



# Managing the Commercial Impact of the Coronavirus: Immigration Implications

**Roy J. Barquet, Ann Marie Uetz**  
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*Coronavirus Resource Center*

*“You don’t want to be complacent. You always want to be ahead of the curve.”* Dr. Anthony Fauci, M.D.,  
Director of National Institute of Allergy and Infectious Diseases.

As the coronavirus outbreak continues to wreak havoc on markets and industries in the U.S. and around the world, businesses are now confronting significant and unique challenges. Successful navigation of these challenges will require thoughtful and comprehensive planning. Foley has created a multi-disciplinary and multi-jurisdictional team, which has prepared a wealth of topical client resources (see [Foley’s Coronavirus Resource Center](#)) and is prepared to help our clients meet the legal and business challenges that the coronavirus outbreak is creating for stakeholders across a range of industries, including automotive, manufacturing, technology, solar, hospitality and travel, healthcare, food, fashion and apparel, and sports & entertainment. Chief among those challenges is the prospect of new legal requirements for employers during this challenging time.

## Coronavirus Impact on U.S. Immigration

As the coronavirus outbreak continues to develop, now is the time for business with significant numbers of foreign national employees to consider response actions to help mitigate their risk and prepare for how they will deal with the fallout from the coronavirus. An effective plan should include establishing a crisis response plan to identify, assess, and manage the risk presented from an immigration perspective. Companies and educational institutions should take the following steps to mitigate risk and preempt the impact of the coronavirus on their workforce, students, and foreign travel plans:

- **Coronavirus Impact on Individuals Seeking Entry into the U.S. From China, Iran and Europe:** According to Presidential [Proclamation 9984](#) [issued on January 31, 2020] and Presidential [Proclamation 9992](#) [issued on February 29, 2020], President Trump suspended entry of certain immigrant and nonimmigrant foreign nationals who were physically present within China [excluding Hong Kong and Macau] and Iran, 14 days prior to their entry into the U.S. For a complete list of all individuals exempt from the travel restrictions, review Proclamation 9984 and the subsequent February-dated Proclamation 9992. While the U.S. entry prohibition does not apply to U.S. citizens, U.S. lawful permanent residents and any foreign national who is the spouse of a U.S. citizen or lawful permanent resident, Proclamation 9984 does state that U.S. citizens who are traveling from

the Hubei province in China within 14 days of arriving to the United States will be subject to up to 14 days of mandatory quarantine. Just 11 days after the issuance of Proclamation 9992, on March 10, 2020, President Trump signed an additional Presidential [Proclamation 9993](#) that suspends the entry into the U.S. of foreign nationals who hold an immigrant or nonimmigrant visa and who have been physically present in certain European countries during the 14 days prior to their scheduled arrival to the U.S. For purposes of this Proclamation, these European countries, known as the Schengen Area, include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. Presidential Proclamation 9993 is effective on March 13, 2020 and it should stay in effect for 30 days. Subsequently, on March 14, 2020 President Trump issued an additional [Presidential Proclamation](#) equally suspending the entry into the U.S. of foreign nationals who hold an immigrant or nonimmigrant visa and who have been physically present in the UK and Ireland during the 14 days prior to their arrival to the U.S. All previous Presidential Proclamations do not apply to U.S. Citizens, U.S. lawful permanent residents and foreign nationals who are the spouses of U.S. citizens or lawful permanent residents.

