

5 Considerations for Year-End Immigration Budget Planning

By **Courtney Noce and Miriam Thompson** (October 16, 2023)

As the end of the year approaches, focus shifts toward financial planning and budgeting for the new year. When budgeting next year's expenditures for immigration-supported U.S. employees, there are many intricate aspects to consider, and the budget will influence business decisions throughout the upcoming year.

It can be challenging to estimate future immigration-related expenses given inherent uncertainties and unforeseen events that can arise. Every company is distinct, with its unique immigration challenges and priorities.

The following insights provide the top five considerations to assist an employer in navigating the complexities of the year-end immigration budget process.

1. Government Filing Fees and Visa Application Fees

A significant portion of a company's immigration budget should be allocated toward the numerous government fees associated with U.S. Customs and Immigration Service filings and with visa applications submitted at U.S. consulates abroad.

These fees vary depending on several factors, such as the visa type, number of applicants and whether the company uses premium processing.

In early 2023, USCIS solicited public comments on a proposed rule to increase its fees. The agency is working on a final rule, which will contain the planned date of implementation. At the time of this writing, it is challenging to predict with certainty a specific date on which fee increases will be effective, if at all.

However, the proposed fee increases for business immigration benefits — including H-1B registrations; H-1B, L-1, E and TN petitions; I-140 petitions; and I-485 applications — are significant. As such, the company should consider setting aside an additional budget buffer, depending on its projected number of petitions or applications to be filed in the new year, with the potential fee increase for each, so it can comfortably navigate any unforeseen fee increases the government may impose.

2. Expenses for Preparing Immigration Filings

To mitigate the risk of rejections or processing delays, companies must allocate resources for expenses related to ensuring their immigration filings adhere to numerous technical requirements. Navigating the complex regulatory landscape, ensuring compliance with all statutory requirements and preparing meticulous documentation will incur expenses.

Immigration sponsorship may result in additional fees from obtaining required education evaluations, translations and other clearance documentation.

Further, companies should continue to review and adjust assumptions about the expenses



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of preparing immigration filings based on any strategic changes in their business goals and priorities, agency compliance requirements or shifts in immigration regulations or adjudication trends.

Immigration enforcement and visa adjudication trends may unexpectedly increase expenses related to preparing immigration filings. For instance, the U.S. Department of State and U.S. Customs and Border Protection have increasingly scrutinized applications for B-1 business visitor visas and travelers seeking to enter the U.S. with a B-1 business visitor visa.

Business activities that were previously assessed as appropriate for a company's employee abroad to undertake in the U.S. as a B-1 business visitor may now be better suited for a U.S. visa option that provides U.S. work authorization, such as an intermittent L-1 intracompany transferee visa, which will likely have higher preparation and filing fees.

3. Transition Costs for Green Card Sponsorship

When preparing an immigration budget, companies should recognize that each stage of an employee's U.S. immigration process has different costs. Understanding where employees are in their immigration lifecycle helps forecast the immigration filings employees will require in the upcoming year and their related costs.

If employees change from temporary to lawful permanent resident status, the process features transitional expenses for the green card application in addition to the cost of maintaining the employee's current work authorization. These additional expenses should be factored into the immigration budget.

Companies with employees in H-1B and L-1 status should be aware of their "max-out" date. The max-out date is the point at which their eligibility for these visa categories will expire due to time limitations. Both H-1B and L-1 visas have predetermined durations for stays in the U.S.

It is crucial for employers of these visa holders to be proactive by planning, at least two to three years prior to an employee's max-out date, budgeting for alternative options, including initiating green card sponsorship. Proactive planning helps to avoid any interruptions in an employee's stay, and ensure their continued presence and work authorization in the U.S.

The number of employment-based green cards that the U.S. government can issue each fiscal year is limited by law. The U.S. Department of State issues a monthly visa bulletin that reflects availability and wait time.

The potential for visa category retrogressions affects the pace of green card processing — and associated expenses. Companies must budget for unexpected increases in time and cost, such as those associated with continued visa extensions and visa applications, even when a green card application has been filed and is pending.

4. Immigration Compliance Costs

Comprehensive immigration compliance requirements include a wide array of expenditures for compliance with federal and state-specific Form I-9 employment eligibility verification requirements, social security numbers and no-match letters, immigration-related anti-discrimination provisions, sponsorship obligations, determining which documents to retain

and for how long, and — for E-Verify participants — compliance with E-Verify rules and required trainings.

