

# Immigration Considerations for Coronavirus Response Plans: Key Questions and Answers

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The continuing spread of the novel coronavirus (COVID-19) throughout the United States has caused employers to consider implementing contingency plans to help curb the spread of the disease and protect their workforces. Many companies are now restricting nonessential travel outside of the United States. Companies are also increasingly instructing their employees to work from home.



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Here are some key immigration considerations that employers may want to take into account when creating their own COVID-19 response plans.

### **U.S. Entry Restrictions**

The U.S. government has [banned entry to the United States](#) for foreign nationals, of any nationality, present in Iran, [China](#) (excluding Hong Kong and Macau) and [28 European countries](#) within 14 days of requesting admission to the United States. U.S. citizens, Lawful Permanent Residents, and other limited groups of travelers may still be admitted, though their entry may be delayed.

The U.S. Department of Homeland Security (DHS) has stated that additional entry and travel restrictions are possible. The [DHS's website](#) has the most current information on these restrictions. [COVID-19 informational website](#).

### **Availability of U.S. Consular Services**

The Department of State has reduced consular activity in several countries, including China and India, and continues to limit consular services around the world. To facilitate access to country specific information, the agency has created a [central webpage](#) with country specific information on COVID-19 including information on transit and exit restrictions and information concerning a reduction or temporary suspension of visa services.

### **Considerations for Foreign National Employees**

*Question 1. Our company has implemented a temporary remote work policy for employees. Does this present any issues for our H-1B, H-1B1, and E-3 employees?*

Generally speaking, a specialty occupation worker (H-1B, H-1B1, and E-3) can move to a new worksite within the same area of employment as long as the terms and conditions of employment remain the same. For immigration purposes, an area within normal commuting distance is typically considered to be within the same area of employment.

To authorize this employment, the employer must post a copy of the Labor Condition Application (LCA) filed in the most recent H-1B, H-1B1, or E-3 filing at the new worksite on or before the employee's first day of employment at the new location and update the public access file.

*Question 2. Our company would like to move workers between worksites to continue operations. Does this present any issues for our H-1B, H-1B1, and E-3 employees?*

If the worksites are in the same area of employment, an employee can report to work at the new worksite once the LCA has been posted (see question 1).

If an employee will work at a new location outside the area of employment (outside of commuting distance), then an employer may need to file an amendment to authorize employment.

In limited circumstances, H-1B employers may be able to utilize the U.S. Department of Labor's (DOL) short-term placement provision that allows H-1B employees to work outside of the area of employment without requiring an H-1B amendment petition. This provision requires the employer to pay certain incidentals in addition to the employee's salary and is time-limited. Importantly, an employer may not utilize the short-term placement option if it employs H-1B workers in that worker's occupation at the second location.

Employers may want to carefully consider the availability of the short-term placement option as usage of this provision requires a fact-specific analysis.

*Question 3. How might a company handle DOL posting requirements if the applicable worksite is closed?*

Employers can use electronic notification if they are unable to post hard copies of the LCA at worksites. Employers may post to a company intranet, if all employees are able to access the portal, or directly through email or electronic distribution.

At this time, DOL has not announced an exception to the physical posting requirements for PERM recruitment.

*Question 4. What might our company's salary obligations be if our H-1B, H-1B1, and E-3 workers are unable to work or are placed on leave due to a company-wide quarantine or worksite closure?*

In the event of a company-wide quarantine or worksite closure that affects all employees, the employer would generally be required to continue to pay the salary of H-1B, H-1B1, and E-3 employees. Payment may not be required if a worker is unable to work due to personal illness or voluntary absence. In these circumstances, H-1B, H-1B1, and E-3 workers may be able to utilize standard company leave benefits offered to the company's U.S. workforce. Employers may want to carefully consider the relevant state and federal laws before taking action.

*Question 5. Does a temporary work-from-home policy present any issues for F-1 employees?*

The Student and Exchange Visitor Program [has encouraged](#) F-1 students to utilize telework options provided by employers. F-1 workers may want to consider discussing any changes to employment conditions with their universities, including worksite changes and derivation of hours. F-1 workers are able to [document adaptations](#) to their work conditions through their universities to the Department of Homeland Security.

*Question 6. May foreign students remain in the United States and enroll in degree programs if their universities closes their campuses and/or cease in-person instruction?*

[DHS has implemented temporary](#) measures that allow foreign students to remain in status in the United States and actively enrolled even if their universities close or move to online instruction. Foreign students should remain in close conversation with their Designated School Official regarding their ability to participate in temporary online instruction.

Additionally, foreign students who have departed the United States may be able to participate in online classes and keep their SEVIS record active. Students should discuss these accommodations directly with their universities.

*Question 6. What are some options for remote employment of other foreign employees?*

Generally, remote work and changes in worksites are allowed for other foreign national employees. Employers may want to carefully consider proposed changes to ensure compliance with immigration regulations.

*Question 7. Can foreign workers still travel internationally to renew their status?*

As discussed above, travel limitations, both inbound to the United States and other countries, change daily. Additionally, U.S. embassy operations may have limited staffing and consular services are subject to suspension without advance warning.

Employers may want to review the timelines of any upcoming immigration renewals generally handled through international travel and consider alternative options for employees.

*Question 8. What are our options if a foreign national employee is outside the United States and unable to return at this time?*

Remote work options may be available. Employers may want to confirm that the laws of the host country allow this employment arrangement. Additionally, employers may want to review the tax implications of such a work arrangement.

*Question 9. What options exist for complying with Form I-9 obligations if our office is closed or if employees are unable to appear in person?*

As of March 13, 2020, employers are required to comply with all Form I-9 and E-Verify requirements and employers must continue to verify employment authorization at the time of hire. USCIS allows an employer to designate an [authorized representative](#), such as a personnel officer, agent, or notary public, to fill out a Form I-9 on the company's behalf. USCIS requires that the authorized representative physically examine each document while in the presence of the employee. Reviewing or examining documents via webcam is currently prohibited.

[Ogletree Deakins' Immigration Practice Group](#) will continue to monitor developments with respect to the policy changes and will post updates on our [immigration blog](#) and the firm's [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available.

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