Based on these Presidential Proclamations, foreign nationals exempt from U.S. travel restrictions who reside in or have recently traveled to China, Iran or the Schengen Area countries, should postpone their consular visa interview appointments until 14 days subsequent to their departure from these countries. Similarly, if a foreign national employee is subject to these travel restrictions [based on a “case by case” analysis] employers can advise the employee to travel to a third country, remain in that third country for at least 14 days, and then proceed to the U.S. While this is a feasible strategy, employers must be mindful that the foreign employee may need a visa to travel to the third country and that many countries have started to implement similar travel restrictions, especially for Chinese citizens. In addition, airline carriers should also be mindful that the Immigration and Nationality Act provides that it is unlawful for commercial carriers to transport improperly documented aliens to the U.S. Accordingly, Customs and Border Protection (CBP) has announced that airline carriers that transport foreign nationals subject to the Presidential Proclamations [“may be subject to a carrier fine for each alien brought to the United States.”](#) Further, CBP advises airline carriers to implement measures to comply with the Presidential Proclamations and direct questions about the scope of implementation, including the authorization for any foreign national to board a U.S. inbound aircraft, to the appropriate CBP Regional Carrier Liaison Group “for adjudication prior to aircraft departure.” CBP has made available the following Regional Carrier Liaison Group contact information:



- Arrival Restrictions at Airports: Under the previous Presidential Proclamations, the U.S. Secretary of Homeland Security is instructed to establish standards and procedures at all U.S. ports of entry to regulate the travel of persons and aircraft to the U.S to facilitate the medical screening and quarantine of persons who enter the U.S. and who may have been exposed to the virus. To implement this mandate, on March 2, 2020, the U.S. Department of Homeland Security (DHS) [announced](#) that all inbound flights with individuals, including U.S. citizens, lawful permanent residents and other foreign nationals exempt from the Presidential Proclamation, who have recently traveled from, or were otherwise present within, one of the countries designated in the Presidential Proclamations only land at one of the following U.S. airports, where health protocols have been implemented to account for treatment and handling of individuals who might have contracted coronavirus. Crew and flights carrying only cargo are excluded from this requirement. The designated airports include the following locations:

1. John F. Kennedy International Airport (JFK) in New York
2. Chicago O’Hare International Airport (ORD) in Illinois
3. San Francisco International Airport (SFO) in California
4. Seattle-Tacoma International Airport (SEA) in Washington
5. Daniel K Inouye International Airport (HNL) in Hawaii,
6. Hartsfield-Jackson Atlanta International Airport (ATL) in Georgia
7. Newark Liberty International Airport (EWR) in New Jersey
8. Dallas/Fort Worth International Airport (DFW) in Texas
9. Detroit Metropolitan Airport (DTW) in Michigan
10. Los Angeles International Airport (LAX) in California, and
11. Washington-Dulles International Airport (IAD) in Virginia
12. Boston Logan International Airport (BOS), Massachusetts
13. Miami International Airport (MIA), Florida

Please be mindful that the above list of affected airports may be modified according to current needs. The Centers for Disease Control and Prevention (CDC) describes the [airport and screening protocol](#) as follows:

- Your travel will be redirected to one of 11 U.S. airports where CDC has quarantine stations.
- You will be asked about your health and travel.

- Your health will be screened for fever, cough, or trouble breathing.
- U.S. Consular Processing: The coronavirus outbreak has caused suspension on all non-emergency services at various U.S. Consulates abroad, especially consulates in severely affected areas such as China, Italy and Spain. As of February 10, 2020, the U.S. Embassy in China [announced](#) that regular visa services at the U.S Embassy in Beijing and the U.S. Consulates General in Chengdu, Guangzhou, Shanghai and Shenyang are suspended due to limited staffing. Similarly, on March 10, 2020, the U.S. Department of State (DOS) issued a [health alert](#) for the U.S Embassy in Rome, Italy and the Consulates General in Milan, Naples, and Florence, alerting that only emergency “American Citizen Services and emergency visa services” are available at these locations due to reduced staffing. Moreover, the Center for Disease Control advises travelers to avoid nonessential travel to Italy and the U.S. Department of State recommends U.S. citizens to [reconsider travel to Italy](#). In addition to the U.S. Consulates in Italy and China, the U.S Consulates in [Spain](#), [Chile](#), [Panama](#), [Argentina](#), [Germany](#) and [India](#) have suspended immigrant and nonimmigrant visa appointments and are providing only emergency services to U.S. citizens. For country-specific information about available U.S. consular services, please visit the [list](#) of embassy websites compiled by the DOS. As coronavirus continues to spread throughout the world, additional closures of U.S. Consulates are expected. Foreign governments may also mandate closing of U.S. consular services as part of their plan to prevent the spread of coronavirus. By example, on February 1, 2020, the [Chinese government](#) required the closing of the U.S. Embassy in Beijing and all U.S. Consulates in China.

