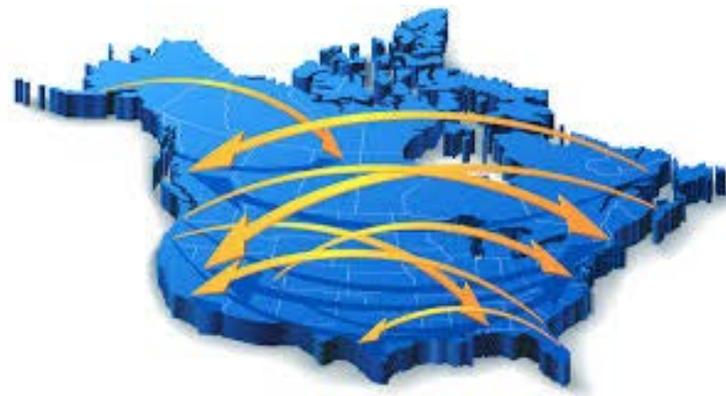




The Immigration Impacts of the Coronavirus

Pabian Law Webinar Series

March 2020



About Pabian Law

- ▶ Pabian Law is a premier national corporate immigration law firm
- ▶ 2 Corporate Immigration Practice Areas
 - ▶ Companies (technology, engineering, aerospace, sports, etc.)
 - ▶ Hospitality (H-2B seasonal visas)
- ▶ Our team consists of about 50 employees based in Massachusetts
- ▶ We focus on customer-service, results, and client education
- ▶ Introducing 1st-ever proprietary H-2B visa software platform, Pabian BOOM!, in April 2020



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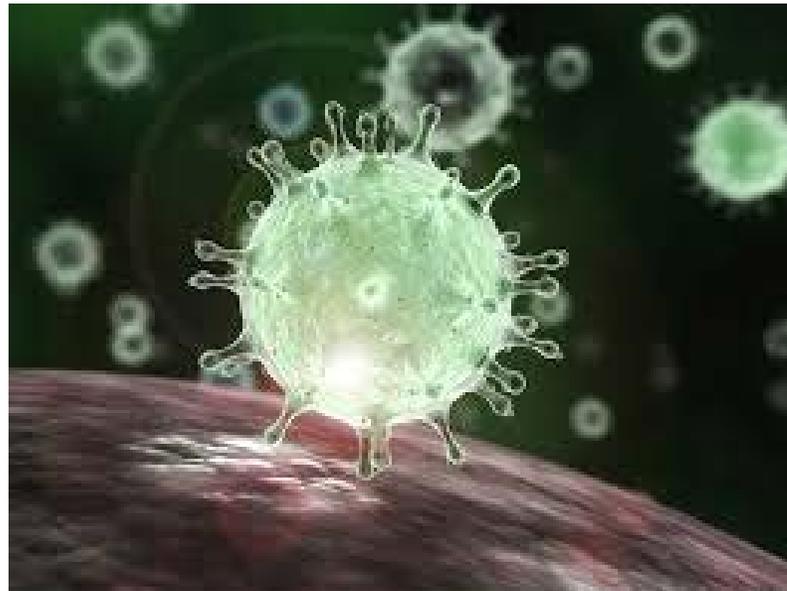


The Immigration Ramifications of the Coronavirus

Updated March 16, 2020



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Issues relevant to all Organizations

Hospitality, Technology, Engineering, Aerospace, Sports, etc.



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At this moment in time, what is happening from an immigration perspective?

Are there currently wide-scale impacts on U.S. immigration?



Travel considerations

- ▶ Is the government allowing travel from that country?
 - ▶ Current 30 day suspension of travel to USA from European countries (now includes UK and Ireland)
 - ▶ US Citizens and Green Card holders are exempt from this suspension
 - ▶ China, South Korea, and Japan are all subject to separate moratoriums on travel to USA
- ▶ Is there a travel ban/suspension in the person's home country?
 - ▶ Currently, only countries barring entries are Australia, Austria, Cambodia, Czech Republic, Denmark, Hong Kong, Hungary, Indonesia, Japan, Jordan, Malaysia, Morocco, Peru, Russia, Saudi Arabia, South Korea, Turkey, and Vietnam (most only bar certain nationalities and/or those who have traveled to certain areas)
- ▶ Are airlines flying to and/or from that location?
- ▶ If flying, is a person's flight connecting through a country/area on heightened alert and/or travel ban?



