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U.S. Employers Beware: The Do's and Don'ts for Business Visitors

In the wake of breaking news reports regarding a leading tech company and charges that it misused temporary visas to bring workers to the U.S., employers should be reminded that business visitors are authorized to enter the U.S. for very limited purposes, and are not permitted to engage in substantive employment in the U.S. The penalties for misusing visas are severe. Employers who violate the law may be subject to the following, all of which are fact-dependent:

- civil fines (for example, up to \$16,000 in fines per worker)
- criminal penalties (for example, up to six months in prison for knowingly hiring an illegal worker to 10 years for harboring one)
- debarment from government contracts
- court orders requiring or prohibiting various actions with respect to hiring employees
- inability to sponsor future employment-based visas on behalf of employees
- asset forfeiture
- compliance measures, including strict reporting requirements under the strict scrutiny of various government agencies

There is also indirect damage from lost productivity, attorneys' fees and negative publicity.

In this case, in fact, the tech company agreed to a \$34 million settlement, the largest ever government imposed fine settlement for immigration violations.

All U.S. visa categories have their own specific criteria and are intended for a designated purpose. The B-1 business visitor visa allows individuals to enter the U.S. for up to six months per visit, and participate in business activities of a commercial or professional nature in the U.S., including, but not limited to:

- Consulting with business associates
- Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
- Settling an estate
- Negotiating a contract
- Participating in short-term training
- Transiting through the United States: certain persons may transit the United States with a B-1 visa
- Deadheading: certain air crewmen may enter the United States as deadhead crew with a B-1 visa

Additionally, the U.S. participates in a Visa Waiver Program ("VWP") for nationals of certain countries. Those who are eligible to travel under VWP are able to enter the U.S. without a visa for up to 90 days per

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visit and participate in business activities of a commercial or professional nature, including, but not limited to:

- Consulting with business associates
- Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
- Negotiating a contract
- Participating in short-term training

An individual is eligible to apply for admission under the VWP if s/he:

- Has a valid passport lawfully issued by a VWP country
- Has authorization to travel via the Electronic System for Travel Authorization
- Arrives via a VWP signatory carrier
- Has a return or onward ticket

Individuals interested in the VWP will need to visit the following website for the Electronic System for Travel Authorization (ESTA), to apply for/register for travel to the U.S.: <https://esta.cbp.dhs.gov/esta/>.

The conditions on travel for business visitors through the B-1 visa or VWP are as follows:

- Visitors cannot engage in substantive work duties or enter the U.S. labor market. They should remain as foreign

employees on foreign payroll and have proof of continuous employment abroad.

- Evidence of *ties to the home country* (employment verification, property, etc.) and *sufficient finances* (bank account statements, pay statements, etc.) should be available to present to Immigration Authorities, as visitors must demonstrate their intent to return to their home country following the temporary visits to the U.S., and they must also establish that they will not become a burden on the U.S. government as they have sufficient funds to cover all costs incurred while in the U.S.
- It is advisable for the U.S. company to provide a business visitor with a letter of invitation that should specifically state why a business visitor is traveling to the U.S. (to attend a meeting or conference, etc.), and emphasize that s/he is not in any way going to be working while in the U.S.

Employers should consult with immigration counsel when reviewing short-term assignments or planning U.S. business trips for foreign workers to determine which visa category is appropriate.

For more information, please direct inquiries to the Immigration and Naturalization and Compliance Practice Group contact, Najia Khalid, at nkhalid@wiggin.com or 203.498.4314.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.