



Trump's 'Hire American' executive order has no weight without Congress

The president will have to broker a deal with Congress to make the massive changes proposed to the controversial H-1B visa program.

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President Donald Trump signed his 23rd executive order Tuesday, which aims to overhaul one of the most contentious parts of the American immigration system: high-skilled visas.

The “Buy American, Hire American” executive order emphasizes enforcement of laws that encourage government agencies and Americans to buy U.S. products and hire U.S. workers. One of the main thrusts of the order calls on cabinet secretaries to implement administrative changes and produce reports that identify potential abuses of the H-1B visa program, which awarded 85,000 work visas this year to foreign knowledge workers through a lottery system, and look for ways the government can only award contracts to American business owners.

Regarding immigration, the order doesn't address the administration's main criticisms of the H-1B program, such as exploitatively low pay and replacing the lottery system to guarantee recipients are the best candidates for the positions. It also carries little weight on its own.

“It doesn't do anything,” said William Stock, president of the American Immigration Lawyers Association (AILA) in Philadelphia. That's because the changes Trump campaigned on need to be approved by Congress.

“Wage levels? Set by Congress. H-1B lottery system? Set by Congress. Changing the way visas are allocated...He needs to talk to Congress.”

Trump campaigned on the concept of putting America first, particularly when it came to jobs. In 2015, then-candidate Trump singled out the H-1B visa program for being rife with abuse and encouraging employers to overlook qualified American workers.

The policy proposal sent a chill through the tech industry, which heavily depends on H-1B workers to fill out full-time and contract positions. That tension intensified earlier this year, after Trump signed his first executive order restricting entry of immigrants from or traveling from several Muslim-majority countries and companies such as Google required resident employees abroad to immediately return to the U.S.

The White House's tenuous relationship with Silicon Valley was strained further as Trump's policies homed in on issues central to the tech industry's ethos and economic health. And with cracking down on H-1B visas in his sights, there's concern Trump could hurt the economy he's trying to help.

"The problem is that Congress likes the rules, they haven't changed them since 1990," Stock said, adding that Congress attempted to change the mandatory pay in 2014 when the immigration reform bill failed in the House of Representatives.

Even if the investigatory reports mandated by the executive order call for changes to the law, reversing the statute isn't necessarily guaranteed.

"The effort to repeal Obamacare illustrates how difficult it is to get Republicans to agree on an issue," Stock said. "Trump has to broker that agreement between enough Republicans and Democrats who think H-1B should be restricted."

Besides a potential congressional hurdle, there could still be economic consequences to Trump's desired changes, especially when it comes to funding existing programs and trade.

For example, further restricting H-1B visas could actually result in taking jobs away from American workers by encouraging companies to relocate, Stock said. That would create more jobs in places like Ireland, India (which is currently the biggest recipient of H-1B visas), China, and countries in South America, where there are growing IT workforces.

"If the workers can't come here, then companies are going to have to go where the workforce is," Stock said. "The unintended consequences are going to outweigh what he was trying to achieve."

The government gets money from H-1B visas through employer fees, and reducing the number of slots could create a budget shortfall, he said. The largest employers who use H-1B visas pay up to \$2,500 in fees that go into the general treasury, according to Stock, and the Labor Department uses these application fees for training and grants.

Restricting H-1B visas or prioritizing American businesses also doesn't replace jobs lost due to the collapse of manufacturing or mining industries.

Dan Ikenson, the director for trade policy at the Cato Institute a libertarian think tank in Washington, D.C., said the order looks tough, especially when it comes to government contract spending. But he worried that Trump's emphasis on only awarding government contracts to American companies could mean that taxpayers lose out. From a free market perspective, Ikenson said, there should be as many foreign companies as possible bidding for government contracts.

"You need the competition," Ikenson said, arguing that only contracting with American businesses could result in overspending. "We shouldn't just assume that it's good for America if Americans transact with other Americans."

That economic stance is why Trump's immigration policies have garnered criticism from economists across the political spectrum.

“We need smart foreign workers to come here and share their ideas,” Ikenson said. “Immigrants are 50 percent more likely than Americans to start new businesses.”