

THE COMPLETE GUIDE TO

BUSINESS *IMMIGRATION*



DAVIS & ASSOCIATES

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Your Guide to Hiring Foreign Talent

If your company needs to hire foreign workers, it's not alone. Thousands of employers across the United States bring in talent from all over the world, and though the process can be complex, it can be incredibly rewarding.

The United States government typically welcomes foreign workers, but it does require businesses to take several steps and remain in compliance with U.S. immigration law. For most companies, the only sensible way to hire foreign workers is to work through an immigration law firm; that's because failing to adhere to immigration law can result in dire consequences.

This guide provides you with all the information you need to know before you begin scouting for foreign talent, including rundowns on the major visa types for foreign workers, information on labor certification through the United States Department of Labor, and your company's responsibilities when sponsoring a worker from another country.

Davis & Associates is here to provide you with the guidance you need for your company to hire workers from outside the United States. Please feel free to call our office at any time; we'll be happy to answer your questions and ensure that you're on the right path.



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Basic Requirements for Bringing in Foreign Workers

The United States government requires companies to meet very specific requirements before permitting them to hire foreign workers. The reason is simple: the government has a responsibility to ensure that jobs are available to Americans when possible. If jobs cannot be filled by Americans, they can be opened foreign citizens to fill.

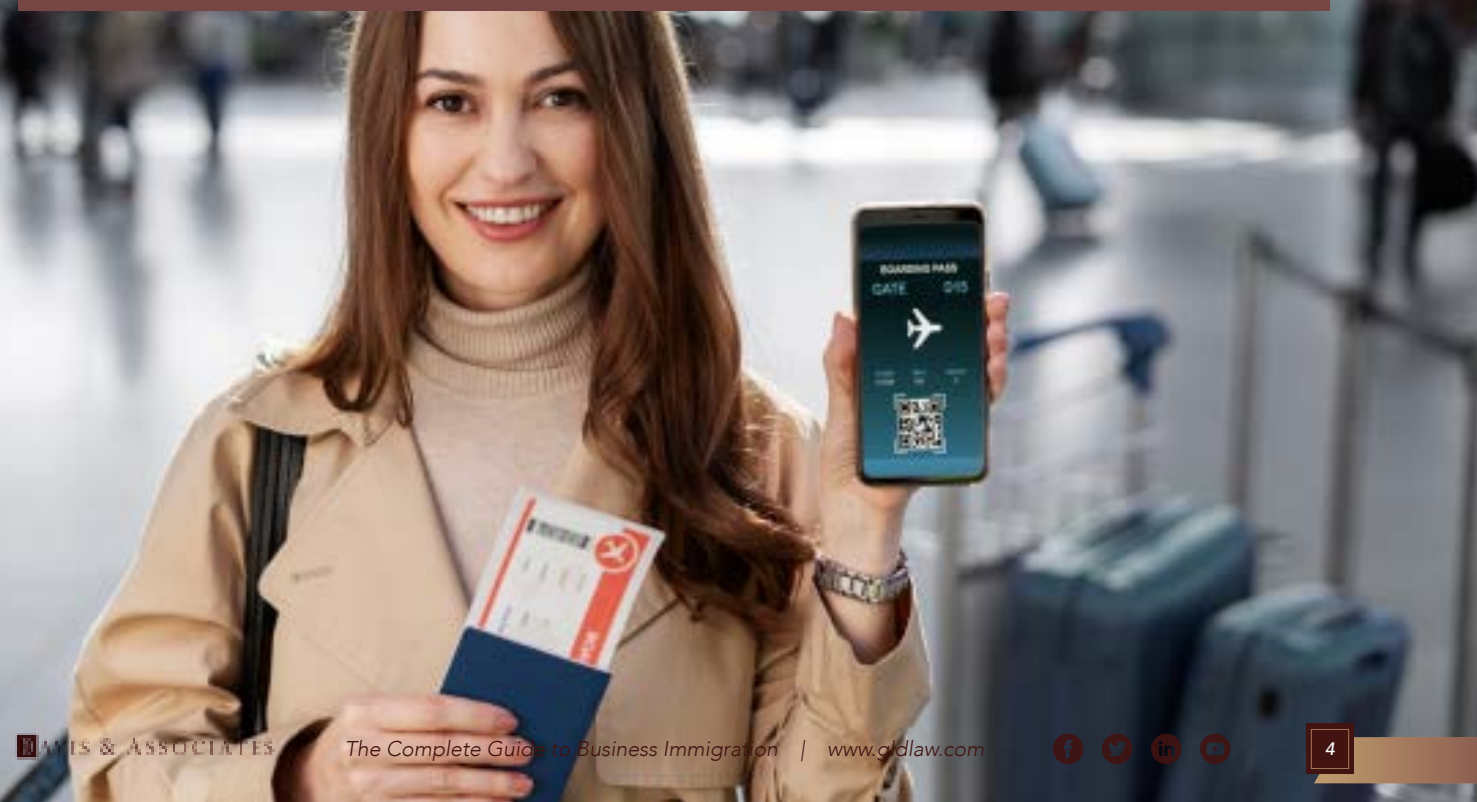
Before a business may lawfully hire foreign workers, it must:

