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Employee Mobility – Immigration and Benefits Issues to Consider for a Remote and Mobile Workforce



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Employee Mobility – What’s the Big Deal?

- **27% of the U.S. workforce was working remotely at least part-time** as of August 2022
- According to Forbes Advisor:
 - **12.7%** of full-time employees work from **home** 100% of the time
 - **28.2%** of full-time employees work a **hybrid** schedule between home and office
 - **59.1%** of full-time employees work in the **office** 100% of the time
- With remote work tolerance, more employers are seeking talent internationally:
 - **Foreign-born workers** accounted for **18.1% of the U.S. civilian labor force in 2022**, up from 17.4%

Immigration & Mobility Team

Our **immigration practice** was established nearly 50 years ago and extends across every US time zone. Our full-service team includes:



70+

Team Members



20+

Attorneys



50+

Paralegals & Business Professionals

We believe our team's diversity is a **Quarles strength**.

87% of our immigration attorneys are women and/or diverse.

90% of our immigration team are women and/or diverse.

Holistic, Relationship-Driven Framework

**Immigration
and Mobility
Program
Management**

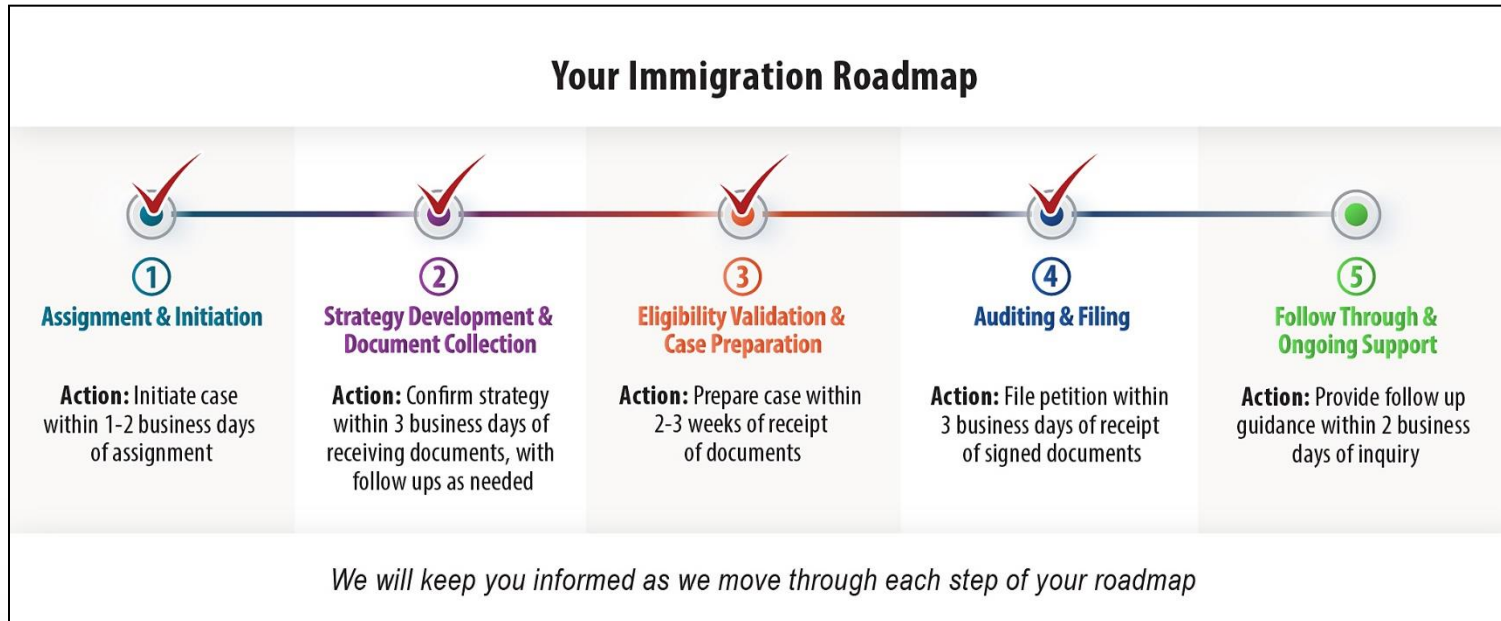
**Expertise in
Temporary Work
and Permanent
Residency
Solutions**

**Immigration
Compliance,
Auditing, and
Investigations
Capabilities**

**Corporate
Restructuring
Support**

**Trendspotting and
Business Planning**

Responsive Communications & Innovative Tools



- **Inform** you and your employees about their matter's status and the timeframes associated with next steps, transparently
- **Build** high-quality, repeatable tools, including FAQs and Toolkits, for your HR, business groups, and Legal, as well as your employees

What's New in Immigration?

