

# Immigration Compliance Update

## U.S. Department of Labor Prevailing Wage Determinations Currently Suspended until Further Notice

The U.S. Department of Labor (DOL) recently announced it has temporarily suspended the processing of prevailing wage determinations for immigration matters. As you know, prevailing wage determinations must be filed in connection with all labor certification (PERM) applications for permanent resident status and H-2B seasonal temporary workers, and, in a few instances, H-1B specialty occupation petitions. The delay in processing prevailing wage requests may negatively affect the processing times for these applications and petitions.

The reason for the delay relates to a court order issued by a U.S. district court requiring DOL to reissue thousands of H-2B prevailing wage determinations by September 30, 2011. DOL has stated that National Prevailing Wage Center resources will consequently be used to comply with this order, and that it will be unable to process regular prevailing wage requests until September 30, 2011.

The scope and duration of the delays is uncertain at this time, so we will continue to file new prevailing wage requests during this suspension period. However, this delay in processing by DOL will clearly mean that employers will not be able to file PERM applications until DOL has processed the employer's prevailing wage request. We will provide updated information when more becomes available.

### *Diversity Visa Lottery to Open October 4, 2011*

The online registration period for the 2013 Diversity Visa Program (DV-2013) will begin on Tuesday, October 4, 2011 at noon, eastern daylight time (EDT) (GMT-4), and conclude on Wednesday, November 2, 2011 at noon, eastern standard time (EST) (GMT-5). Applicants must register online at <http://www.dvlottery.state.gov>.

The congressionally mandated Diversity Immigrant Visa Program makes available up to 55,000 diversity visas (DVs) annually. DV entries are randomly selected from countries with low rates of immigration to the United States within the previous five years, and must meet strict eligibility requirements.

Natives of all countries are eligible to apply unless the country sent a total of more than 50,000 immigrants to the United States in the previous five years. Countries *ineligible* this year are Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible to apply.

The law and regulations require that every DV entrant must have at least: (1) a high school education or its equivalent or (2) two years' work experience within the past five years in an occupation requiring at least two years' training or experience. The Department of State does not notify successful DV applicants by letter or e-mail. Entrants may check the status of their entries by returning to the website at <http://www.dvlottery.state.gov> to find out if their entry was selected or not.

### **Fraud Warning**

Some companies posing as the U.S. government have sought money in order to "complete" DV entry forms. There is no charge to download and complete the Electronic Diversity Visa Entry Form.

### *H-1B Cap Update*

As of August 12, 2011, U.S. Citizenship and Immigration Services (USCIS) has received

approximately 25,300 H-1B petitions under the fiscal year 2012 annual cap of 65,000, and 14,700 under a special quota of 20,000 for individuals with U.S.-issued advanced degrees. These H-1Bs become available when the government's 2012 fiscal year begins on October 1, 2011.

### *Department of State Releases New DS-160 Nonimmigrant Visa Application*

The Department of State (DOS) has released a new version of the Form DS-160 Nonimmigrant Visa Application. The DS-160 form is an online application form that is completed and submitted electronically in connection with nonimmigrant visa applications at all U.S. embassies and consulates around the world.

The new DS-160 clarifies that the applicant—and only the applicant—must electronically sign and submit the DS-160 application. The only exceptions to this requirement are for applicants under 16 years of age and those physically incapable of completing an application. In these cases, the DS-160 may be completed and executed (i.e., electronically signed and submitted) by the applicant's parent or guardian or, if there is no parent or guardian, by any person having legal custody of, or a legitimate interest in, the applicant.

Attorneys may prepare the application for the applicant, but the applicant must "submit" the application electronically—an attorney is no longer permitted to submit the application for the applicant. Other changes on the new DS-160 include the addition of six new questions relating to possible grounds of inadmissibility.

### *U.S. Immigration and Customs Enforcement Continues Trend of Employer I-9 Investigations*

U.S. Immigration and Customs Enforcement (ICE) has initiated a new round of I-9 investigations. The agency has indicated that the emphasis is on "businesses related to critical infrastructure and key resources," which includes sectors such as banking and finance, commercial nuclear reactors, dams, drinking water and water treatment systems, government facilities, information technology, telecommunications and transportation systems, among others.

These inspections seek to ensure that companies hire only individuals authorized to work in the United

States, and they involve inspecting I-9 forms and documents provided by employees in order to verify identity and employment authorization.

An employer typically has three days from receipt of the notice of inspection to produce the I-9 forms for review; additional supporting documentation may be requested as well. If violations are found, ICE may impose a number of different penalties. Depending on the severity of the violation, these can range from fines to preclusion from bidding for federal contracts. In the most serious cases, criminal charges may be filed.

