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New immigration law to create trouble for India IT companies

Written by: **Rajiv S Khanna** Updated: Tuesday, July 9, 2013, 17:51 [IST]

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Virginia, July 9: H-1B visas allow foreign nationals who hold at least a Bachelor's degree or equivalent in professional subjects to temporarily work in the United States on specific projects. Among other requirements, employers must file a Labour Condition Application (LCA), which includes certain attestations about the position, with the Department of Labour (DOL).

These non-immigrant visas are frequently used by India-based companies with business models focused on supplying IT services to US companies that require professionals to work on short term-projects at various locations. Senate Bill 744, which recently passed the Senate, would have a profound impact on these Indian IT companies.



Assuming the bill passes the [house](#) of Representatives without significant alteration, Indian IT companies would likely be severely restricted in their accustomed use of H-1B visas. The bill raises fee amounts and wage requirements, increases government investigative authority, places additional recruiting requirements on employers, limits the total number of H-1Bs certain employers may hire, and contains significant

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restrictions on "outplacements," A phrase that is so broadly defined as to include all types of contracting for an employee's services at a third-party site.



There are additional limitations placed on "H-1B dependent employers. The Senate bill would impose additional [fees](#) on H-1B employers.³ The system and method of calculation for DOL-provided prevailing wage determinations also changes significantly under the bill.

H-1B dependent employers must pay a minimum of Level 2 wages even if the new recruit is signed right out of school. Furthermore, employers will be required to have taken good faith steps to recruit US workers using industry-wide recruitment standards and must have offered wages at least as great as that offered to the H-1B applicant.

Government investigative authority would also increase significantly under S.744. The standard of review by DOL for LCAs becomes more onerous, the statute of limitations period on LCA violations doubles, DOL no longer needs "reasonable cause" to initiate investigations that stem from complaints, fines are doubled and additional employer liability for lost wages and benefits to employees is added, and DOL is required to conduct annual audits under certain criteria.

Additionally, there are several new restrictions placed on employers during their recruitment for a position offered to an H-1B applicant.⁶ Although it remains to be seen exactly how the provision will be interpreted, Indian IT companies could be significantly affected and hindered by the restrictions on "outplacements," in the bill. S.744 prohibits outplacement, outsourcing, leasing, or "otherwise contracting for services or placement of" H-1B employees by H-1B dependent employers, and imposes a fee of \$500 per outplaced employee on non-H-1B dependent employers.

Indian IT companies regularly use workers on H-1B visas and typically require them to work at several worksites. This practice would likely be severely impeded if S.744 is enacted. Although it remains to be seen whether or not the bill will become law, it is safe to say that many of the bill's measures would make competing in an increasingly competitive global marketplace significantly tougher on Indian IT companies.

[[Rajiv S Khanna](#) is a leading [US](#) immigration lawyer. He operates out of Virginia in the US]

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