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Client Alert: Executive Order on H-1B Program Integrity and Interagency Coordination

On September 18, 2026, President Trump signed an Executive Order titled "Enhancing Program Integrity and Interagency Coordination in the Administration of the H-1B Nonimmigrant Visa Program" (the Order). The Order takes an aggressive approach to H-1B enforcement and changes how federal agencies will scrutinize H-1B petitions, labor condition applications, and visa adjudications going forward.

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This alert explains the order's requirements and implications for workforce planning.

The Order's Stated Purpose

The Order asserts that the H-1B program has been "widely abused by certain employers, third-party placement groups, and outsourcing firms to undercut and displace the supply of skilled United States labor." The Administration states this abuse has depressed wages, citing an estimated wage gap of $9,000 to $20,000 between H-1B holders and comparable U.S.-born workers in H-1B-reliant industries. It also asserts that employers have collectively laid off between 800,000 and 1.3 million American employees from 2022 through 2026 while requesting H-1B visas for hundreds of thousands of workers.

The Order further frames H-1B abuse as a national security concern, citing investigations of outsourcing firms for visa fraud, money laundering, and related activities. It cites ongoing government probes identifying "widespread fraud and noncompliance," including misrepresentation of job duties and worker qualifications and the submission of "questionable foreign degrees from diploma mills."

Three Big Changes

The Order has three operative provisions:

i. **More agencies will weigh in on H-1B decisions:** The Order creates a new interagency coordination mandate. The Secretaries of State, Labor, and Homeland Security must "coordinate and consult" with the Secretaries of Commerce and Education and the Administrator of the Small Business Administration when processing H-1B petitions, labor condition applications, and visas. The additional agencies will share wage data, educational records, and industry information to help evaluate whether H-1B filings are legitimate.

ii. **Employers' layoff history will now be a factor:** This may be the most operationally significant change as the Order requires agencies to consider employer layoff history. When evaluating any H-1B labor condition application, petition, or visa, the three lead agencies must now consider whether the sponsoring employer "directly or indirectly engaged in layoffs within the previous year or plans future layoffs that negatively affect the employment of similarly situated United States workers." Employers with recent or planned reductions in force should expect heightened scrutiny of their H-1B filings.

iii. **The Department of Labor will review the filings that are already on file:** By October 18, 2026, the Secretary of Labor (DOL), through the Wage and Hour Division, must begin reviewing data related to previously submitted labor condition applications to determine whether further action against sponsoring employers is warranted under the Immigration and Nationality Act (INA) § 212(n)(2)(G). That provision authorizes DOL investigations, penalties, and potential debarment. The review is retrospective, not prospective.

Under INA § 215(a), the Order further delegates broad authority to the Secretaries of State, Commerce, Labor, and Homeland Security to issue or adopt rules, policies, operational guidance, or other guidance to carry out this order. So, expect implementing regulations and policy memoranda in coming months.

Practical Takeaways

- **If you've had layoffs recently (or are planning them), take a close look at your H-1B filings: Audit your layoff-to-H-1B pipeline.** Any concurrent or near-term H-1B petition will face elevated adjudicatory risk if your organization conducted layoffs in the past twelve months or is contemplating them. Document specifically why each H-1B role is not interchangeable with any recently eliminated position.
- **Prepare for DOL enforcement activity.** The 30-day review directive subjects labor condition applications already on file to retrospective scrutiny. Ensure that your Labor Condition Application (LCA) files are complete, that actual wages match or exceed stated prevailing wages, and that the working conditions described in your LCAs reflect current reality.
- **Budget extra time for H-1B processing: Expect a slower, more complex adjudication environment.** Interagency coordination adds new data sources and decision makers to the H-1B arena. Processing times may lengthen, and requests for evidence may become broader and more specific.

We are monitoring implementation and will issue supplemental guidance as the relevant agencies issue rules and operational directives. If you have any questions, please contact Maria del Carmen Ramos at mramos@shumaker.com or 813.227.2252, Olivia Johnson at ojohnson@shumaker.com or 843.996.1948, or Haley Kole at hkole@shumaker.com or 813.676.7254.

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