

Immigrant Workers: The Impact of the New H-1B and L-1 Reform Acts

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MOST PEOPLE WOULD agree that a diverse workforce encourages utilization of skills to their fullest. Diversity contributes to the overall growth and prosperity of our nation. However, progress toward diversity in the workplace still remains slow. Economic growth in New Jersey and in the United States has been on the rise for the past several years, and yet there is a disparity of contributions by immigrant workers with the same qualifications and skill sets as U.S. workers.

The policy of increasing diversity in the workplace remains a focus of immigration policy initiatives. For example, the U.S. Department of State (DOS) continues to administer the "Diversity Lottery" which allows foreign nationals from under-represented countries to enter a lottery annually to obtain a green card. Also, the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Service (CIS) and the DOS continue to streamline and/or expedite exchange visitor or cultural exchange visitor entries into the United States.

On Dec. 8, 2004, President Bush signed the Omnibus Appropriations Act for Fiscal Year 2005, which contains provisions affecting the H-1B (the "H-1B Reform Act of 2004") and L (the "L-1 Reform Act of 2004") nonimmigrant visa categories. Both the H-1B and the L programs allow

U.S. employers to sponsor temporary workers. These visa classifications allow businesses to transfer foreign national workers to the United States. The transfers promote diversity and multicultural exchange in all divisions of U.S. and multinational business organizations. However, the new law does not promote

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diversity.

In fact, the new law inhibits H-1B and L-1 temporary transfers. The H-1B Reform Act of 2004 reinstates and raises the American Competitiveness and Workplace Improvement Act (ACWIA) Training Fee to \$1,500. Organizations that employ more than 25 full-time equivalent employees, are allowed to submit a reduced fee of \$750. The new fee under the H-1B Reform Act of 2004 applies to any non-exempt petitions filed after Dec. 8, 2004. Clearly, the

ACWIA Training Fee does little to provide incentive to implement multicultural or diversity incentives utilizing the transfer of highly-skilled nonimmigrant workers.

The H-1B Reform Act of 2004 provides further disincentive for organizations to hire temporary foreign national workers by creating a new Fraud and Detection Fee of \$500. The new Fraud and Detection Fee will have to be paid by employers seeking to hire individuals in either H-1B or L-1 status after March 8th, 2005. It should be noted that each of the aforementioned additional fees is in addition to the base processing fee of \$185 which is the filing fee for a Petition for a Nonimmigrant Worker (Form I-129).

Our nation's immigration laws should not "voice" a policy of diversity and eviscerate that policy with economic disincentives (higher filing fees, training fees, premium processing fees, fraud fees, etc.). Certainly, national security is vital. We always want to ensure that individuals coming to our shores are here to benefit our nation. We just need to be certain that our nation's immigration laws do not come at the cost of sacrificing our nation's ability to succeed as the world's technology leader. ■

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