In addition to these I-9 inspections by ICE, employers of foreign nationals are also subject to site visits by the Department of Homeland Security (DHS). In these site visits, DHS intends to confirm that the employer is a bona fide organization that knowingly filed the visa petition for its employee, and that the employee is actually working for the employer in the position that was the subject of the visa petition, and at the wage promised in the petition. No prior notice of a site visit is given; the inspecting officer simply shows up at the job site.

Please contact your Vedder Price attorney immediately if you receive any communication about a visit or inspection from ICE or DHS.

While there is no way to prevent a site visit or the issuance of a notice of inspection, good policies and practices are essential to avoiding problems. It is critical that employers implement an immigration compliance policy that requires their organization to routinely conduct internal I-9/immigration audits and engage in regular and systematic training of personnel charged with the responsibility for I-9s and other immigration matters.

Vedder Price is available to prepare compliance policies and to conduct I-9 audits and trainings at your office and through webinars, which can reach all employees responsible for I-9 compliance throughout a multioffice organization.

### *Maryland's Prince George's County Public Schools to Pay over \$4 Million in Back Wages for H-1B Violations*

The U.S. Department of Labor's (DOL) Wage and Hour Division announced that Maryland's Prince George's County Public School system has agreed to pay over \$4 million in back wages to more than

1,000 employees as a result of violations of the H-1B program. Because some of the violations were willful, the school system will also pay a civil penalty of \$100,000 and be debarred for two years from using immigration programs. This debarment precludes not only filing new immigration petitions, but also extension requests for existing nonimmigrant employees and permanent residence petitions for foreign workers in any employment-based visa category.

DOL investigators found that the school system illegally reduced the wages of the H-1B workers by requiring them to pay fees that the school system was required to pay. H-1B regulations require that employers pay certain fees that cannot be passed on to the H-1B employee, including the \$500 anti-fraud fee and the \$1,500 (or \$750 for small employers) ACWIA fee, which is used to train U.S. workers. Instead of paying these fees and other costs, the school system required the H-1B workers to pay them, which effectively reduced their salaries below the required levels.

The Department of Labor takes wage violations in the H-1B program very seriously, and all H-1B employers must be vigilant in complying with the wage requirements. Changes to the H-1B worker's job or job location, if not properly handled, can result in wage violations, and any reductions in salary must be carefully assessed to make sure these don't create violations as well. Contact your Vedder Price attorney if you anticipate making any changes to a sponsored foreign national's position, job location or wages. In some cases, amended visa petitions must be filed or labor condition application notices posted to keep your company in compliance.

### Questions

Please feel free to contact your Vedder Price attorney, the head of the Business Immigration practice group, **Gabrielle M. Buckley** (312-609-7626/gbuckley@vedderprice.com) or **Michelle Jacobson** (312-609-7761/mjacobson@vedderprice.com), if you have any immigration questions or needs.

## VEDDER PRICE®

222 NORTH LASALLE STREET  
CHICAGO, ILLINOIS 60601  
312-609-7500 | 312-609-5005 • FAX

1633 BROADWAY, 47th FLOOR  
NEW YORK, NEW YORK 10019  
212-407-7700 | 212-407-7799 • FAX

1401 I STREET NW, SUITE 1100  
WASHINGTON, D.C. 20005  
202-312-3320 | 202-312-3322 • FAX

[www.vedderprice.com](http://www.vedderprice.com)

### About Vedder Price

Vedder Price P.C. is a national business-oriented law firm composed of more than 265 attorneys in Chicago, New York and Washington, D.C.

### The Vedder Price Business Immigration Group

The Vedder Price Business Immigration practice group counsels U.S.- and foreign-based companies with regard to all aspects of business-related immigration laws, including assisting clients in obtaining temporary and permanent immigration status for their executive, managerial and professional employees in virtually every visa category. Building on the firm's strong corporate compliance practice, 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 also provide proactive advice to best position a company and its workforce before and after corporate changes, including acquisitions, mergers, divestitures and reorganizations.

This *Update* is published periodically by the law firm of Vedder Price P.C. It is intended to keep our clients and interested parties generally informed on developments in the business immigration industry. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this *Update* may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.

© Copyright 2011 Vedder Price P.C. Reproduction of this *Update* is permitted only with credit to Vedder Price. For additional copies or an electronic copy of this *Update*, or for address changes, please contact us at [info@vedderprice.com](mailto:info@vedderprice.com).

Additional questions or comments concerning the *Update* or its contents may be directed to the firm's Corporate Practice Leader, John R. Obiala (312-609-7522), the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780), or, in Washington, D.C., Amy L. Bess (202-312-3361).