

## What Ending H-4 Work Permits Means For Cos., Immigrants

By **Allissa Wickham**

Law360, New York (November 20, 2017, 11:14 PM EST) -- With the Trump administration reportedly mulling plans to end work authorization for H-4 visa holders, thousands of immigrant spouses may lose the ability to work in the U.S., potentially halving their families' incomes and creating another headache for employers.

In a move consistent with the Trump administration's hard-line stance on immigration, the administration has been writing a regulation to roll back work authorization for H-4 visa holders, the San Francisco Chronicle reported Friday. These visa holders are the spouses of H-1B guest workers, and have only been able to work in the U.S. since 2015, thanks to an **Obama-era regulation**.

Since that rule went into effect, thousands of immigrant spouses have received work authorization. In the 2016 fiscal year, for instance, 41,526 approvals were issued for H-4 work permits, according to U.S. Citizenship and Immigration Services statistics.

Now, however, that work authorization appears to be in serious jeopardy. This is likely unsurprising to anyone who's been following a **court case** over the H-4 regulation filed by a group of information technology workers claiming they were replaced by H-1B visa holders. The Trump administration told the court in September that the Department of Homeland Security was examining whether it was "appropriate" to release more rulemaking on the H-4 issue.

But despite the government's foreshadowing in the litigation, rescission of the H-4 work authorization rule will likely still be a tough pill for many immigrants and companies to swallow.

"I think it would be devastating to employers and to the individuals who have the work authorization," said Susan Cohen, chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC, who highlighted the families who are now relying on the extra income.

And beyond the financial impact, there's also an emotional component. Spouses on H-4 visas — who are often women, according to anecdotal reports from attorneys — would likely return to not working, after having been given several years in the U.S. workforce.

"There's a psychological component to working with work authorization that makes people feel very good about themselves," Cohen noted. "And taking that away will absolutely, in some cases, have an adverse psychological or emotional effect on people."

Additionally, some H-4 visa holders are themselves skilled, educated individuals, noted Justin Storch, of the Council for Global Immigration, who said that spousal work authorization could play into some people's decision to come to the U.S.

"Some people are going to make the decision not to come to the United States at all if their spouse isn't going to be able to work," Storch said. "So it affects both hiring and retention."

As for what to do now, Beth Carlson, an attorney with Faegre Baker Daniels LLP, recommends that anyone who can file for H-4 work authorization do it now, before a rule change is announced, and those that already have it seek extensions, if possible.

People may also want to start considering other immigration options that could allow them to work, she said. This could include potentially moving to H-1B status, or going back to school and then being able to work through what's known as "curricular practical training" or "optional practical training," according to Carlson.

Attorneys are also hopeful that the rollback of the H-4 work authorization rule will be gradual, allowing for some sort of grace period or phase-out, rather than simply revoking existing work permits. Once their work permits have expired, however, many H-4 spouses will likely wind up stepping back from their jobs, attorneys said, and may have to wait it out while their spouse's green card case pends.

"All it's really going to do is just make those who are in the line, trying to do it legally, suffer a little bit more," said David Grunblatt of Proskauer Rose LLP.

As for what the future portends, the government isn't giving any clues. On Monday, a USCIS representative told Law360 that the agency hasn't "implemented any new policies or rules related to H-4 employment authorization," and that it's not able to talk about "any part of the predecisional processes."

One thing that employers shouldn't do in the meantime, however, is root through their employees to try to determine who might be on an H-4 visa, noted Storch, lest they run into a discrimination issue.

"The employer shouldn't overstep the bounds of trying to identify those people themselves. They shouldn't be terminating people, prospectively. ... Let the [work permit] run its course, and then we can deal with the situation at that time," he said.

--Editing by Mark Lebetkin.