

## As an H-1B or L-1 Petitioner, Do I Need to Worry About the Export Control Rules?

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March 20, 2018

Under U.S. Department of Commerce rules, the disclosure of technology to a foreign national (even if that individual is physically located in the United States or the disclosure occurs in the course of that individual's employment with a U.S. company) constitutes the export of that technology to the foreign national's home country. A "foreign national" is nearly any person who is not a U.S. citizen or legal permanent resident. Whether or not that transfer, or "deemed export" requires a specific license depends on the export classification of the technology, and the nationality of the individual in question. The law requires that this licensing determination be made in each case prior to the disclosure of the technology to the foreign national.

Under U.S. export control laws, the term "export" covers a broad range of activities. An "export" includes not only the physical shipment of items abroad, but also the transmission of technology and software to foreign countries, or transfer of technology and "know-how" to foreign nationals even if they are working in the United States. As a result, virtually any exchange of information with foreign nationals – including telephone conversations, electronic messages and emails, the sharing of computer databases, technical proposals, briefings, training sessions, and question and answer exchanges – can involve an export. Violation of the export control laws can have serious consequences, including civil penalties and criminal prosecution. In addition, U.S. Citizenship and Immigration Service's Form I-129 contains a specific question about the disclosure of export-controlled technology and whether a license is required by H-1B or L-1 petitioning company with respect to employing foreign national listed on the petition. Therefore, it is important to know and understand these rules.

U.S. export control laws place various restrictions on exports and re-exports of products, software, and related technology from the U.S. These restrictions depend on the nature of the item as well as on the destination and purpose of the export. Export restrictions apply not only to defense or to military articles, but also to a wide range of commercial or "dual-use" articles – items that have both commercial and military applications.

*Therefore, ask yourself the following questions. If any of your answers are "yes", contact your Foley Hoag lawyer or a member of the Export Controls Practice Group.*

- Does my company have parents, subsidiaries, branches, affiliates, joint ventures, agents, representatives, developers, researchers, or other partners abroad? Do we send goods, technology or services to those entities?
- Does my company use H1-B visa workers or other non-immigrant foreign workers in our research, production or product development? This could include graduate students, interns or other types of temporary employees.
- Is my company a U.S. company seeking to acquire operations or license its technology abroad?
- Is my company a foreign company with existing U.S. operations or seeking to acquire U.S. operations?
- Does my company host tours of its research and/or production facilities for visitors, which could include foreign national visitors?
- Does my company conduct marketing or demonstration activities outside the U.S. or for foreign nationals inside or outside the U.S.?

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