

Critical New Compliance Updates on Employment Authorization Terminations for Employers of Foreign Nationals

Insights for Employers Alert | 2 min read

Jul 18, 2025

Overview

Recent changes in U.S. immigration policy, including the revocation and termination of several humanitarian parole programs and Temporary Protected Status (TPS) designations, have created new compliance challenges for employers of foreign nationals.

Employers are facing unprecedented risks in balancing their ongoing obligations under federal law as it relates to employing unauthorized workers and steering clear of discriminatory hiring and retention practices.

Key Compliance Obligations

- **Continuous Work Authorization:** Employers must ensure that all employees hired after November 6, 1986, remain authorized to work in the United States throughout their term of employment. This is primarily managed through the Form I-9 process, including timely reverification when required.
- **Reverification Requirements:** If an employee presents a work authorization document with a specific expiration date (such as an Employment Authorization Document (EAD) or Form I-94), employers are required to reverify employment authorization no later than the document's expiration date.
- **Constructive Knowledge:** Employers may be held liable if they have actual or constructive knowledge that an employee has lost work authorization. Constructive knowledge can arise from information available to the employer, such as an expired I-9 document, government notifications, or public announcements regarding the termination of certain immigration programs.

Recent Developments Impacting Employers

- **Program Terminations and EAD Revocations:** The U.S. government has recently ended or paused several parole and TPS programs, including Uniting for Ukraine (U4U), Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), and Afghan TPS. EADs issued under these programs may be revoked or have their validity periods shortened, sometimes with little advance notice.
- **E-Verify Alerts:** U.S. Citizenship and Immigration Services (USCIS) has begun notifying E-Verify employers when EADs have been revoked. Employers should monitor these alerts and utilize new tools, such as the “Status Change Report,” to identify affected employees.
- **Automatic Extensions:** The Department of Homeland Security (DHS) has implemented a 540-day automatic extension for certain EAD categories, but this rule is subject to potential legislative changes. Employers must stay informed about the status of this extension and similar policies.

Risks and Enforcement

- **Civil and Criminal Penalties:** Knowingly continuing to employ unauthorized workers can result in significant civil and criminal penalties. Employers must act promptly if they become aware—through any credible means—of an employee’s loss of work authorization.
- **Antidiscrimination Considerations:** Employers must avoid discriminatory practices during the I-9 process, such as requesting additional or specific documents beyond what is required or treating employees differently based on their citizenship or immigration status.

Best Practices for Employers

- **Monitor Expiration Dates:** Track expiration dates of work authorization documents and set up reminders for timely reverification.
- **Stay Informed:** Regularly review government announcements, Federal Register notices, and E-Verify alerts for updates on program terminations and EAD validity.
- **Consistent Policies:** Apply compliance procedures consistently across your workforce to avoid claims of discrimination.
- **Employee Communication:** Encourage employees to notify HR promptly if they receive any government communication regarding their immigration status or work authorization.
- **Legal Review:** Consult with the Hinshaw & Culbertson LLP immigration team to assess risk tolerance and develop response strategies tailored to your organization’s operational needs and risk profile.

Conclusion

The evolving landscape of employment authorization for foreign nationals requires heightened vigilance and proactive management by employers. By understanding your obligations and implementing robust compliance protocols, you can mitigate your legal risks while supporting your company’s foreign national workforce.

For further guidance or to review your current policies, please contact a member of the Hinshaw & Culbertson LLP immigration team.

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