

Corporate Immigration Challenges in 2022

By **Zabrina V. Reich**
Phillips Lytle LLP

The longest international border in the world — that between the United States (U.S.) and Canada — experienced an 80% drop in border-crossing traffic during the COVID-19 pandemic. With things returning to normal and fully vaccinated tourists now able to cross the border both ways, business travel is also increasing after several years of hiatus. If you're a company or an employer, this is the optimal time to be thinking about your corporate immigration strategies. Many of our clients are currently focusing on three aspects of managing their U.S. immigration operations and compliance:



Zabrina V. Reich
Partner

- Updating or developing corporate immigration policies
- Evaluating workforce changes and attendant visa/green card needs
- Assessing the impacts of remote work on immigration compliance

Corporate Immigration Policies

If you regularly sponsor foreign nationals for nonimmigrant visas and green cards, a corporate immigration policy is particularly important. Typically, such a policy sets forth processes and procedures that apply to your foreign nationals who are subject to U.S. immigration laws. Well-crafted and thoughtful immigration policies are critical to ensuring your company's U.S. immigration program is business-minded, compliant and consistently applied companywide.

The benefits of having an established corporate immigration policy are many. It provides the framework for regulatory compliance and auditing, and is often a mitigating factor in the event of a governmental enforcement action. It puts managers and employees on notice of the standards that will be followed and sets clear expectations for immigration sponsorship. It can also serve as an effective recruitment tool for top talent.

Employee Immigration Status Review

While things slowed down during the pandemic, many companies were strategizing for the point in time when their business would be back to normal, making future plans to hire and transfer employees. Additionally, long-delayed business meetings, conferences and/or other short-term business activities may now be on the calendar with Canadian workers needing to cross the U.S. border to meet in person.

It's important to plan ahead so that your immigration strategy best suits your short-term and long-term goals. Do you understand what constitutes permissible B-1 business visitor activities? Are your foreign workers looking to engage in activities in the U.S. that would constitute "work" and require U.S. employment authorization? Will you need to sponsor green cards in the near future? It's also important to build in new agency timelines. Just last month, the U.S. Department of State's Bureau of Consular Affairs issued a statement that its National Visa Center continues to be dramatically affected in its ability to process immigrant visas due to COVID-19. Similarly, U.S. embassies and consulates worldwide report lengthy wait times for nonimmigrant visa interviews due to staffing issues. Internally, U.S. Citizenship and Immigration Services

(USCIS) also reports that the agency is still not back up to pre-pandemic operating capacity, resulting in lengthy wait times for immigration benefits.

Remote Work

Remote work became increasingly more common during COVID-19, providing challenges and opportunities for employers and employees, as well as creating implications for immigration policy. The options offered by employers ranged from allowing employees to work from home within the same country, to permitting them to work from a different country for a certain number of days per year, to working with contractors and freelancers

in other countries.

But immigration policy in the U.S. is not aligned with remote work, and there is frequently a disconnect between the flexibility employers would like to offer and what is feasible. Specific work locations are often key to immigration compliance, and employers must be able to track employee work. For example, H1-B visa holders can generally work only at the locations specified on their Form I-129 petition and/or Labor Condition Application. While they may work remotely if their home is located within a "normal commuting distance" of the employer's office, any further distance results in the imposition of additional

regulatory obligations.

This is a challenging time for companies to design an effective and strategic approach to immigration issues. Awareness of emerging changes in the regulatory and policy landscape is critical to an effective and compliant internal immigration program and in obtaining the proper authorization for foreign workers.

Zabrina V. Reich is a partner at Phillips Lytle LLP and leader of the firm's Immigration Practice. She assists companies and individuals in strategically navigating the complex U.S. immigration system and handles a wide array of immigration matters. She can be reached at (716) 847-5446 or zreich@phillipslytle.com.

Giving clients our Best. That's The Phillips Lytle Way.

Phillips Lytle has the distinction of being named a "Top-Listed" law firm in Buffalo, NY for Environmental Law and Commercial Litigation.