- White House Initiatives
- State-side Visa Processing
- Proposed H-1B Regulation
- Changing Market Conditions

Key Immigration Questions Related to Remote Work

Short-Term, Nonimmigrant Visa Status

- Does location matter?
- Can we prove this employee is under our control?
- Will we know if the employee moves?

Long-Term, Green Card Application

- Did we disclose remote work on the green card application?
- PERM Application Recruitment Campaigns – where do we post?
- Can we change it later?

I-9 Compliance

- Is remote verification still OK?
- How does remote verification actually work?

Overview of the Employee Benefits & Executive Compensation Practice

- **Retirement plans:** 401(k), 403(b), pension plans, ESOPs
- **Multiemployer plans:** Complete and partial withdrawal liability, workforce reductions, facility moves, shutdowns
- **Health and welfare:** COBRA, HIPAA, ACA and other compliance and tax issues
- **Executive compensation:** Employment, severance and compensation programs
- **Fiduciary issues/ ERISA litigation**
- **Corporate Transactions:** Benefits issues within mergers, acquisitions and reorganizations

Current Employee Benefits Issues

Transparency Requirements for Group Health Plans

- Submit a “no gag clauses” attestation by December 31, 2023

ERISA Fiduciary Check-Up

- Key steps include adopting any discretionary amendments to plan documents before year end
- Changes to voluntary correction programs

Retirement Plan Legislative Changes

- Cares Act, Secure Act, Secure 2.0
- What’s effective now and what should employers be planning for?

Key Tax & Benefits Questions Related to Remote Work

- Exposure to tax and reporting obligations where remote work performed
- Registration to do business may be triggered by remote worker
- Registrations signal to state and local authorities that employer may have “tax nexus” with remote work location
- Effect on benefits – PTO, bonuses, ERISA benefits

Company A hires non-U.S. citizen interns and permanent employees from several graduate programs throughout the U.S.

Consider:

- Resident v. non-resident alien status
- Tax withholding rates
- Visa status planning, short-term v. long-term Green Card timelines
- I-9 documentation for students
- Eligibility checklists and internal approvals

Scenario #1

Company B has a non-U.S. citizen working on an H-1B visa in California. The employee has decided to move to Colorado and work remotely.

Consider:

- Company's registration requirements in CO
- Tax nexus in CO
- Impact on benefits
- Location listed
- Control/site visit?
- Green card?

Scenario #2

Company C has a non-U.S. citizen on an H-1B status in California. The employee has decided to work half of the year in India and half of the year in California.

Consider:

- Effect on federal and CA tax withholding
- Doing business in India rules
- Travel explanations
- H-1B usage
- Permanent status concerns
- Protocols for work location updates/agreements
- Training managers and employee morale

Scenario #3

Employee of Company D works 100% remote from home. Without Company D's knowledge, Employee moved to Mexico and is working full-time from Mexico.

Consider:

- U.S. citizen v. non-U.S. citizen tax impact
- Taxing nexus in Mexico
- Mexican immigration
- Ability to return
- Protocols for work location updates/agreements
- Training managers
- Employee morale

Scenario #4

Company E is hiring a UK citizen to perform consulting services. Over 50% of the services will be performed in the U.S.

Consider:

- Employee v. IC tax withholding and visa concerns
- Resident v. non-resident alien status
- L-1 options
- Eligibility checklists and internal approvals

Scenario #5

Do you want to learn more about recent legal updates, particularly surrounding California workplace matters?

(Or do you just need additional CLE or HRCI credit before year end?)

Join us on December 7 at our **26th Annual PPQ Labor & Employment Law Seminar**

Please click on the link below to register:

<https://bit.ly/PPQSeminar>

Agenda

Registration & Networking: 12:30 – 1:00 p.m.

Seminar: 1 – 5:30 p.m.

Social Hour: 5:30 – 6:30 p.m.

Location

DoubleTree by Hilton San Diego – Mission Valley

**Questions?
Thank you!**

**Paul Plevin
Quarles**