

Proposed L-1 Legislation: L-1 Nonimmigrant Reform Act

Legislation was introduced in the House of Representatives on July 10, 2003 that, if enacted, will significantly impact the use of L-1 status to import foreign national employees. The sponsors of this legislation are seven Democrats, one Republican, and one Independent representative. While this bill (called the "L-1 Nonimmigrant Reform Act") is very preliminary and could change or disappear entirely, it reflects an apparent growing concern on the part of many legislators that L-1 status is being abused and needs to be significantly restricted. At this point, however, we have no way of assessing the likelihood that this particular legislation will become law.

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The legislation proposes a cap of 35,000 L-1 nonimmigrants per year, abolishment of the blanket L-1 category, and an authorized admission limitation of three years.

Additional provisions include:

- Employment abroad during two of the last three years instead of the current one of the last three years.
- Requirement that L-1B nonimmigrants have at least bachelor's degree in the area of specialized knowledge
- A Labor Condition Application requirement that is more stringent than the one currently used for H-1B employees, including attestations that:
 - wages that equal or exceed the prevailing wage
 - no strike or lockout
 - employer has provided notice of filing to bargaining representatives or postings
 - named occupational classification, wage rate, and working conditions
 - employer did not displace and will not displace U.S. workers from within 180 days before and 180 days after the date of filing the visa petition.
 - employer may not out-source, lease, or otherwise contract for the placement of a worker with another firm.
- Public Access File must be assembled within one day and contain a copy of the LCA.
- The Secretary of Labor will compile a list (by employer and occupational classification) of applications which will include the wage rate, number of aliens, country of origin, period of intended employment, and date of need. This list will be available for public examination.
- The Secretary of Labor will establish a process for receiving, investigating, and resolution of complaints that employers have failed to meet a condition of the LCA. Complaints may be filed by an aggrieved person or organization. The Secretary of Labor will investigate the complaint and the employer may be fined for violations. The employer may be further penalized for willful violations by the inability to use L petitions for three years.
- Employers cannot levy a monetary penalty on L-1 nonimmigrants for early

termination of employment.

- Employers cannot recoup the BCIS fee for the L-1 petition from the nonimmigrant employee.
- Employers cannot bench L-1 nonimmigrants nor reduce their hours and corresponding pay based on lack of work. This does not include voluntary requests or circumstances where the nonimmigrant is unable to work.
- Employers must offer the L-1 nonimmigrant the same benefits and eligibility criteria as U.S. workers.
- Employers are liable for the cost of return transportation if the nonimmigrant is terminated before the expiration of the L-1 status.
- There is an imposition of a \$1,000 surcharge for L-1 petitions and the first extension filed by an employer. BCIS may use 30% of these fees for processing and data collection, 40% for enforcement, and 30% for training and education of U.S. workers.
- The legislation indicates that it will apply to "applications for nonimmigrant status filed on or after the first day of the first fiscal year beginning after the date of the enactment of this Act." Therefore, it does not appear to apply to existing L-1 nonimmigrants during their current approved stays. However, it would appear to prevent extensions for L-1 nonimmigrants if they will have been in L-1 status for three years.

It should also be noted that Congressman Mica also recently proposed a bill that would have restricted L-1A visas. (In addition, one Republican Congressman has introduced a bill to ban H-1B visas altogether.)

Again, we caution that this legislation is very preliminary and, even if enacted, would likely be modified from the original version introduced in Congress. Nevertheless, we want to communicate the fact that there appears to be increasing concern about L-1 visas and that there may be continuing initiatives to try to limit their usage.

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