Given the increasing uncertainty surrounding U.S. consular processing, companies should consider filling employment based nonimmigrant visa extensions [i.e. O-1A/O-1B, L-1A/L-1B, etc.] in the U.S. with U.S. Citizenship and Immigration Services (USCIS) on the Form I-129, Petition for Nonimmigrant Worker, before their foreign national employees authorized U.S. stay expires. Please be mindful that there is a six-month time limit to file visa extension petitions for L-1 and H-1B visa categories, meaning that employers cannot file a visa extension petition before the six-month mark. However, USCIS advises employers to commence the visa extension process at least 45 days in advance of the nonimmigrant status expiration date. In case of employment-based visa applications and visa extension applications requiring consular processing, companies should consider filing them far in advance to avoid possible consular closings and/or additional visa issuance delays due to coronavirus. The DOS recommends visa applicants to start the consular visa application/extension process about 3 months in advance of their intended date of travel, since consular appointments are usually full 2-3 months in advance. Moreover, consular visa applications/extensions are now subject to a greater degree of scrutiny than in the past due to the Trump administration restrictions and the coronavirus pandemic. As a result, it is advisable that consular visa applicants schedule ample time before their planned travel date when seeking to obtain an employment-based visa at a U.S. Consulate abroad.

- Impact on F and M Student Visas: On January 29, 2020, the Student and Exchange Visitor Program (SEVP) issued a [broadcast message](#) providing guidance on how schools should respond to F and M

international students and dependents who 1) are currently either outside or inside the U.S. and 2) who are exhibiting coronavirus symptoms. For initial foreign students, SEVP recommends schools with first-time foreign students who are in impacted places [i.e. Iran, China, and Italy] or who are exhibiting symptoms of the virus to delay program start date and to issue a new initial Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. In the case of enrolled students exhibiting symptoms of coronavirus, schools may authorize a medical reduced course load and register the student in the Student and Exchange Visitor Information System (SEVIS) for a [medically reduced](#) course load with “no course load.” Furthermore, schools should advise enrolled students who are currently outside the U.S. suffering from coronavirus to avoid travelling to the U.S. until they can enroll full-time. In cases of absences exceeding the five-month limit, schools should provide a detailed explanation to SEVP Response Center at [SEVP@ice.dhs.gov](mailto:SEVP@ice.dhs.gov) for a “case-by-case” basis resolution. Based on these SEVP guidelines, schools must continue to ensure that F and M students maintain their nonimmigrant student status, even during emergency events related to coronavirus illness. As previously noted, schools should also be mindful that consular offices in China and Italy only have emergency consular services for U.S. citizens. If these consular service restrictions continue into the 2020 summer season, students from China and Italy will be unable to get their student visas approved/renewed. Schools should also consider an emergency on-campus housing plan for international students who cannot travel back home due to the travel restrictions in place, especially Chinese students who conform the majority of foreign students in the U.S.

