

### Companies that operate internationally and regularly send foreign-based employees to the US should be aware that the environment for business travel into the US is changing.

The US Department of State (State Department) released a fact sheet on October 4, 2025 explaining what it considers permissible under the business visitor category for B-1 visas. The B-1 classification is the standard non-immigrant visa used for short-term commercial activities, such as negotiating contracts, consulting with business associates, attending board meetings or participating in professional conferences. This is not a new law, but it comes at a time when US authorities, particularly Customs and Border Protection (CBP), are taking a closer and more skeptical look at what foreign employees actually plan to do once they arrive in the US.

For many global companies with US subsidiaries or operational sites, this shift in US immigration policy hits close to home. It is common for overseas offices to send engineers to assist with equipment, technicians to help troubleshoot issues, HQ staff to audit operations or specialists to support project work. Short visits such as these used to flow smoothly and were often seen as low risk. That assumption no longer holds.

The State Department's guidance repeats the long-standing principle that B-1 visitors may attend meetings, conferences, negotiations and other non-productive business activities. It also restates the prohibition on commercial and industrial work; that is, any hands-on, productive activity that resembles labor for the US entity. It is important to note that these limitations apply equally to travelers utilizing the Electronic System for Travel Authorization (ESTA). ESTA is an automated vetting system that determines the eligibility of visitors to travel to the US under the Visa Waiver Program (VWP). The VWP allows citizens of 41 participating countries (including Japan, South Korea, the UK and most of Europe) to visit the US for tourism or business for up to 90 days without obtaining a visa. However, an ESTA approval is not an authorization to work, and ESTA travelers are subject to the same limits because ESTA entries are treated the same as B-1 for activity purposes.

The State Department has also added a narrow specialized trainer provision to the Foreign Affairs Manual. Under this guidance, a foreign national may qualify for a B-1 visa if they are traveling to the US on a temporary basis to provide training, or transfer specialized or proprietary knowledge to US workers in support of a qualifying project involving equipment, machinery or processes sourced from outside the US. To fall within this provision, the individual must possess unique knowledge that is not widely available in the US, and must receive no remuneration from a US source.

This guidance applies only to visa adjudications and does not bind US Customs and Border Protection. Given the fact-specific analysis required and the discretion exercised at the border, companies seeking to rely on this provision should do so through a properly documented B-1 visa application rather than ESTA.

A key point that many companies overlook is that the State Department does not have the final say once a traveler arrives at a US airport. Consular officers overseas issue visas using the Foreign Affairs Manual as their guide. However, CBP officers, who belong to a different agency under the aegis of the Department of Homeland

Security, make the final decision on whether the traveler may enter the country and what they may do in the US. CBP is not obligated to follow the State Department's interpretations. Adding to the uncertainty, CBP no longer publishes internal guidance comparable to the Foreign Affairs Manual, and its public information is limited. ESTA travelers, who never go through a consular interview, are particularly vulnerable to inconsistent assessments at the port of entry.

Given this reality, companies that rely on personnel traveling to the US from overseas need to rethink how they classify and prepare for US business trips. Whenever a visit may involve hands-on work, equipment checks, troubleshooting or support tied to US operations, relying on ESTA is risky. Obtaining a formal B-1 visa, or a work visa, is the safer approach.

If companies continue relying on ESTA for standard business visits and preparation matters then travelers should know what they can and cannot do, understand their itinerary and carry supporting materials such as letters of invitation and meeting agendas. Alignment among a company's HQ, the overseas office, and the US entity is essential so that instructions to personnel are consistent.

The immigration environment in the US is not the same as it was a decade ago, when short-term support visits were rarely questioned. International companies should revisit their internal travel policies, ensure global HR and mobility teams are aligned and avoid assuming that ESTA will be sufficient for anything other than a straightforward business meeting.

If going with just ESTA, it is advisable to have counsel review the travel plan and prepare the traveler before departure to avoid potential mishaps.

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