

# Traveler/Immigration Alert

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## Important January Reminders

### **International Travelers Must Register with “ESTA” Prior to Travel to the U.S.**

Many business visitors from non-U.S. countries travel to the United States pursuant to the Visa Waiver Program (“VWP”) to attend meetings and conferences or for vacation purposes. Travelers from VWP countries\* are permitted to travel to the U.S. for up to 90 days without first obtaining a visitor’s visa. Until now, they have been permitted to simply buy a ticket, board a plane, and travel to the U.S. **As of January 12, 2009**, all citizens of VWP countries who plan to travel to the United States for business or tourism using the VWP must pre-register with the Electronic System for Travel Authority (“ESTA”) program and receive an electronic travel authorization **prior to boarding a U.S.-bound airplane or cruise ship**. (The requirement will not affect U.S. citizens traveling overseas.) ESTA applications may be submitted at any time prior to travel, although it is recommended that the VWP traveler apply for ESTA travel authorization at least 72 hours before departing for the United States. VWP travelers may apply for ESTA authorization at <https://esta.cbp.dhs.gov>. Once approved, ESTA travel authorizations will be valid for multiple entries for up to two years or until the applicant’s passport expires, whichever occurs first. Please ensure that your organization is aware of this new requirement, as failure to register with ESTA will result in travel delays and can result in meeting cancellations or disruptions.

### **UPDATE: Federal Contractor Regulations Delayed Until February 20, 2009**

#### **New Regulations Will Require Over 168,000 Federal Contractors to Use E-Verify**

New rules were scheduled to go into effect on January 15, 2009 to require most federal government contractors to use E-Verify, an electronic employment eligibility verification system operated by the U.S. Department of Homeland Security. E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) allows employers to electronically confirm the biographical data of employees pursuant to a Memorandum of Understanding (“MOU”) entered into between the employer, the U.S. Department of Homeland Security (“DHS”) and the Social Security Administration (“SSA”). The government is delaying the effective date of these regulations until February 20, 2009 due to a lawsuit filed by the U.S. Chamber of Commerce, the American Council on International Personnel, the

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\*VWP Countries: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Society for Human Resources, the H.R. Policy Association, and the Associated Builders and Contractors.

The new rules will require that all future prime government contracts contain a clause requiring companies to register for E-Verify within 30 days of the contract award, and to verify the status of new and existing hires through E-Verify within 90 days of enrollment in E-Verify. The rule will apply to all future contract employees, and all existing employees and federal subcontractors once they begin working on new federal government contracts. Exempt from this requirement are employees working on contracts performed outside the United States; those employees hired before November 6, 1986; subcontracts valued at less than \$3,000; contracts lasting for less than 120 days; and contracts covering commercially available products (COTS items).

If the E-Verify system is unable to confirm the employee's status, the worker will receive a "tentative nonconfirmation" notice and will have eight days to settle the discrepancy with DHS or SSA. In the event that the discrepancy cannot be resolved, the employee may be terminated. The Federal Acquisition Regulations provide federal officials with the authority to terminate a federal contract or to recommend suspension or debarment proceedings for companies that knowingly hire undocumented workers. The new rules also require DHS and SSA to refer the contractor to a suspension or debarment official in the event the MOU is terminated.

In the event you are required to register for E-Verify, please contact your Vedder Price attorney to assist in registering for E-Verify and executing the MOU with DHS and SSA.

### **State Law Alert—Certain Employers Must Use E-Verify**

All employers doing business in Arizona are required to register for E-Verify and run all new Arizona employees through the E-Verify system. **As of January 1, 2009**, all Mississippi employers with over 250 employees and all South Carolina employers with more than 500 employees must register to use E-Verify. The E-Verify requirement for smaller employers in these states will be phased in over the next several years. The following states also require certain employers to use E-Verify, often in connection with state contracts and subcontracts: Colorado, Georgia, Idaho, Minnesota, Missouri, North Carolina, Oklahoma, Rhode Island, and Utah. In the event you think that you may be required to register for E-Verify, please contact your Vedder Price attorney to assist you.