- **Impact of Online Classes:** Similarly, on March 9, 2020, SEVP issued a new [broadcast message](#) stating that it will be “flexible with temporary adaptations” to school curriculums [i.e. temporary school closures and online classes] affecting international students, as schools across the U.S., including [New York University](#), [Harvard University](#) and the [University of Washington](#), have switched to online classes. Generally, students on F visas can only take one course online per semester and students on M visas for vocational training cannot take online classes. However, SEVP’s message states that it will temporary allow online classes, if schools notify the Agency “of procedural adaptations within 10 business days of the change.” For detailed instructions regarding SEVP notifications, review the [broadcast message](#). Please note that SEVP message does not address student visa repercussions in case schools completely shut down. Additionally, SEVP encouraged recent graduates under Optional Practical Training to work with their companies to find “alternative ways to maintain employment,” such as “teleworking or other arrangements.”
- **Rescheduling USCIS Service Center Appointments Due to Coronavirus:** On February 25, 2020, USCIS issued a coronavirus [alert](#) advising individuals who are “ill for any reason” [regardless of whether they were exposed to coronavirus] to follow instructions on their appointment notice and to cancel and reschedule their appointments with USCIS without penalty. In addition to appointment rescheduling, USCIS is already experiencing Service Office closures due to coronavirus contagion. On March 4, 2020, USCIS Service Office in South Seattle, Washington and the Seattle Application Support Center (ASC) closed [from March 4 through March 11] due to a confirmed case of coronavirus. Additional closures of local USCIS Service Offices and regional Service Centers [i.e.

California Service Center, Nebraska Service Center, Texas Service Center, Vermont Service Center, etc.] should be expected, as coronavirus continues to spread across the U.S., infecting USCIS workers and the public alike. In case of systematic closures of USCIS facilities, especially regional Service Centers, companies should expect to see significant delays, even a halt, on employment-based visa adjudications. While it is difficult to predict USCIS's likely response in such scenario, it is probable that USCIS will continue to adjudicate visas, albeit at a much slower rate, and automatically reschedule visa appointments in cases of Service Office closures. For instance, the South Seattle Service Office and the Seattle ASC office automatically rescheduled USCIS biometric appointments for those applicants that did not attend their scheduled appointments due to the coronavirus closure. In light of looming USCIS closures, it is important to highlight the need for swift visa petition/visa extension filings with USCIS, particularly premium processing filings for employment-based visas such as E-1/E-2, L-1A/L-1B, H-1B, O-1A/O-1B, EB-1, etc. Please recall that premium processing provides expedited processing for USCIS Form I-129, Petition for Nonimmigrant Worker, and USCIS Form I-140, Immigrant Petition for Alien Worker, guaranteeing processing within 15 calendar days for an additional \$1,440 filing fee.

- **Teleworking for H-1B and L-1 Visa Beneficiaries:** USCIS is yet to issue any guidance regarding teleworking consequences for employment-based visas that require employees to work from specific worksite locations, namely H-1B and L-1A/L-1B nonimmigrant visas. In light of SEVP's guidance regarding temporary online classes for foreign students on F and M visa status, it is likely that USCIS will adopt a similarly flexible stance regarding teleworking for H-1B and L-1A/L-1B visa beneficiaries. That being said, it is unlikely that USCIS will sanction an elective teleworking policy that permits employees, regardless of their immigration status, to elect working from home. Accordingly, companies with elective teleworking policies should advise foreign national employees under H-1B and L-1A/L-1B visa status to continue to work from their approved worksite location to maintain compliance with strict worksite H-1B and L-1A/L-1B regulations.
- **U.S. Department of Labor (DOL) Coronavirus Guidance:** The leadership team of DOL's Office of Foreign Labor Certification ("OFLC") has advised the American Immigration Lawyers Association that if practitioners and/or employers are unable to fulfill a DOL deadline due to coronavirus-related emergency, they can request an extension and provide the reason for the extension. Previously, the DOL has permitted extensions under special circumstances such as hurricanes and floods. Additionally, the DOL has noted that while a physical posting notice is a common practice to alert employees that a Labor Condition Application is being filed in connection with an H-1B visa petition, it will allow an employer to post such notice electronically in case of a coronavirus-related emergency.

For more information about these recommended steps, please contact your Foley relationship partner. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

We will continue to keep you apprised of relevant developments. [Click here](#) for Foley's Coronavirus Resource Center for insights and resources to support your business during this challenging time.