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Service

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Employer Takeaways from the New Regulations "Modernizing H-2 Program Requirements, Oversight, and Worker Protections"

On December 18, 2024, the Department of Homeland Security (DHS) released updated H-2 (including both H-2A and H-2B) visa regulations, with the purpose of modernizing the H-2 visa program.

Below are the critical changes that H-2A and H-2B employers should know:

Employers now can hire H-2 workers from any country. DHS has removed the list of countries eligible to participate in the H-2 program.

DHS has extended the H-2 worker grace period to 60 days after the end of H-2 period of employment. This means that H-2 workers now have 60 days after their employment ends to leave the country or change their immigration. During these 60 days, the H-2 worker will be considered as maintaining their status and will not accumulate a period of unlawful presence.

DHS is now providing “whistleblower” protections, comparable to that protection offered to H-1B workers, to protect those who seek to expose an employer’s violations of the H-2 visa program rules.

Employers should review their obligations under the H-2 visa program to confirm compliance with all regulations. Those employers who are accused of violating program rules may face site visits or audits by DHS.

DHS is making portability permanent for H-2B workers and removing the requirement that H-2A workers can only port to an E-Verify employer, meaning that all H-2 workers may change jobs and start working for the new employer as soon as the new employer files an H-2 petition on their behalf, rather than waiting weeks or months for the petition to be approved.

Husch Blackwell's Business Immigration and Global Mobility team offers a Resource Center with insights to help employers navigate the evolving immigration policy landscape.