- *Apply for and receive a labor certification from the U.S. Department of Labor (if the job is permanent)*
- *Open the job to workers and conduct interviews*
- *Sponsor the selected employee(s) for a visa*

Above all, your company must show that offering a job to someone from another country – whether it’s permanent or temporary – will not adversely affect American workers’ job opportunities, wages or working conditions.

One of the biggest hurdles your company will face along the way is the labor certification, which we cover in the following section.

If you are offering a temporary position, your workers may qualify for a temporary work visa – and you don’t need to obtain a permanent labor certification.



All About the Labor Certification for Permanent Positions

The U.S. Department of Labor, or DOL, requires U.S. employers to meet specific requirements before hiring foreign workers. After employers meet those requirements, they are permitted to hire people from other countries on a permanent basis.

In order to do this, the United States government requires employers to obtain a labor certification. The labor certification is only for permanent positions; if your company is hiring for a temporary position, you don’t need a labor certification. However, your business will need to sponsor your employee for a temporary visa in most cases.

What is a Labor Certification?

A labor certification is a “thumbs-up” from the U.S. government that allows a company to hire foreign workers for permanent jobs. You must have this certification whether you are hiring one or a hundred foreign employees.

Getting a labor certification is a process. As an employer, you must first demonstrate that there are not enough qualified United States workers available and willing to perform the work at the local prevailing wage. Then, you must complete and file the appropriate forms with the Department of Labor and wait for approval before you can move forward in the process.

You must also show that:

- *You intend to hire a worker as a full-time employee*
- *The job is permanent in nature (rather than temporary)*
- *The job has reasonable job requirements (meaning that the requirements are customary in that occupation) unless it is a business necessity*
- *Your company will pay the prevailing wage or higher*



The Full-Time Employment Requirement

Your company will not qualify for a labor certification if you intend to hire a part-time employee. The employee you plan to hire must work full-time.

Job Permanence

The employer must offer a permanent position to qualify for a labor certification. If your company is hiring temporary employees, a work visa may suffice.

Reasonable Job Requirements

You must show that the minimum educational and experience requirement for the job must be the same as those that are customarily required. For example, if other workers in the same occupation need a bachelor's degree or its equivalent and ten years of work experience, that's all you're permitted to ask for in your job description. This rule prevents employers from finding a candidate they want to hire and then changing the job description to match that candidate's background.

However, if you can prove to the Department of Labor that unusual job requirements are necessary for your business, you may include them in your job description.

A Word on the Prevailing Wage

The *prevailing wage* is the average wage paid to similarly employed workers in the same occupation. You can determine the prevailing wage by submitting a request to the National Prevailing Wage Center, or NPWC, or by using other legitimate sources of information. Your attorney can help you determine the prevailing wage if you don't already know what it is.

What Happens After You Obtain Labor Certification?

After the U.S. Department of Labor certifies your company, you may open the job to applicants. After you have made your selection, your company will need to apply for a visa on your employee's behalf. Your employee cannot enter the country without a valid visa.

Visas for Foreign Workers

Whether your company is hiring temporary or permanent workers, your employees will need visas to enter the United States and work. The most common types of U.S. work visas are:

- *Temporary nonimmigrant visas*
- *Permanent immigrant worker visas*
- *Visas for short, business-related stays in the U.S.*

Your company will be required to sponsor any employee it hires.

Sponsoring a Worker for a Visa

Foreign workers are not allowed to apply for their own visas except in very limited circumstances. Instead, employers have to sponsor them. That means the employer must extend a job offer to the employee, as well as guarantee that the employee will only work in the job position they were hired for, and only while covered by a valid visa. The employer files the visa petition on the worker's behalf.



Types of Visas for Foreign Workers

The U.S. government offers several types of visas for foreign workers. Though only some require a labor certification, every worker coming to the United States must have a valid visa. Without a visa, the employee will not be permitted to enter the country to work.

Temporary Nonimmigrant Visas

Temporary nonimmigrant visas are for people who want to work in the United States for a fixed period of time. If your company is hiring temporary workers, you do not need a labor certification from the US Department of Labor. However, you will still be required to prove that you are working in good faith, that hiring foreign workers will not adversely affect American workers, and that you will pay your employees the appropriate amount of money. You will also be required to accept some forms of responsibility for that worker during their time in the United States; that's what it means to "sponsor" an employee.

