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News & Types: Immigration Monthly Updates

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Practices: Immigration

DOL Proposes Significant Changes to the PERM Program

On November 17, 2026, the U.S. Department of Labor (DOL) issued a proposed regulation to modernize and make significant changes to the PERM program. The PERM program is the first stage of the employment-based green card process for most applicants. In order to approve a PERM application, the DOL must determine that: 1) There are not sufficient U.S. workers who are able, willing, qualified and available in the offered occupation at the place where the employment will be performed and 2) That the employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. The last time that the DOL modified the PERM program was more than 20 years ago.

The following a summary of the more significant changes being proposed by the DOL:

1. ***Elimination of Schedule A:*** Since 1965, DOL has designated occupations on Schedule A that it concluded were in short supply and thus could bypass the PERM process. The two main occupations currently contained on Schedule A are registered nurses and physical therapists. With the elimination of Schedule A, employers seeking foreign workers to fill these occupations would have to complete the PERM recruitment process similar to other occupations.

2. ***Modernizing the PERM Recruitment Process:*** The proposed regulation would change the current mandatory recruitment process in many ways. One of the most positive changes would be the elimination of the newspaper advertisement requirement. The DOL replaces this requirement with a specific list of recruitment sources which will have to be followed by all employers regardless of whether the position is professional, skilled or unskilled.

3. ***Expanding and Restricting PERM Recruitment Timelines:*** The proposed regulation provides much more expansive and restrictive recruitment timelines, such as:
    1. Recruitment cannot be commenced until a prevailing wage determination is issued by the DOL.
    2. Recruitment must occur for a minimum of 90 days.

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3. The PERM application must be filed within 30 days of the completion of the recruitment.

4. ***Notice of Filing:*** The proposed regulation changes the Notice of Filing (NOF) process. Instead of posting the notice between 30 and 180 days prior to filing which is currently required, the posting must commence 10 days prior to filing and continue after the PERM application is filed through PERM certification/approval and through the approval/denial of the Form I-140 Immigrant Petition for Alien Worker by the U.S. Citizenship and Immigration Services (USCIS).

5. ***PERM Filing:*** Currently, the employer does not file a PERM application with supporting documentation. The proposed regulation would require employers to upload the recruitment report, recruitment documents and the resumes of any applicants as part of the filing process. If the employer does not upload all of the required documents, the PERM application will be summarily denied.

6. ***Layoffs:*** Currently, an employer that has had a layoff in the same or similar occupation at the place of employment within 180 days of filing the PERM application cannot file the application unless it has provided notice to the laid off worker(s) and has considered the laid off worker(s) for the offered position. The proposed regulation would not allow an employer to file a PERM application on behalf of a foreign worker if the employer has had a layoff in the same or similar occupation at the place of employment in the past two years.

7. ***Special Handling for University Teachers/Faculty:*** The proposed regulation significantly changes the special handling process. Most universities will not be able to use the original selection process for the faculty member because the recruitment can only begin after a prevailing wage determination is issued and the PERM application must be filed within 30 days of the completion of the recruitment. Universities will have to decide whether to complete a re-selection process using the special handling procedure or the new regular basic recruitment procedure.

8. ***Staffing Companies:*** The proposed regulation may impact companies that place foreign workers at third party worksites. Some of the potentially negative provisions include:
    1. *Changing Recruitment Process:* If the foreign worker will be working at various unanticipated client sites, the employer will no longer be able to recruit based upon its company headquarters. Instead, it would recruit based upon the closest local company office.
    2. *Form Changes:* The employer will be required to indicate on the revised PERM application if it is placing the foreign worker at a third-party site and provide the name of the third-party site.
    3. *Notice of Filing:* The NOF would have to be placed at the client site for the entire period discussed above.

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4. *Layoffs:* The employer will have to inquire with the third-party client indicated on the PERM application if it has had a layoff in the same or similar occupation at the place of employment within the past two years. If such a layoff has occurred, the employer would not be able to proceed with the PERM process for this occupation/location. Additionally, the third-party client will have to notify the employer if it will be having a layoff in the same or similar occupation at the place of employment at any time after the filing of the PERM application up until the time that the Form I-140 is approved/denied by the USCIS. Employers are required to notify the DOL and USCIS (if applicable) within five business days of the layoff.

