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ROSNER, ORTMAN & MOSS

COUNSEL FOR IMMIGRATION PARTNERS

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Immigration Law Update

Current Developments in Immigration

Greetings!

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

U.S. Citizenship & Immigration Services Issues Clarifies when H-1B Amendment is Required

New guidance promulgated by U.S. Citizenship & Immigration Services (USCIS) clarifies the employer's requirements when an H-1B employee changes job location. As a reminder, H-1B employment is tied to a specific job and a specific work location. If there is a material change in the terms or characteristics of H-1B employment, the employer is required to amend the H-1B petition with USCIS. For years, there has been ambiguity about how an employer is required to alert USCIS to changes in employment location, and to remain compliant with DOL when a geographical change occurs. A new policy memorandum issued on July 21, 2015 resolves that ambiguity.

At Rosner, Ortman & Moss Partners, it has been our position that a change in employment location that moves the H-1B worker outside of the Metropolitan Statistical Area (MSA) identified in the original H-1B petition requires the submission of an amended petition prior to the move. That position has been confirmed by USCIS in its recent guidance.

As a practical matter, we note that employers are not always aware of their ongoing obligation to inform USCIS of material changes in employment, including changes in job location. With the new policy guidance issued by USCIS, it is critical that employers develop vigilance around notifying counsel *before* a meaningful change is made. USCIS has instituted a retro-active grace period to help employers establish compliance, but after August, employers will be strictly penalized for failure to follow the new amendment guidance.

NO ACTION REQUIRED

Changes in employment location on or before April 9, 2015

USCIS has provided a grace period for employers who failed to file a necessary amendment for an employee who changed job locations on or before April 9, 2015. The employer may choose to file an amended petition by January 15, 2016; however USCIS does not anticipate taking action against employers who fail to do so.

CONTACT COUNSEL TO DISCUSS

Changes after April 9 but prior to August 19, 2015

Where a change in job location occurred after April 9, 2015, the employer is legally required to file an amended petition by January 15, 2016. Please contact our office as soon as possible if you are aware of an H-1B employee who changed job location after April 9 and who therefore requires an amendment.

MAINTAINING COMPLIANCE IN THE FUTURE

Changes on or after August 19, 2015

August 19 is the cut-off by which employers are expected to comply with the new guidance. Any changes in employment location that take the employee out of the MSA and which occur on or after August 19, 2015 **must** be preceded by the filing of an amended H-1B petition with USCIS. Failure to follow these guidelines could result in an H-1B worker falling out of status.

Please note that not **all** changes in job location will require an amended petition. If an H-1B employee changes job locations but remains in the MSA, then an amended petition is not required. This type of change might occur when an employee changes offices in the same campus, or where an employer moves to a new building in the same city. In addition, USCIS has clarified that short-term placements of up to 30, or in some cases 60, days, will not require the filing of an amended H-1B petition, nor will

employment at any non-worksites locations. Note, however, that these kinds of changes may carry separate requirements, such as posting the Labor Condition Application at the new location. Exactly what kinds of steps are required will need to be evaluated on a case-by-case basis.

The important take away here is that H-1B employers should be mindful that even small changes in employment location may trigger compliance requirements. Be sure to contact us in advance of any changes so that we can do our part in helping you and the Company stay compliant.

For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.

Sincerely,

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