSHA (California's Division of Occupational Health and Safety, which has stricter standards than Federal OSHA) will increase penalties by as much as 80%. An *Other-Than-Serious Violation* that currently carries a maximum penalty of \$7,000 will increase to \$12,600. The fine for a *Willful or Repeated Violation* will grow from \$70,000 to \$126,000. If there is a loss of life involved the penalty could be up to \$3,500,000 plus possible prison time. In addition to financial penalties, many companies involved in these cases also have their reputations damaged as they garner negative media attention.

Safety is a critical function for all types of businesses and occupations. Often when we think of workplace injuries, we think of those that occur in construction, manufacturing, transportation, or similar high-risk industries. However, the CDC estimates that office workers are twice as likely to trip or fall and injure themselves as non-office workers. From poor ergonomics to bumping into a desk to improper lifting, there is plenty of room for error in an office environment. While all California companies must maintain and regularly update an Injury and Illness Prevention Program (IIPP), certain industries may have specific regulations. For example, as of April 1, 2017, healthcare employers must maintain a Workplace Violence Prevention Plan in addition to, or as part of, their IIPP, as well as provide training for all employees.

Keeping the workplace safe is important for the physical wellbeing of employees

and the financial wellbeing of employers. The key to minimizing injuries is to focus on prevention. One way to do this is to retain the services of safety professionals. Certified Occupational Safety Specialists collaborate with clients to identify and develop mitigation strategies for hazardous situations that could have the potential for injuries and citations. They develop Cal/OSHA-compliant safety plans along with safety program documentation, communication, training, and reporting materials. Conducting a thorough risk analysis of the work environment, tasks and workforce on a yearly basis (minimum) has numerous benefits including reducing incidents in the workplace, maintaining optimal productivity, protecting your company's image, and saving costs by being proactive instead of reactive.

National Safety Month is a reminder that all injuries are preventable and that protecting your employees means protecting your business.

Lisa Pierson

Lisa Pierson is the President of Advantex Professional Services, a recruitment firm specializing in finance and accounting, IT and engineering; Kimco Staffing Services, which includes office professionals, technical support, accounting operations, industrial, and onsite managed services; and MediQuest Staffing which focuses on healthcare positions. In the past 30 years, the companies have employed 212,512 people, serviced 21,941 clients, and filled 687,192 positions. You can reach Lisa at lperson@kimco.com or 949.331.1102.



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Financial Wellness Programs — A Rising Trend for 2017

Corporate wellness programs have come a long way in recent years, it is safe to say that they are no longer just a “fad” but are here to stay. Although these programs have mainly been tailored around mental and physical well-being, financial wellness has been an increasing trend in the past years. According to a PWC 2016 study (of more than 1,600 full-time employees), 52% of workers are stressed about their finances with 46% spending three to four hours a week dealing with or thinking about financial issues. These challenges run the gamut from student loans, asset management, excessive debt, college education funds and retirement planning. With these numbers continuously increasing, the link between financial stress and job performance is fueling the growth of employer-sponsored financial wellness programs.



Will these programs be utilized by employees? Employees cannot be forced into using these resources thus many employers are providing incentives or one-time bonuses to subsidize sessions with a planner.

Financial Wellness programs have increased by 76% in comparison to last year. This number continues to climb as employers see the importance of providing a blend of financial, physical, social/emotional programs to provide maximum support for members. As this trend evolves, it is crucial for organizations to competitively position themselves as a business that cares in order to attract and retain top talent!

Let’s look at two primary practices utilized in the market today:

General Education: a starting point for many employers new to this trend would be to simply increase financial literacy. Organizations can work with vendors through seminars and “lunch and learn” programs to cover topics such as: the fundamentals of budgeting, debt management and prioritizing personal financial goals (i.e. retirement, emergencies, and other major purchases such as buying a home). This is the most popular approach today with 82% of employers expected to offer these for 2017.

Personalized Assessments:

employees may feel uncomfortable speaking about their finances in a group setting. Many employers are turning towards personalized assessments to offer key solutions tailored to an employee’s current vulnerabilities and lifestyle. As these surveys take a worker’s financial challenges, priorities and family structure into account, it allows a program based around current habits and strategies. These are behaviors that the employee can change vs. general educational solutions.

How do we measure the success of these programs? Many companies still have no success metrics in place. Employers should utilize programs that allow them to get reports and data about not only involvement rate but also ongoing progress with individual goals. Key metrics can include participation, engagement and the total amount of debt paid off and money saved. These programs should not be a “one and done” deal but rather an ongoing process.

How in depth should these initiatives be? These programs can be accessed online, conducted via group educational sessions or one-on-one meetings with perhaps a financial advisor. Obviously, the more tailored the program, the more effective, but expensive it will be.

For more information about Financial Wellness Programs, please visit resources such as: Society for Human Resource Management (SHRM) www.shrm.org, Harvard Business Review (HBR) www.hbr.org or PricewaterhouseCoopers (PwC) www.pwc.com.

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Renee Loignon Dion - CFO

Renee has been with the Marquee team for more than 20 years where she has played a crucial role in developing and growing the company’s financial infrastructure. With a strong accounting background, a “can do” attitude and a knack for developing key strategic relationships, Renee continues to build upon Marquee’s growing operations. Today, she oversees all finance and accounting functions along with HR initiatives. For more information about Marquee Staffing, please visit www.marqueestaffing.com.



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DAVID HIRSON
+1 949.383.5358
dhirson@hirson.com
Wechat ID: DavidHirson
Skype: david_hirson



NIMA KORPIVAARA
+1 949.383.5363
nimak@hirson.com
Wechat ID: NimaKorp

For more information visit: www.hirson.com

1122 Bristol St., 1st Floor, Costa Mesa, CA 92626, USA

* Certified by the State Bar of California, Board of Legal Specialization as a Specialist in Immigration and Nationality Law since 1990.