Comments on the proposed regulation may be submitted to the DOL on or before January 19, 2027. After the comment period closes, the DOL will review the comments and then issue a final regulation. It is assumed that the final regulation will be issued in summer 2027.

Employment-Based Immigration After the Midterm Elections

Employers should expect increased immigration enforcement, more scrutiny of employment-based visas and additional compliance requirements in 2027.

Key Areas for Employers to Watch

Increased Worksite Compliance and Enforcement: Employers may see increased scrutiny of employment-based immigration programs, particularly H-1B and STEM OPT cases. Areas likely to receive attention include:

- Increased fraud and compliance investigations through unscheduled site visits by USCIS's Fraud Detection and National Security Directorate (FDNS).
- When adjudicating immigration petitions, a greater focus by USCIS on job duties and employee work locations, including remote-work arrangements.
- Employers that place workers at customer locations may face additional government requests for documentation (requests for evidence or "RFEs"), audits or investigations.

More Scrutiny of Visa Applications: Visa appointments at U.S. consular posts are already limited. At the appointment consular officers are expected to conduct more detailed visa interviews and place greater emphasis on:

- Social media posts
- Public charge considerations and financial sponsorship
- Verification of the purpose of travel to the United States and legitimacy of an approved USCIS visa classification

Employers may wish to consider alternative work arrangements or contingency plans if a foreign national employee is delayed in returning to the United States because of visa processing delays.

Employers May See More Audits of Green Card Sponsorship Programs: The Administration is expected to continue focusing on wage compliance and U.S. worker protections. Employers sponsoring foreign nationals for a Green Card may experience:

- Increased DOL investigations

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- Increased prevailing wages
- More frequent audits of PERM applications and additional review of recruitment practices
- Heightened scrutiny involving workforce reductions and layoffs

Even with a Democrat-majority led Congress, major legislative immigration changes remain challenging. Some of the most significant immigration changes may appear through agency guidance, policy revisions, processing delays or changes in enforcement priorities.

Employers should plan for longer visa processing times, additional government scrutiny and increased compliance activity in 2027. Advance planning for international travel and employment-based immigration cases will be more important than ever.

Federal Court Strikes Down DHS Rule Eliminating Duration of Status for F/J/I Non-Immigrants
On November 16, 2026, a federal judge in Massachusetts struck down a Department of Homeland Security (DHS) regulation that would have limited the period of authorized stay for F international students and J exchange visitors to a maximum of four years. The regulation sought to eliminate the longstanding “duration of status” (D/S) framework, which generally allows F students and J exchange visitors to remain in the United States for the duration of their academic/exchange programs, provided they continue maintaining their immigration status. Under the new rule, affected individuals would have been required to apply for extensions of stay with DHS (or travel internationally and reenter the US) if they needed additional time beyond the Admit Until Date (AUD) on their Forms I-94. Additional information about the D/S Elimination regulation is contained in the July 2026 Masuda Funai Business Immigration Monthly.

The court ruled that the regulation exceeded DHS's statutory authority and failed to adequately consider less burdensome alternatives. The court questioned whether requiring students to undergo a discretionary extension process would meaningfully improve the government's ability to identify immigration fraud, particularly given the substantial burdens the change would impose on international students and educational institutions. The decision follows a September 2026 court order that had already blocked the regulation from taking effect while the litigation proceeded.

For now, the ruling preserves the existing D/S framework, allowing F and J nonimmigrants to continue pursuing their academic/exchange programs without automatically having to apply for an extension of stay prior to an AUD expiration, provided they otherwise maintain valid immigration status. The decision represents a significant development for international students, exchange visitors, universities, and employers. DHS appealed the decision and the appeal is currently pending review by the First Circuit Court of Appeals.

Additional information about D/S rule will be contained in future Masuda Funai Business Immigration Monthly updates once it becomes available.

Trend Watch: Visa Processing
While U.S. consular posts strive to reduce appointment backlogs, they face a mandate to focus security screening and fraud detection. Visa applicants may continue to see delays in appointment availability, face additional vetting and scrutiny in the interview process and often see delays in visa issuance due to administrative processing.