Best Lawyers®
2023 "Lawyer of
the Year"

ANGELA ZWIRECKI MILLER Best Lawyers® 2023, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law, "Lawyer of the Year," Buffalo, NY **KENNETH A. MANNING** Best Lawyers® 2023, Bet-the-Company Litigation; Litigation – Municipal; "Lawyer of the Year," Buffalo, NY **WILLIAM P. KEEFER** Best Lawyers® 2023, Health Care Law, "Lawyer of the Year," Buffalo, NY

SHARON PRISE AZURIN Corporate Law **HOLLY A. BEECHER** Trusts and Estates **LUCY BERKMAN** Trusts and Estates **EDWARD S. BLOOMBERG** Commercial Litigation **GLENN J. BOBECK** Corporate Law **ALAN J. BOZER** Appellate Practice **WILLIAM J. BRENNAN** Commercial Litigation **WILLIAM J. BROWN** Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law; Litigation – Bankruptcy **CRAIG R. BUCKI** Litigation – Municipal **WILLIAM D. CHRIST** Mass Tort Litigation / Class Actions – Defendants; Personal Injury Litigation – Defendants; Product Liability Litigation – Defendants **JAMES J. CONTINO** Real Estate Law **DOUGLAS W. DIMITROFF** Real Estate Law **JAMES D. DONATHEN** Employment Law – Management; Labor Law – Management; Litigation – Labor and Employment **DEBORAH A. DOXEY** Banking and Finance Law **KEVIN J. ENGLISH** Commercial Litigation **DAVID P. FLYNN** Environmental Law **ROBERT E. GLANVILLE** Environmental Law; Product Liability Litigation – Defendants **JAMES R. GRASSO** Employment Law – Management; Labor Law – Management **TAMAR P. HALPERN** Commercial Litigation; Product Liability Litigation – Defendants **MARY JO HERSCHER** Personal Injury Litigation – Defendants **KEVIN M. HOGAN** Environmental Law; Litigation – Environmental **PAUL F. JONES** Commercial Litigation; Product Liability Litigation – Defendants **WILLIAM P. KEEFER** Health Care Law **DAVID H. KERNAN** Employee Benefits (ERISA) Law **GARY F. KOTASKA** Corporate Law; Employee Benefits (ERISA) Law **RYAN A. LEMA** Personal Injury Litigation – Defendants **KENNETH A. MANNING** Bet-the-Company Litigation; Commercial Litigation; Litigation – Labor and Employment; Litigation – Municipal; Litigation and Controversy – Tax; Personal Injury Litigation – Defendants **LISA MCDUGALL** Health Care Law **DAVID J. MCNAMARA** Commercial Litigation; Litigation – Banking and Finance **SEAN C. MCPHEE** Commercial Litigation **ANGELA ZWIRECKI MILLER** Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law **DAVID J. MURRAY** Corporate Law **JOHN A. PAPPANO** Real Estate Law **GREGORY L. PETERSON** Real Estate Law **MICHAEL B. POWERS** Personal Injury Litigation – Defendants **JOHN G. SCHMIDT JR.** Commercial Litigation **RONALD S. SHUBERT** Litigation – Real Estate; Real Estate Law **LISA L. SMITH** Product Liability Litigation – Defendants **JAMES W. SMYTON** Corporate Law **ADAM S. WALTERS** Environmental Law; Real Estate Law **JAMES W. WHITCOMB** Commercial Litigation; Personal Injury Litigation – Defendants **SHARON L. WICK** Litigation – Trusts and Estates; Trusts and Estates **ALAN M. WISHNOFF** Personal Injury Litigation – Defendants **PRESTON L. ZARLOCK** Commercial Litigation

ERIN C. BOREK Commercial Litigation **CATHERINE N. (EISENHUT) CERVONE** Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law **ERIN E. CONNARE** Commercial Litigation; Product Liability Litigation – Defendants **JEFFREY D. COREN** Commercial Litigation **ANDREW P. DEVINE** Commercial Litigation; Litigation – Banking and Finance; Litigation – Real Estate **KIMBERLY R. NASON** Environmental Law **JACOB S. SONNER** Commercial Litigation; Product Liability Litigation – Defendants

Best Lawyers:
Ones to Watch
in America™

Phillips Lytle congratulates our WNY attorneys listed in the 2023 Edition of *The Best Lawyers in America*® and *Best Lawyers: Ones to Watch in America*.™ With the most recognized attorneys for Environmental Law and Commercial Litigation in Buffalo, NY, we are proud to have the distinction of being named a "Top-Listed" law firm. Having so many attorneys firmwide honored by Best Lawyers® is a testament to our exemplary performance in the legal profession.

 **Phillips Lytle LLP**

ONE CANALSIDE, 125 MAIN STREET, BUFFALO, NY 14203 (716) 847-8400 PHILLIPSLYTLE.COM
NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | CHICAGO, IL | WASHINGTON, DC | CANADA: WATERLOO REGION
Prior results do not guarantee a future or similar outcome. © 2022 Phillips Lytle LLP