Consulate/embassy closures

- ▶ Long-term closures and delays in affected countries
- ▶ Short closures for cleaning (ex. Jamaica)
- ▶ Interview delays
- ▶ Delays once resume normal operations



Government closures

- ▶ Agencies
- ▶ Local offices
 - ▶ Green card interviews
 - ▶ Naturalization Oath Ceremonies
 - ▶ Immigration Courts
- ▶ Borders/Ports of Entry
- ▶ Consulates and embassies

- ▶ Big issue over the weekend was confusion by agencies when administration enacted new policies (lack of communication between executive branch and its agencies)



What if a foreign national's home country will not let the person back?

- ▶ Note: no government has fully closed its borders yet
 - ▶ Argentina: self-quarantine for 2 weeks
- ▶ No government announcement
- ▶ Foreign national would need to either apply for a tourist visa or overstay
 - ▶ Will government punish for overstays?



Foreign Nationals working from home

- ▶ Is it allowed?
- ▶ Compliance mandates
 - ▶ Isn't the worksite important?





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Understanding how
your organization is
handling the
business effects of
the coronavirus

Layoffs

- ▶ Effects on visas
- ▶ Effects on green card applications
- ▶ Can I lay off foreign national employees?
- ▶ Can I lay off U.S. workers?



Quarantined Foreign Nationals

- ▶ If can't get back to their home country (Argentina)
- ▶ What happens if a foreign national is put on sick leave and/or quarantined in the USA?
 - ▶ Pay
 - ▶ Compliance obligations
 - ▶ Documenting situation for employment law purposes



Public Charge Considerations

- ▶ New rule recently went into effect
- ▶ Can a foreign national receive emergency medical benefits given the new rule?
 - ▶ Rule prohibits certain specific benefits, most of which are need-based (and not medical-based)
 - ▶ Government specifically excludes disaster relief and medical benefits for the prevention of communicable disease from the public charge rule.
 - ▶ But, Medicaid is one of the listed prohibited benefits, and therefore, foreign nationals should avoid applying for any Medicaid benefits.



