The Work Week

News from the Bassford Remele Labor & Employment Practice Group

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Layoffs Meet H-1Bs:
What Employers Need to Know About the New Executive Order

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Before filing your next H-1B petition, every sponsoring employer should ask a new question: Has the company recently laid off, or does it plan to lay off, employees in roles similar to the position it now seeks to fill with a worker who requires H-1B sponsorship? A new executive order puts that question at the center of the federal government's review of H-1B filings. And it applies to every sponsor, not just employers that have traditionally drawn heightened scrutiny.

What the Order Does

On September 18, 2026, the President signed an executive order titled "Enhancing Program Integrity and Interagency Coordination in the Administration of the H-1B Nonimmigrant Visa Program." The order does not change who qualifies for H-1B status or how an employer files a petition. Instead, it changes how federal agencies review those filings by placing an employer's workforce decisions at the center of the analysis. The administration states that the order is intended to address misuse of the program that displaces U.S. workers and depresses wages.

Three Changes Worth Your Attention

- **More agencies at the table** - The Departments of State, Labor, and Homeland Security must consult with the Departments of Commerce and Education and the Small Business Administration when handling H-1B petitions, labor condition applications, and visas. The agencies may use shared wage, education, and industry data to evaluate whether a filing is legitimate.

- **A companion proclamation** - On the same day, a companion proclamation extended the September 2025 order titled "Restriction on Entry of Certain Nonimmigrant Workers," including its $100,000 entry payment for certain H-1B petitions, through September 21,

2027. A federal court has issued an injunction on the collection of that payment. A separate proposed rule would impose a six-figure fee for each petition. Neither measure is currently in effect, but either could significantly increase the cost of sponsorship.

- **Where employers may get caught** - The layoff provision is likely to catch some employers off guard. It applies to all sponsors, looks back one year, and reaches planned reductions. Yet the order does not define "layoff" or establish a minimum size threshold. Smaller-scale or "micro" layoffs used to control costs may therefore fall within its scope because the order covers employers that directly or indirectly engage in layoffs negatively affecting similarly situated U.S. workers. Agencies have not yet explained how they will weigh layoffs or what evidence they will expect. For now, employers should monitor the guidance and document why each sponsored position differs from any eliminated role.

What It Signals

- The order does not itself deny anyone a visa. It does, however, signal sustained and more coordinated federal scrutiny of H-1B sponsors, particularly when an employer is both reducing its U.S. workforce and sponsoring foreign workers. As agencies issue implementing guidance, employers should be prepared for longer processing times, broader requests for evidence, and increased audit and investigative activity.

Practical Steps

- **Review layoffs alongside sponsorship** - If your organization recently implemented, or is planning, a reduction in force, review any pending or upcoming H-1B filings. Be prepared to explain and document how each sponsored position differs from any eliminated role.

- **Check labor condition application compliance** - Confirm that actual wages meet or exceed required wages, public access files are complete, and job descriptions match the work employees actually perform.

- **Take a closer look at third-party placements** - Employers placing H-1B workers at client sites should anticipate closer review and ensure the record supports the placement.

- **Plan for government contact** - Identify internal points of contact and establish protocols for responding to requests for evidence, site visits, and investigations.

- **Budget with the uncertainty in mind** - Continue tracking the fee litigation and pending rulemaking, both of which could affect long-term workforce costs.

Expect a look back at existing filings. The order directs the Department of Labor's Wage and Hour Division to begin reviewing previously filed labor condition applications within roughly 30 days to determine whether enforcement action against sponsoring employers is warranted.

This area is moving quickly, and much will depend on the guidance agencies issue in the coming weeks. If you have questions about how the executive order may affect your H-1B program, pending filings, or a planned workforce change, please contact the Bassford Remele Labor and Employment Practice Group.

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