Common Types of Temporary Nonimmigrant Visas

The most common types of temporary nonimmigrant visas are:

- **H visas.** These visas are for people in specific professional and academic fields who have special expertise. H visas are divided into three categories, each dependent on the type of employment the worker will engage in.
- **I visas.** These visas are for members of the foreign press, including reporters, film crews and representatives of foreign media outlets.
- **L visas.** These visas are for temporary transfers within a company, and they're reserved for people who are at the executive or management level or those who have specialized expertise.
- **O visas.** These visas are for people who have extraordinary or exceptional abilities and achievements.
- **P visas.** These visas are for exceptional athletes, artists and performers, and they usually only last as long as the person will be performing (such as a band on tour or an athlete who is engaged in a specific competition).
- **R visas.** These visas are for nonimmigrant religious workers.
- **TN NAFTA visas.** These visas allow some Canadian and Mexican citizens to work in the United States to engage in business activities under the North American Free Trade Agreement.

Permanent Immigrant Worker Visas

Permanent immigrant worker visas are reserved for people who will occupy permanent positions in U.S. companies. If your company wants to hire permanent workers, it must typically be certified by the Department of Labor. However, some of these visas don't require labor certification (see the following section for more details).

These visas can lead to lawful permanent residency in the United States – and eventually to citizenship if the worker wishes to pursue it.

Types of Permanent Immigrant Worker Visas

There are five categories of permanent worker visas:

- **First-preference EB-1.** These visas do not require labor certification; they're reserved for business professionals, academics, researchers, and others with extraordinary ability.
- **Second-preference EB-2.** These visas are available to professionals who hold an advanced degree or who can show at least ten years of experience in the field, as well as those whose employment is in the U.S.'s national interest.
- **Third-preference EB-3.** These visas are for people who have bachelor's degrees (or the foreign equivalent), as well as to skilled and unskilled laborers who will be filling permanent positions in the U.S.
- **Fourth-preference EB-4.** These visas do not require labor certification. They're for certain religious workers, some physicians and a handful of other workers.
- **Fifth-preference EB-5.** These visas do not require labor certification – they're only for immigrant investors who make the appropriate investment in a new commercial enterprise in the U.S. The enterprise must employ at least ten full-time U.S. workers.

Visas for Short, Business-Related Stays in the United States

There are two types of visas available to people who are making a short, business-related trip to the U.S. Employees do not need sponsorships for these visas.

- **B-1 visas,** which are for people who are staying in the U.S. for one to six months (though they may be extended for an additional six months in some cases).
- **WB Temporary Business Visitors,** which allows for nationals of 39 countries to travel to the U.S. without a visa if they intend to stay for 90 or fewer days.

Common Questions About Business Immigration

Business immigration can be very complicated, and for many people, it's downright confusing. Check out these common questions about business immigration, sponsoring workers, visas and processing times.

How Long Does it Take to Process Workers' Visa Applications?

U.S. Citizenship and Immigration Services handles worker visa applications. Typically, it takes a few months to a year (or more, in some cases) for USCIS to approve or deny worker visa applications. Your employee can't enter the United States until their work visa has been approved and issued.

Can Workers Bring Their Families to the U.S.?

Under most work visas, employees are allowed to bring their spouses and unmarried children who are under 21 years of age. However, there are some visas – such as those for short-term business visits to the U.S. – that don't allow workers to apply to bring their families.

What is Premium Processing?

Premium processing is a USCIS service that expedites petitions – but it comes at a price. Because it can take a significant amount of time for USCIS to issue a decision on a work visa, some employers choose to pay for premium processing, which guarantees processing within 15 calendar days. If USCIS doesn't process the application within that time, it refunds the premium processing fee and continues with expedited processing.



How Much Does it Cost to Sponsor a Worker?

The cost to sponsor a worker varies based on several factors, including the current cost of the visa your worker needs. The best way to find out how much it will cost your company to sponsor a worker is to get in touch with an immigration attorney.

Can Employees Get Green Cards After Coming to the U.S.?

Some workers who come to the United States are eligible to become lawful permanent residents (green card holders) after a certain period of time has elapsed. However, only workers who come to the U.S. for permanent positions under the EB-1, EB-2 and EB-3 preference categories become eligible for green cards.

If your employee becomes a lawful permanent resident of the United States, your company no longer has to sponsor them. They are legally authorized to work anywhere they want to work.

What if You Fire or Lay Off a Sponsored Worker?