H-2B Seasonal Visa Specific Issues

Pabian Law's Hospitality Clients



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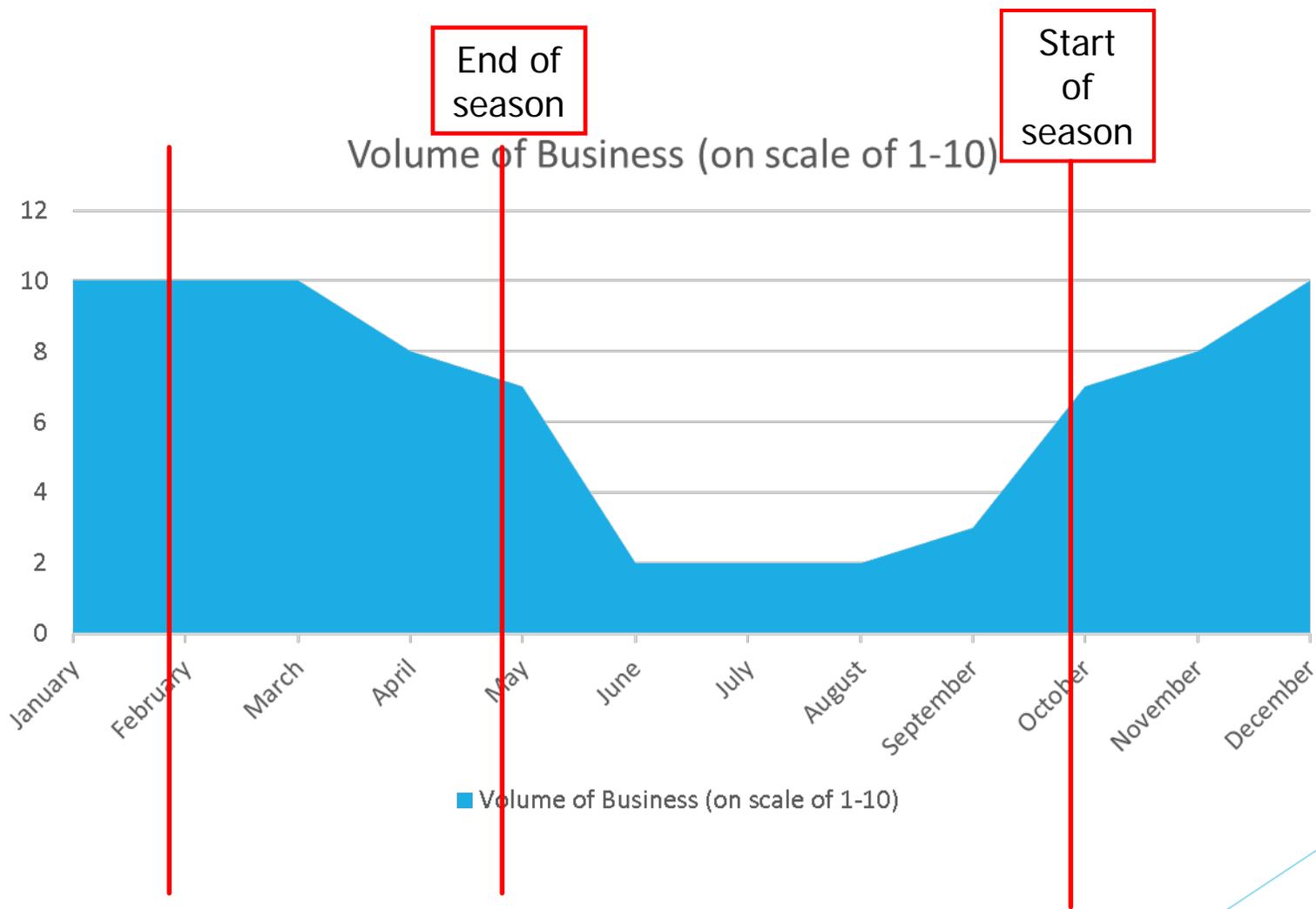
What if business levels drop and can no longer employ H-2B workers?

- ▶ Might be able to reduce hours as long as they don't drop below the $\frac{3}{4}$ guarantee
- ▶ If some workers leave voluntarily, you can still keep other workers
- ▶ If cannot meet the $\frac{3}{4}$ hours requirement, can file an "impossibility of work" notice to the U.S. Department of Labor
 - ▶ This is a rare allowance due to an "Act of God"
 - ▶ If you do not file this notice, $\frac{3}{4}$ rule requirements remain in effect





Understanding the $\frac{3}{4}$ rule



H-2B visas & layoffs

- ▶ If you do layoffs, must first layoff all H-2B workers before any U.S. workers
- ▶ Can't lay off only some H-2B workers and not all on the same job/application



Quarantined H-2B visa workers

- ▶ It is legally possible for an H-2B worker to be placed on a leave of absence.
 - ▶ However, the H-2B program has a minimum hours requirement called the “three-fourths guarantee.”
 - ▶ Therefore, if a worker is out of work for long enough where his/her average hours fall below the three-fourths guarantee minimum, you may need to pay them for a certain minimum number of hours to ensure they do not fall below the legal requirement.



Questions surrounding visa petitions

- ▶ Should summer-season employers move forward with their 2020 H-2B visa petitions?
 - ▶ April, May, June start dates
- ▶ If business levels in April and May are significantly impacted, can you delay the arrival of H-2B visa workers?
- ▶ Can winter-season employers send their workers home early if business levels don't pick up by the end of the season?
- ▶ Can winter-season employers reduce employees' hours below the $\frac{3}{4}$ rule level for remainder of season?
- ▶ How should winter-season employers decide about proceeding with their 2020-2021 petitions?
 - ▶ We start work on these petitions in April and May



Impacts of H-2B visa transfer petitions on opposite season employer

- ▶ Current scenario is happening where winter-season organization wants to let workers go early
 - ▶ Summer-season employer then wants to hire the employee for its summer-season without worker having to go home
 - ▶ Note: if worker goes home, might not be able to come back as “cap exempt”
- ▶ The worker will only be able to stay if the summer-season employer has filed its H-2B visa petition with U.S. Citizenship & Immigration Services
 - ▶ Until petition is filed and received by government, worker is not protected in terms of being able to stay in the USA
- ▶ Worker cannot begin summer-season work until employer’s start date
- ▶ Winter-season employer is responsible for notifying government that worker is no longer employed at its organization
 - ▶ If withdrawal happens before summer-season H-2B visa petition is filed, will likely cause problems for worker



Summer-season tip!

