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## Stakes High For Employers In Immigration Reform Push

By **Abigail Rubenstein**

Law360, New York (January 14, 2013, 8:26 PM ET) -- With President Barack Obama gearing up to press Congress for swift action on a comprehensive immigration reform bill, attorneys said employers should get involved in the debate to ensure that key business immigration issues, such as retaining skilled foreign workers, don't get overshadowed by disputes over immigration enforcement.

Obama and Senate Democrats plan to propose an ambitious overhaul of the U.S. immigration system in one comprehensive bill that would include a path to citizenship for undocumented immigrants currently in the country, The New York Times reported Saturday.

The president's plan includes several elements that would significantly affect employers, including adding visas to relieve backlogs and allow highly skilled immigrants to stay in the United States, creating a guest-worker program for low-wage immigrants, and imposing mandatory verification of immigration status for all new hires, according to the report.

While any truly comprehensive reform package is likely to present employers with something of a mixed bag — both increasing their compliance obligations and implementing reforms aimed at making it easier for them to fill certain jobs with foreign workers — attorneys said employers shouldn't sit on the sidelines but instead should take the opportunity to try to ensure that any reform package meets their most pressing needs.

"Like most things to go through the House and Senate, this has the potential to be something that starts out as probably a good law and then through various negotiations comes out a very different piece of legislation," Ian R. MacDonald, the co-chair of Littler Mendelson PC's global mobility and immigration practice group. "Companies should educate themselves, as there are going to be many changes proposed, and unless people make their voices heard, the change is going to happen very fast."

One particular area where it would behoove employers to get involved to help shape the legislation is in the discussion of additional visas that would allow companies to bring skilled workers to the United States and keep them here, attorneys said.

The current H-1B visa process for skilled workers does not provide employers with enough workers to fill all the positions businesses need filled, leaving a decided shortage of qualified workers in science, technology, engineering and mathematics fields where there are not enough qualified American candidates, lawyers said.

"Things have gotten to where they are in part because employers have been sitting on the sidelines while the [immigration] debate has centered on how big a fence to build on the

Mexican border," said Robert S. Groban, the national chair of Epstein Becker & Green PC's immigration law group. "Employers have a significant interest across industries in trying to find a more sensible way of handling the H-1B visa process."

"We need to try to create a more seamless path so employers can fill the skill deficits they are so desperately looking to fill, not only for the high-tech, bioscience and biofuels industries, but also other industries like finance," Groban said. "There is nothing wrong with enforcement, but we can't have it as a myopic focus as we are getting increasingly noncompetitive on a global basis."

Possible reforms that lawyers told Law360 employers might rally behind include making more visas available, possibly for a higher fee, or increasing the exemptions to the visa quota, especially for those holding STEM degrees.

Beyond just pushing for more visa availability for skilled workers, employers may want to get behind efforts to implement new kinds of visas, such as visas for entrepreneurs, lawyers said.

"If someone like Bill Gates wanted to come here and set something up, he couldn't because of the labyrinth that is the EB-5 program," Groban said, referring to the visa program for immigrant investors.

And at the other end of the spectrum, attorneys said employers should get involved in the discussions of a potential guest-worker program for unskilled workers, who are sorely needed by businesses in a number of fields.

"Hopefully there will be a new type of visa that will allow unskilled workers to work legally in the country," said Susan J. Cohen, the chair of Mintz Levin Cohn Ferris Glovsky & Popeo PC's immigration practice. "We just don't have a work visa for those kind of workers, but the need for them is great in restaurants and factories and for all kinds of unskilled construction work or work for moving companies."

"Employers are at a disadvantage in terms of their hiring because there are a lot of attractive candidates who apply for jobs with them who aren't legal, and some very small percentage of companies end up being bad actors employing those people illegally, but the majority are just not finding the workers they need because they are doing the right thing and not hiring workers without work authorization," she said.

Debates about the creation of a guest-worker program helped to bring about the demise of a previous effort at immigration reform when some unions raised objections to bringing in foreign workers, so it is that much more important that employers speak out on the issue this time around to try to counter such objections, according to Eileen Scofield of Alston & Bird LLP.

For those industries that simply cannot fill the unskilled jobs they have open under the current regime, a guest-worker program could actually help keep jobs in the United States, Scofield said.

"If we don't bring in workers to work, the work is going to go to the workers," said Scofield, who is working with the agriculture industry, among others, on immigration reform issues. "Apples will be grown in Chile, and eggs will be produced in Mexico."

Whether the issues that helped scuttle previous efforts at immigration reform resurface or new ones arise, lawyers told Law360 that the prospects for immigration reform to actually become law are looking stronger than ever, so employers should not miss the opportunity to have their voices heard.

One thing that may help spur an immigration reform package toward passage is the potential willingness of Republican lawmakers who may not otherwise have supported the idea to do so in the wake of the last election.

"The Republican party, as I understand it, failed to attract sufficient numbers of voters in the Latino community, and immigration was one of the key points of distinction," MacDonald said. "We may now see certain members of the Republican party supporting immigration reform where they may not have done so previously."

In addition to the White House's plan, a bipartisan group of senators has also been drafting its own comprehensive reform bill, with the aim of introducing the legislation as soon as March, according to The New York Times report.

Besides the possibility of bipartisan support for the right reform deal, both business and labor groups have backed the broad idea of immigration reform so far.

The president of the U.S. Chamber of Commerce vowed last week to work with labor groups and Latino organizations to get a comprehensive reform bill passed in the next year. And with the battle over health care reform in the past and the fiscal cliff fight resolved, attorneys said that immigration reform's time may have finally arrived, making it all the more important that employers get involved in the debate and try to work toward viable solutions for their businesses.

"This is the moment," Cohen said. "The first half of 2013 is the best chance for immigration reform because there is some momentum."

--Editing by Elizabeth Bowen and Chris Yates.

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