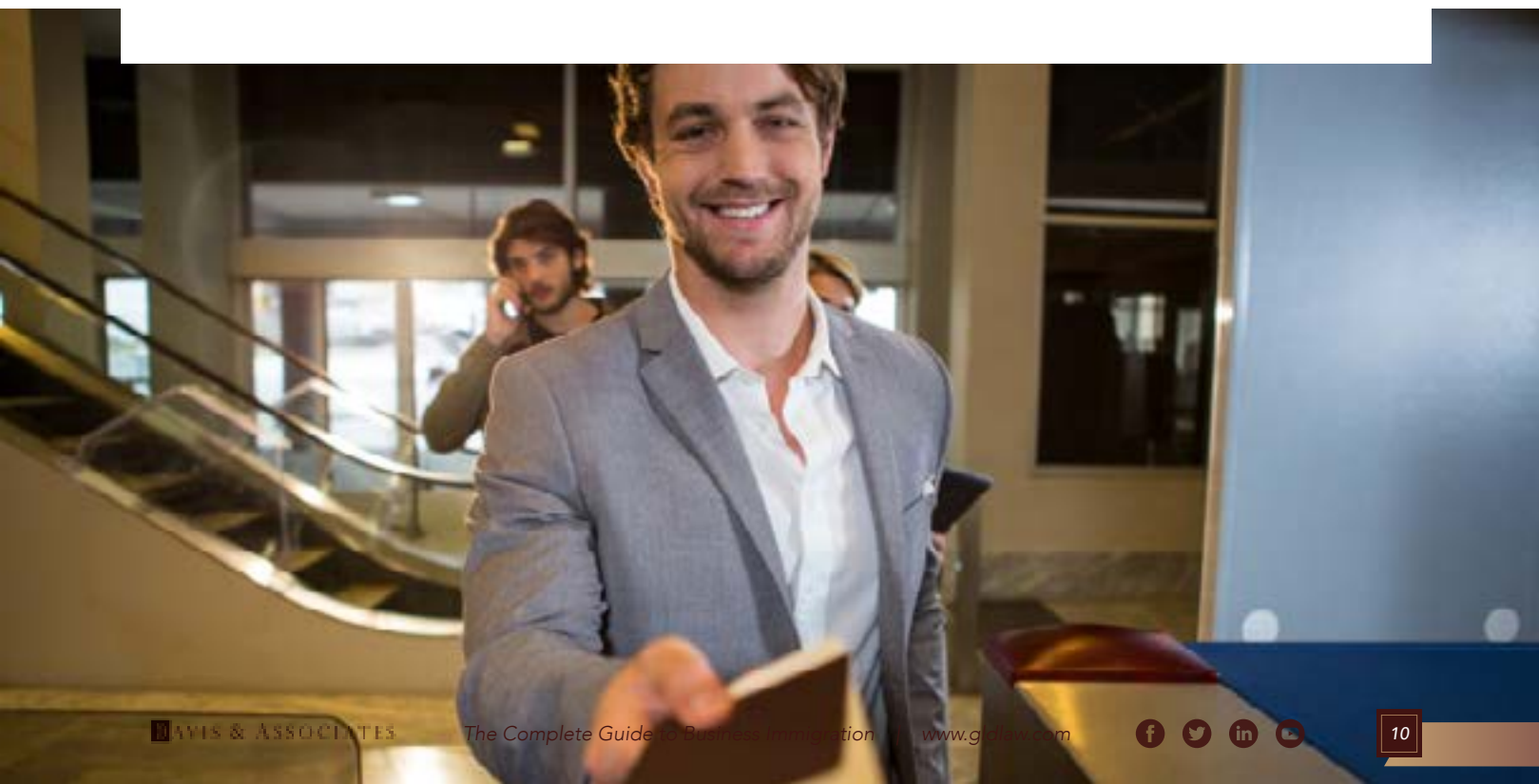
If you fire or lay off a sponsored worker, your company may be held liable for the worker's costs in getting home.

What About Social Security and Other Tax Laws?

Your foreign employee will need a Social Security number. They'll also be required to pay all U.S. taxes, and your company will be responsible for making the appropriate deductions.

Does the Employee Have to Meet Certain Criteria?

Every foreign worker who wishes to enter the United States must be considered admissible. That means they are not barred from entering the U.S. due to security reasons, health reasons, or other reasons that the government has defined.



Davis & Associates Is Your Key To Hiring Foreign Talent

Because United States immigration law is complex, and because companies are required to adhere to strict regulations, it typically makes sense to work with an immigration attorney who understands how it all works. Working with an attorney can help ensure that your company remains on the right side of U.S. immigration law.

If you have questions about hiring foreign workers, or if you're ready to start the process, our firm is here for you. Please feel free to call us at any time to [*schedule a complimentary consultation*](#). You don't have to do this alone – we're on your side.



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