- ▶ Reach out to winter-season organizations again
- ▶ There may be more in-country worker opportunities than there were last week



Sports-specific issues



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What happens if we suspend the season?

- ▶ If season is suspended and the players are placed on paid leave, we recommend providing each employee with a letter explaining:
 - ▶ The nature of the leave; and
 - ▶ Documenting the league's and each player's intent to have the employment resume once the leave is over/season re-starts.
- ▶ If possible, P-1 players should not leave the country during this period
- ▶ Could be delays when season resumes to have visas approved at consulates and embassies



Best Practices/Closing Thoughts



Best Practices

- ▶ Be careful about what news you trust
 - ▶ There is a lot of misinformation happening and some who are trying to profit off of the virus
- ▶ If employees do not need to travel internationally, it is easier and better if they stay here
- ▶ If employees are already outside the country or need to travel internationally, plan for them to be out of the USA for awhile



Where can I get more information?

- ▶ We at Pabian Law are always happy to help!
 - ▶ (617) 939-9444
 - ▶ www.pabianlaw.com
- ▶ Consulate/Embassy Closures: <https://www.usembassy.gov/> & <https://www.nafsa.org/regulatory-information/covid-19-restrictions-us-visas-and-entry>
- ▶ U.S. Citizenship & Immigration Services: <https://www.uscis.gov/news/alerts/uscis-response-2019-coronavirus>
- ▶ U.S. Citizenship & Immigration Services office closings: <https://www.uscis.gov/about-us/uscis-office-closings>
- ▶ U.S. Department of State: <https://www.state.gov/coronavirus/>
 - ▶ Travel advisories/suspensions: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>
- ▶ U.S. Department of Labor: <https://www.dol.gov/coronavirus>
- ▶ Centers for Disease Control and Prevention: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- ▶ Countries with travel bans/suspensions: <https://www.cnn.com/travel/article/coronavirus-travel-bans/index.html>





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Save the Dates for Education

We have exciting things in store!!!

Upcoming Pabian Law Webinars

- ▶ Pabian BOOM! Demo
 - ▶ Thursday, March 19, 2020
 - ▶ 2pm EST
 - ▶ Open to all
- ▶ Creating a Culture of Inclusion for your International and Domestic Workers
 - ▶ April 15, 2020
 - ▶ 2pm EST
 - ▶ Open only to Pabian Law clients
 - ▶ Guest expert speaker, Kari Heistad!
- ▶ Keeping Your Workforce Global: Green Cards and Long-Term Staffing Options
 - ▶ May 6, 2020
 - ▶ 2pm EST
 - ▶ Open to all
- ▶ After the Petition: What you need to Know Once your H-2B Workers Arrive for the Season
 - ▶ June 17, 2020
 - ▶ 2pm EST
 - ▶ Open only to Pabian Law clients



Our H-2B Main Events!!! (Clients only)

Pabian Law Spring Social

- ▶ May 13-15
- ▶ Yellowstone National Park, Montana
- ▶ Hosted by Delaware North
- ▶ Early Bird registration extended until February 29th
- ▶ Hurry - we're running out of horses!

Pabian Law H-2B Client Summit

- ▶ September 21-22
- ▶ Boston and Framingham, Massachusetts
- ▶ Day 1: social events
 - ▶ Fenway Park tour
 - ▶ Boston Harbor cruise (private)
 - ▶ Dinner
- ▶ Day 2: education & cocktails
 - ▶ Two tracks this year! (beginner & regular)
- ▶ Expecting around 125-150 people!



Questions?

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