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Key Areas for Visa Applicants to Watch

Traveling Internationally? Expect More Visa Delays: Many posts are applying more intensive security screening before visa issuance. Some applicants are being asked to complete Form DS-5535, which requests 15 years of travel, employment, address and social media history. When required, this additional review can delay visa issuance by several months and visa applicants should avoid making travel plans until knowing the visa will be issued.

Which Visa Applicants May Face Additional Scrutiny? F-1 students, individuals working in STEM, AI, semiconductor, biotech, aerospace, and advanced manufacturing fields, applicants with extensive international travel histories and nationals or residents of countries subject to enhanced security screening.

What are Areas of Concern for Consular Officers? For employment-based visas, consular officers increasingly review where an employee works, whether wages are being paid as expected, remote-work arrangements, customer worksite assignments and the employer's business operations.

Is "Refused" Status Really a Visa Denial? A "refused" status often means the consular officer needs additional time to review the case rather than that the visa has been permanently denied. A consular officer may reach out to the visa applicant's school or employer to confirm the information stated in the visa application. Visa applicants are required to monitor their application status as periodic "last updated" date changes may occur with no direct communication from the consular post. The approved application and visa issuance cancel the refusal. However, in future visa applications, the applicant is encouraged to explain this temporary refusal.

The overarching theme heading into 2027 is that USCIS adjudication is no longer the primary source of delay for many employment-based cases. Visa delays are increasingly being caused by security screening, administrative review and staffing shortages at individual consulates.

DOL Judge Orders H-1B Employer to Pay Over $25,000 in Back Wages for Unpaid Bench Time

On November 5, 2026, a DOL Administrative Law Judge (ALJ) ordered an H-1B employer to pay $25,808.53 in back wages, plus interest, for failing to compensate an H-1B employee during periods of nonproductive time.

The H-1B employee entered the United States in February 2022 but did not begin his client assignment until April 25, 2022. The employer argued that the employee was not entitled to wages before his assignment began, particularly because he had traveled to the United States on his own initiative and subsequently returned to India. The ALJ disagreed, finding that the employee made himself available for work on February 17, 2022, when he departed India for the United States. Under H-1B regulations, employers must pay the required wage during nonproductive periods that are the result of lack of assigned work on the part of the employer, commonly referred to as "bench time." Although exceptions exist for certain voluntary, personal absences, the employer failed to establish that the employee's travel to India qualified for an exception. The ALJ emphasized that an employee's departure from the United States does not automatically relieve an employer of its wage obligations.

As an side, the ALJ rejected the employee's separate claims involving unpaid medical benefits and retaliation, and declined to impose civil monetary penalties.

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The takeaway from this case is that H-1B employers cannot delay wage payments until an employee begins a client assignment or productive work. Employers should carefully document when an H-1B employee becomes available for work, maintain payroll during periods without assigned work, and retain documentation supporting any unpaid personal leave. An employee's international travel, without additional evidence establishing an applicable exception from wage payment requirements, does not necessarily excuse the employer's obligation to pay the required wage.

U.S. Department of State Pauses Diversity Visa Issuance Despite Court Ruling

On August 31, 2026, the U.S. Department of State (DOS) announced a new pause on the issuance of all Diversity Immigrant Visas (DV), commonly known as the Green Card Lottery. The announcement followed an August 28, 2026, court order in Medani v. Trump, which ended a previous Diversity Visa issuance suspension imposed in December 2025. The DOS explained that the new suspension was implemented to allow for a review of screening and vetting procedures within the Diversity Visa program, citing national security and public safety concerns.

Under the new policy, Diversity Visa applicants may continue submitting applications and attending scheduled consular interviews. However, no Diversity Visas will be issued while the suspension remains in effect. The Department confirmed that there are no exceptions to the policy, including for humanitarian circumstances. Previously issued visas have not been revoked.

The suspension is particularly significant because Diversity Visa eligibility is limited to a specific fiscal year. For DV-2027 selectees, visas must be issued by September 30, 2027. Applicants who do not receive their visas before the applicable fiscal-year deadline generally lose their eligibility, even if they were selected in the lottery and completed the interview process. The DOS has not announced when Diversity Visa issuance will resume.

For assistance navigating these developments, please contact a member of Masuda Funai's Immigration Practice.

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