

Nasscom says Trump move on federal contracts misguided

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BENGALURU: IT industry body Nasscom said US president Donald Trump's new executive order preventing federal agencies from contracting work to H-1B visa holders is based on misperceptions and misinformation. The executive order -- Aligning federal contracting and hiring practices with the interests of American workers -- was signed on Monday. It requires federal agencies to review the contracts to assess any negative impact of contractors' and subcontractors' temporary foreign labour hiring practices or offshoring practices on the economy.

The fresh order comes weeks after Trump's decision to suspend H-1B and L-1 work visas, which are used extensively by Indian IT companies. Indian IT firms are, however, not on the top ten of the list of federal contractors.

“As the world opens up post the Covid-19 induced lockdowns, it is important for the US to be able to access talent critical to the recovery phase. Measures that restrict access to talent will slow down the recovery phase of the US economy, jobs, innovation and R&D,” Nasscom said in a statement on Tuesday.

It said the order is particularly coming at a time when there is a huge shortage of STEM (science, technology, engineering & math) skills in the US, that workers on short-term non-immigrant visas like H-1B and L-1 help bridge. “Unemployment rate for computer occupations (those most common amongst H-1B visa holders) declined from 3% in Jan 2020 to 2.5% in May 2020, while unemployment rate for all other occupations grew from 4.1% in Jan 2020 to 13.5% in May 2020. Further, in the 30-day

period ending May 13, 2020, there were over 625,000 active job vacancy postings advertised online for jobs in common computer occupations, including those most common to H-1B visa holders," it said.

Stephen Yale-Loehr, professor of immigration law practice at Cornell Law School, said the latest executive order seems innocuous. "But as we have seen with prior executive orders, this may be the starting point to increase H-1B enforcement generally. Moreover, even if the review doesn't do much, it is good publicity for President Trump to appear to support American workers as part of his re-election campaign," he said.

Vikram Shroff, head of HR law practice at law firm Nishith Desai Associates, said the world should expect to see more restrictions on foreign workers in the US as the elections come closer.

A recent Bloomberg government report BGOV200 showed that federal technology market spending was nearly \$70 billion in the 2019 fiscal, up from \$50 billion in the 2014 fiscal.

Among the top ten federal IT contractors are General Dynamics, Leidos Holdings, Accenture and Dell. The executive order also requires the secretaries of Labour and Homeland Security to "take action" within 45 days "to protect United States workers from any adverse effects on wages and working conditions caused by the employment of H-1B visa holders at job sites (including third-party job sites)." These may include the changes to the definitions of "specialty occupation", "employer", and "employer-employee relationship," Nasscom said.

"I don't think that that specific component of this Executive Order will cause significant economic harm to the vast majority of Indian IT firms. The more troubling aspect is contained within Section 3 of the EO, which directs DHS and DOL to investigate whether the employment of H-1B workers creates any adverse effects on the wages and working conditions of US workers. This is a broad mandate, and the 45 day deadline means that we can expect additional burdensome restrictions to be forthcoming," said Scott Fitzgerald, managing partner of Fragomen, Del Rey, Bernsen & Loewy.

He also said the fact that the EO contains specific references to employers who place H-1B workers at the "third-party job sites"

of “secondary employers” is also troubling, as that is exactly the standard business model of the Indian IT services firms.