

GMS Flash Alert



Immigration Edition

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United States - Move Aimed at Prioritizing U.S. Workers for Federal Contracts

On August 3, 2020, U.S. President Donald Trump signed an Executive Order directing federal agencies to review their federal contracting practices with the objective to prioritize the hiring of U.S. workers. The Executive Order, titled “Aligning Federal Contracting and Hiring Practices with the Interests of American Workers” directs federal agencies to thoroughly review their contractors’ use of foreign workers and offshoring labor to fulfill contracts with the U.S. government, and to assess for negative impacts of these practices on U.S. workers, the economy, and national security.¹

WHY THIS MATTERS

The U.S. government awards hundreds of billions of dollars in federal contracts each year to businesses to meet the needs of its federal agencies.² Businesses competing for federal contracts are required to meet specific conditions and are often vetted through rigorous review processes.

Under the new Executive Order, federal agencies are instructed to further review their contractors’ (as well as subcontractors’) use of foreign workers and offshore labor in the provision of products and services to the U.S. government. Specifically, businesses that employ foreign workers or use offshore labor to perform services may experience additional scrutiny when competing for federal contracts.

Employers who contract with the U.S. government should be prepared to provide additional information about their workforce and offshoring labor practices.

Directives in New Executive Order

Pursuant to the August 3 Executive Order, federal agencies are directed to review the type of work performed by foreign workers and assess whether U.S. workers and U.S. national security interests are jeopardized by the hiring of nonimmigrant workers or by the practice of offshoring labor. Where there are possible negative impacts to U.S. workers

and U.S. national security through a federal contractors' use of temporary foreign labor or offshoring, the federal agencies are directed to recommend corrective action. Federal agencies have 120 days to report the results of their review to the Office of Management and Budget (OMB).

The Executive Order also directs the Department of Labor (DOL) and the Department of Homeland Security (DHS) to take actions by September 17, 2020 "to protect United States workers from any adverse effects on wages and working conditions caused by the employment of H-1B visa holders at job sites (including third-party job sites)."

KPMG NOTE

Possible Impact on Employers and Their Employees

This mandate leaves open the possibility that employers could be subject to additional scrutiny and requirements in the foreseeable future such as increased site inspections and the implementation of new policies holding H-1B employers and their end-clients jointly liable for compliance with the H-1B program rules on wages and working conditions.

We Are Monitoring the Situation

KPMG LLP Law in Canada is tracking this matter closely. We are monitoring the implementation of the Executive Order and any upcoming regulations affecting the H-1B and other employment-based immigration programs. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

1 See President Trump's Executive Order: <https://www.whitehouse.gov/presidential-actions/executive-order-aligning-federal-contracting-hiring-practices-interests-american-workers/> .

2 See "How to Become a Federal Government Contractor" at: <https://www.usa.gov/become-government-contractor> .

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Contact us

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