In an evolving landscape, more and more states are mandating E-Verify, which requires additional state-specific training for employers, and their agents and users, extending beyond general E-Verify training.

Companies should factor into the immigration budget the costs of ongoing immigration compliance training and the cost of technology geared toward managing workplace immigration.

For instance, well-designed I-9 software may carry a substantial price tag, but can automate the employment verification and reverification process, facilitate reporting and audit of I-9 records, safeguard sensitive employee data, scale the I-9 program, and minimize the risk of errors and potential compliance violations.

Notably, investigations and audits by the U.S. Department of Homeland Security and the U.S. Department of Labor are on the rise. The development of a comprehensive and effective compliance program involves self-audits to pinpoint and rectify compliance issues.

Self-audits should encompass Form I-9 and related recordkeeping, and protocols and training for government site visits. Employers filing labor condition applications for H-1B, H-1B1, and E-3 petitions should also self-audit maintenance of public-access files.

These self-audits may entail significant time and cost but are essential for identifying deficiencies, corrections and training needs and preparing employers for government investigations or audits.

Many immigration-related wage and hour division investigations begin with a complaint filed by a current or former immigration-sponsored employee regarding compensation issues, or by a member of the public encountering access issues to public access files.

Employers of covered immigration-supported employees must establish compliance practices that adhere to DOL requirements, including the timely creation and maintenance of accurate public access files.

The government periodically updates immigration-related forms and processes, necessitating additional training for a company's human resources team.

For example, the DHS published a new edition of Form I-9 on Aug. 1, which will become mandatory for all employers on Nov. 1, and that introduced a new alternate procedure for I-9 document review for eligible employers. Consequently, to ensure compliance, staff or employer agents need to be trained to complete the new edition and in new procedures.

While establishing a compliant I-9 program can be costly, financial penalties for substantive and uncorrected technical I-9 violations range from \$272 to \$2,701 per individual for a first offense.

Additionally, fulfilling immigration requirements can have direct impacts on other budget considerations such as employee salaries. Every year on July 1, the DOL updates its Foreign Labor Certification Data Center's online wage library, which typically includes changes to prevailing wages.

The DOL data library is the primary source of prevailing wage data, most commonly used by employers when filing certain nonimmigrant petitions — e.g., H-1B, H-1B1, and E-3. Due to increasing inflation, prevailing wages for most occupations have increased significantly, potentially triggering immediate increases in employee salary expenses for nonimmigrant visa holders.

5. Organizational Change Costs

In the event that a company is contemplating mergers or acquisitions in the new year, it must anticipate that higher immigration-related costs will result, starting with due diligence review of the target company's Form I-9 and public access file compliance, and an assessment of the impact on existing employees sponsored for nonimmigrant visa status and green cards.

Nonimmigrant visa holders will present some of the most immediate challenges, often requiring amended filings as most work visas are company-specific. Employees awaiting green card processing may, for example, require new permanent labor certifications or amended I-140 permanent resident petitions.

Anticipated company growth and increased hiring needs in the new year may require a business to rely on additional immigration-supported employees, which will involve expenses associated with H-1B registration submissions and subsequent H-1B petitions, H-1B transfer petitions or other forms of nonimmigrant visa sponsorship.

Similarly, if the company plans to downsize and close an office in the coming year, immigration supported employees associated with that office, or those with green card cases tied to that office, may need amended or new immigration filings.

Also, employers must consider how proposed updates to company policies in the new year may affect immigration-related expenses.

For example, introducing a companywide work-from-home policy could result in changes to work locations for immigration-supported employees. This shift could affect nonimmigrant work authorization and pending green card processes, possibly requiring amended or new immigration filings.

If the company has a policy of initiating green card sponsorship after a specified period of employment, certain employees will become eligible to begin the green card process in the coming year, with corresponding expenses.

Conclusion

Employers should annually review their corporate immigration policy to determine whether it continues to align with their business goals. The cost implications of updating the policy — whether to remain competitive, cover dependent applications, use premium processing or implement immigration repayment agreements — should be considered when preparing the budget.

Any immigration budget should involve a contingency line dedicated to addressing the unexpected costs or emergency situations that may arise during immigration processes. Unforeseen circumstances, shifts in adjudication trends or global events can demand an immediate response that will bear its own cost.

For example, recently an increased number of visa applications at U.S. consulates and embassies abroad have been selected for administrative processing, often requiring significant additional review time with limited possibility of expediting the visa applicant's return to the U.S. Lengthy administrative processing of an immigration-supported employee can cause significant costs related to supporting the employee and mitigating the business impact of their absence.

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