

Protect and Grow American Jobs Act: New H-1B Bill Targeted at Dependent Employers

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On November 15, 2017, the House Judiciary Committee approved *The Protect and Grow American Jobs Act* (H.R. 170), which primarily affects “H-1B dependent” employers. The bill revises the definition of a dependent H-1B employer to include all employers which have a workforce that is more than 20% percent H-1B employees (an improvement over the current 15% test). However, if a company qualifies as an H-1B dependent employer, the company would be subject to significantly higher wage requirements and substantial new obligations related to the protection of US workers. Dependent employers will be required to recruit US workers and offer the job to any qualified US worker, unless the H-1B worker is paid the lesser of \$90,000 or the mean wage (typically the level 3 prevailing wage) for the occupation in the area of intended employment.

One of the more onerous requirements in the bill deals with the placement of H-1B workers at non-dependent US companies. Non-dependent US companies will not have any new wage restrictions or obligations. However, if an H-1B dependent employer places its H-1B worker onsite and there is indicia of an employment relationship, the non-dependent company must provide written assurance to sponsoring H-1B dependent employer that it did not and will not displace any of its US workers during period of placement. In addition, the non-dependent US company will be required to cooperate with Department of Labor (DOL) in connection with an audit or investigation conducted at the dependent H-1B employer. DOL will be mandated to investigate at least 5% of dependent H-1B employers annually.

There will also be an additional \$495 fee with each H-1B filing by a dependent H-1B employer.

The bill has received the bipartisan support of Representatives Darrell Issa, (R-Calif) and Representative Zoe Lofgren (D-Calif) but, given the current political dynamics in both the Senate and House, it is hard to predict whether this or any other high-skilled immigration legislation will be enacted in the near future.

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