### **U.S. Lawful Permanent Residents Now Subject to US-VISIT**

**As of January 18, 2009**, all lawful permanent residents of the United States will be subject to the biometric requirements of the US-VISIT program. US-VISIT was established in 2003 to verify the identities and travel documents of visitors. Until now, only temporary visitors were subject to US-VISIT requirements. Lawful permanent residents will now be required to be photographed and fingerprinted upon arrival to or departure from the U.S. This data will then be checked against intelligence and law enforcement watch lists and databases. Initially, US-VISIT will apply to all permanent residents entering or exiting from an airport or seaport. Permanent residents entering through land ports of entry will be required to provide fingerprints only if they are referred to secondary inspection. Lawful permanent residents with criminal convictions (including DUI convictions) traveling outside of the U.S. are likely to be questioned at entry and should carry with them court records or other documents showing the disposition of the matter and any other evidence regarding their admissibility to the U.S.

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## REMINDER for U.S. Citizens and Residents

**Effective June 1, 2009**, the Western Hemisphere Travel Initiative (“WHTI”) will require travelers to present a passport or other approved secure document denoting citizenship and identity for all *air, land and sea travel* into the United States, Canada, Mexico, the Caribbean and Bermuda. This requirement **will** affect U.S. citizens. Currently, secure documentation is required only for persons traveling by air to these countries.

A new, less expensive alternative to the passport is the new U.S. “passport card,” available through the U.S. Department of State. This new card was designed to meet the needs of border community residents and facilitates entry at U.S. land and sea ports of entry when arriving from Canada, Mexico, the Caribbean and Bermuda. *The card may not be used for travel by air.* Otherwise, it carries the same rights and privileges as a U.S. passport. Information may be found at [www.travel.state.gov](http://www.travel.state.gov). Additionally, DHS is working with the state governments to develop enhanced driver’s licenses that denote both identity and citizenship to comply with WHTI requirements.

## H-1B Petitions May Be Filed on April 1, 2009 for the Next Fiscal Year

Employers—please note that all petitions for new H-1B visas should be filed with DHS on **April 1, 2009** to ensure that they have a chance of being adjudicated. Please identify any employees or prospective employees requiring H-1B status for the upcoming fiscal year as soon as possible. As you know, the U.S. government limits the number of new H-1B visas for professionals to 65,000 each year, with limited exceptions. Because demand exceeds supply, DHS has developed a lottery selection process to determine which petitions will be adjudicated. This year’s demand is expected to be similarly high, and the entire year’s supply of H-1B visas is expected to be exhausted on April 1—the first day that petitions may be filed for the 2010 Fiscal Year. Due to new Labor Condition Application procedures, employers should take increased processing times into account when planning to submit H-1B visa petitions. Employers should not wait until the final weeks before April 1, 2009 to identify possible H-1B visa employees.

Please contact your Vedder Price attorney or a member of our Immigration Practice Group should you have any questions regarding immigration issues.

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Vedder Price P.C. is a national, business-oriented law firm with over 260 attorneys in Chicago, New York and Washington, D.C.

**The Vedder Price Business Immigration Group**

Vedder Price provides a full range of business immigration services. Building on the firm's expertise in corporate compliance and best practices, we work with clients to develop policies and internal processes to ensure compliance with federal and state-level immigration laws and minimize exposure to civil and criminal immigration enforcement. We provide proactive advice to best position a company and its workforce before and after corporate changes, including acquisitions, mergers, divestitures and reorganizations. The firm assists clients in obtaining temporary and permanent immigration status for their executive, managerial and professional employees in virtually every visa category. Together with the firm's tax, benefits, executive compensation, estate planning and employment lawyers, we help clients develop and service their global workforce.

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