

Employers caught in middle of immigration fight

By Holly Culhane, Contributing Columnist



On Nov. 20, President Obama issued an executive order that brought cheers from some sectors and protests from others. It also has caused uncertainty and confusion among some employers.

The president's executive order will affect approximately 5 million foreign-born people who are not authorized to be in the United States. They will be temporarily protected from deportation and allowed to obtain work permits. An estimated 4 million of these immigrants are parents of U.S. citizens or lawful, permanent residents.

About 1 million are foreign-born U.S. college students, who are enrolled in science, technology, engineering and math programs. Their student status will be extended and they will be able to obtain work permits.

The executive order is similar to Obama's 2012 Deferred Action for Childhood Arrivals, or DACA, which temporarily protected about 500,000 young immigrants from deportation. That program affects people who were illegally brought into the country as children by their parents or guardians.

While rights advocates complain the executive order does not go far enough to reform immigration policies, others contend the president exceeded his authority.

Just a few days ago, 17 states, led by Texas, filed a federal lawsuit to block the executive order, contending the president is violating his constitutional duty to enforce U.S. laws. The lawsuit contends the order places a financial burden on local governments and will trigger a flood of illegal border crossings. Congressional Republicans vow to hold up federal spending until the order is lifted.

Caught in the middle are the nation's employers, who are legally required to hire only people who are authorized to work in the U.S. This means immigrant workers must be legally in the country and have documents showing they are authorized to work.

The president's executive order is far from being a "done deal." Federal agencies still must clarify their policies and a months-long "rulemaking" procedure must be completed. The order also must survive court challenges and survive political skirmishes.

So while politicians battle it out, what are the nation's Main Street employers, including those in Bakersfield, supposed to do? The implementation of DACA is instructional.

--All U.S. employers and employees are required to accurately complete I-9 forms. Using specified documentation, these forms verify the identity and employment authorization of individuals hired to work in the U.S.

--Employees must attest to their eligibility and present federally-required documentation of their employment status. The completed I-9 forms must be kept on file at the company and are subject to audit.

--Under DACA, many of the “childhood arrivals” were issued an Employment Authorization Document (EAD) that authorized them to legally work in the U.S. For more information about DACA and the EAD documents, go to www.uscis.gov/childhoodarrivals The U.S. Citizenship and Immigration Services has posted fact sheets on its website about the program.

--Like DACA, the most recent executive order grants temporary “deferred action,” or temporary relief from deportation “pending immigration reform,” and issuance of EAD cards, which are acceptable documents to verify identity and employment authorization. Information about acceptable documents can be found at www.uscis.gov/i-9-central/acceptable-documents

--Like those issued under DACA, these EAD cards will be issued for a limited time – likely one or two years. Employers must periodically re-verify an employee’s work authorization status to assure that the law is being met.

Depending on the type of industry, the number of employees affected by the president’s latest executive order could be few or many. To insure your company’s policies and procedures comply with federal immigration laws, you may need to consult with an attorney and/or a human resources consultant.

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on Friday, December 12, 2014. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the [PAS Facebook](#) page or by phone at 631-2165.

P•A•S Associates has expertise in human resources and other areas involving employment issues. P•A•S Associates, in providing this website, does not represent that it is acting as an attorney or that it is giving any form of legal advice or legal opinion. P•A•S Associates recommends that before making any decision pertaining to human resource issues or employment issues, including the utilization of information contained on this website, the advice of legal counsel to determine the legal ramifications of the use of any such information be obtained.