



## CORPORATE IMMIGRATION POLICY GUIDE

This document is intended to be used as an introductory immigration policy guide to help you understand some of the main considerations when starting the process of creating this vitally important document. A sampling of clauses are also included as a starting point from which to build your unique policy.

### **A. Immigration Policy Considerations**

Some of the important questions that need to be answered before you will be able to create your foundational corporate immigration policy include:

- Will you will pay for all Green Card fees for all foreign national employees including non-mandatory fees related to processes such as the I-485 Adjustment of Status process?
- Where you are not covering all costs of all immigration filings determine which costs you will cover at various stages of processing?
- Will your company pay for all or some of the visa processing costs related to applications for the dependent spouse and children of your foreign national employees?
- Will you cover travel expenses related to consular processing of visa applications?
- How willing you are to accommodate remote overseas employment that might arise due to immigration delays or case denials?
- How promptly you will notify the government of the termination of an employee and therefore sponsorship of their visa application?
- How long must a foreign national employee must be in good standing before being eligible for Green Card sponsorship and how do you plan to objectively determine good standing?
- What criteria will be used in determining which employment-based immigrant visa category will be pursued in Green Card filings (EB-2 v. EB-3)?
- Will you pay for Premium Processing fees to expedite all or only some immigration case adjudications?
- Do you wish to attempt to institute 'payback agreements' as allowed under the law when foreign national employees terminate employment within certain periods of time after the initiation of a Green Card process?

Of course there are many more considerations but this provides a good starting point. As you work through the creation of your policy you should consider how much you want to use this policy as a recruitment and retention tool. Some benchmarking and an understanding of what others in your industry may be doing is always helpful as well. Immigration policies should be considered in conjunction with your overarching HR policies and employment practices.

### **B. Sample Immigration Policy Clauses**

We herein provide a sampling of clauses to help illustrate how your policy decisions could be represented in an official format. Note that any and all immigration policy clauses should always be verified as valid from an employment law standpoint as well to ensure legal compliance on all fronts. Your immigration, employment law, and HR resources must work together for you to have the most dependable policies.

### 1. Introductory Clause

This immigration policy applies to those foreign nationals who will be working with COMPANY or who are already working with COMPANY and who are subject to U.S. immigration laws. COMPANY complies with all immigration laws. This policy aims to provide guidance on how COMPANY will handle certain specific scenarios however COMPANY reserves the right to make further exceptions and to alter this policy over time.

### 2. Contingent Employment Clause

Offers of employment are contingent upon an individual's ability to secure and maintain the legal right to work at the company, including obtaining work authorization. All employees are required to complete and satisfy all I-9 requirements within three (3) days of beginning work for the company in the U.S. COMPANY is enrolled in E-Verify and will comply with all E-Verify mandates as well.

If COMPANY is unable to validate work authorization or complete I-9 requirements the offer of employment is withdrawn with no liability to the company for any expenses incurred, time spent or other inconvenience to the job applicant.

It is COMPANY's general practice to pursue immigration sponsorship and to pay for most of the financial costs associated with such sponsorship, as outlined in this policy, for the purpose of hiring and ensuring legal employment authorization in the United States.

This policy does not alter the nature of at-will employment.

### 3. Non-Immigrant Sponsorship Clauses: Assessment of Visa Options

COMPANY will conduct a visa assessment to determine a foreign national candidate's immigration options to secure employment authorization where needed. COMPANY will require candidate to enter into a conditional acceptance of employment contingent on securing the immigration status which COMPANY determines is preferred under COMPANY sponsorship.

### 4. Non-Immigrant Sponsorship Clauses: When May Employment Begin

A valid independent employment authorization card or official authorization to begin employment such as through evidence of USCIS receipt of a H-1B transfer filing, will allow foreign national to begin employment prior to or without the approval of a non-immigrant application with the USCIS. Without such authorized work status COMPANY may not hire foreign national.

### 5. Non-Immigrant Sponsorship Clauses: Payment of Fees

COMPANY will cover most immigration sponsorship costs for required applications allowing foreign national employee to obtain valid work authorization to begin employment. In general no fees are covered for dependent family members (spouse and children under the age of 21) however foreign national employee and dependent family members may work with COMPANY's designated immigration law firm to process such applications, ensuring the most efficient and often the most cost effective immigration processing.

The need for Premium Processing (expedited government processing) filings will be considered by COMPANY on a case by case basis to determine if there is a business need or not. If a business need exists COMPANY will cover such Premium Processing fees. If COMPANY decides that Premium Processing is not supported by a business need, foreign national employee may still request such a filing and pay such fee where legally permitted.

A summary of immigration service fees covered by COMPANY is listed below. Note that this list is not meant to be a complete listing of fees covered and may be modified by COMPANY at any time without notice:

- Initial Non-immigrant work authorization (ex. H-1B, H-1B1, E-3, L-1A or L-1B, TN, J-1, O-1).
- Non-immigrant work authorization extensions (ex. H-1B, H-1B1, E-3, L-1A or L-1B, TN, J-1, O-1).
- Non-immigrant status amendments due to material changes in employment such as job title, duties, and/or location.
- Non-immigrant visa application fees and costs for the employee, if travel is required for business purposes. If travel is not required or related to COMPANY business then foreign national employee will be responsible for all visa processing consular fees.

#### 6. Immigrant Sponsorship Clauses: Requirements and Process

COMPANY requires that dual intent immigration status (H-1B for example) be obtained prior to beginning an Immigrant Visa ('Green Card') process for any employee. Immigrant visa sponsorship is not guaranteed to any employee.

Immigrant visa sponsorship requires a good faith showing to the government that employee is needed and will be employed in a particular position into the future. Therefore COMPANY needs to see that an employee has worked as a full-time employee for at least 150 days with COMPANY and is in good standing. COMPANY will also consider the following factors prior to authorization of any Immigrant Visa process being started:

- Future skills needed of the function and/or department;
- Current and expected labor market conditions;
- Employee's current knowledge, skills and abilities;
- Employee's performance against objectives and values;
- Level of position within the company;
- Expected duration of employment Employee's current non-immigrant status.

COMPANY is allowed to make exceptions to this rule where there is a pressing business need. An example of such a situation could be where an employee is running up against the six year maximum period of stay allowed on an H-1B visa. Again, this decision is subject to COMPANY discretion.

COMPANY will determine which immigrant visa category will be sponsored based on consultation with the in-house and external immigration team as needed.

The Immigration Visa process may be stopped, after initiation due to business needs, employee performance, or other criteria as determined by the COMPANY.

#### 7. Immigrant Sponsorship Clauses: Fees

COMPANY will cover most Immigrant Visa sponsorship costs for sponsorship of a foreign national employee. In general no fees are covered for dependent family members (spouse and children under the age of 21) however foreign national employee and dependent family member may work with COMPANY's designated immigration law firm to process such applications, ensuring the most efficient and often the most cost effective immigration processing.

In addition to mandatory fees to be paid by COMPANY the I-140 Petition for Alien Worker as well as the I-485 Adjustment of Status application fees will also be covered for employee.

A foreign national employee will be responsible for all additional costs outside of mandatory fees and the attorney and government filing fees related to the I-140 and I-485 as laid out above. These additional costs may include costs such as the cost of obtaining a required medical examination and any travel that may be required to obtain any Immigrant Visa where not associated with travel for the benefit of the COMPANY.

Although COMPANY will pay for all fees discussed above, employee understands that COMPANY reserves the right to seek partial repayment from employee, where legally permissible, for non-PERM costs such as those associated with the I-140 Immigrant Petition and the I-485 Adjustment of Status application, where employee leaves COMPANY within 24 months of starting the Green Card process.

#### 8. Employee Responsibilities: Maintaining Documentation and Status

Although COMPANY will maintain records it is the foreign national employee's responsibility to always ensure that government documentation, including electronic I-94 entry documentation, is accurate and complete.

Employee is also responsible for notifying COMPANY six months ahead of any immigration status expiration to ensure that COMPANY has sufficient time to prepare and file any extension applications. COMPANY will also track such dates but this is employee's ultimate responsibility to ensure the possibility of continued employment.

Note that initiation of the Immigrant Visa process is not guaranteed to any employee and may not apply to all positions at the COMPANY.

#### 9. H-1B Employee Termination Clause

COMPANY is under a legal obligation to notify the USCIS upon termination of employment of a H-1B visa holder and is not able to extend this time period. As a result COMPANY may also withdraw any related Immigrant Visa applications.

Where employee is terminated by COMPANY before H-1B visa status expiration, COMPANY will pay for the return airfare of employee as required by law. Where employee decides to voluntarily terminate employment COMPANY is under no obligation to pay for such return transportation.

#### 10. Immigration Team Information

COMPANY works with two immigration providers, one in-house and one external, each one assuming certain roles and responsibilities to enable the efficient and effective implementation and execution of our immigration program:

Our in-house immigration team, assessing, defining, and executing on our internal immigration policies and beyond is provided by:

Provider Name: ImmiPartner  
Contact:  
Phone:  
Email:

Our external immigration law firm, executing on processing all immigration related applications is handled by:

Provider:  
Contact:  
Phone:  
Email:

This policy is subject to periodic review and revision.

*READ AND APPROVED BY:*

Employee Name: \_\_\_\_\_

Employee Signature: \_\_\_\_\_