

Trump Administration Claims Facebook Improperly Reserved Jobs for H-1B Workers

Michelle Hackman, Sadie Gurman and Deepa Seetharaman

7-9 minutes

The Trump administration has sued [Facebook Inc.](#), [FB -1.97%](#) accusing the social-media company of illegally reserving high-paying jobs for immigrant workers it was sponsoring for permanent residence, rather than searching adequately for available U.S. workers who could fill the positions.

The lawsuit reflects a continuing Trump administration push to crack down on alleged displacement of American workers.

In a 17-page complaint filed Thursday, the Justice Department's civil-rights division said Facebook inadequately advertised at least 2,600 positions between 2018 and 2019 that were filled by foreign

professionals on H-1B visas when the company was looking to sponsor them for permanent residency permits, known as green cards.

Companies sponsoring workers for employment-based green cards are required to show as part of the application process that they couldn't find any qualified American workers to fill the job.

A Facebook spokesman said the company “has been cooperating with the DOJ in its review of this issue and while we dispute the allegations in the complaint, we cannot comment further on pending litigation.”

Policy Fights Over Foreign Workers

The lawsuit also reflects long-running tensions between Silicon Valley and the Trump administration over the use of foreign workers in key technology roles. It also adds to a broader set of actions by the administration against the tech industry including [ongoing antitrust investigations into Facebook](#) and other companies and [scrutiny of the social-media platforms' liability shield](#) known as Section 230.

The Trump administration has viewed the H-1B visa program for

foreign professionals—the primary pathway international graduates of U.S. colleges remain in the country—with antagonism, believing that employers are displacing American workers with foreign staffers who demand smaller salaries.

It rejected 21% of new H-1B visa applicants in 2019, compared with 6% in 2015, according to an analysis of government data by the National Foundation for American Policy, a nonpartisan Washington think tank.

The administration [banned the visas outright in June](#) due to the coronavirus pandemic and imposed new rules that would have significantly raised the salaries that companies are required to pay their H-1B visa workers. Both moves [were overturned by federal courts](#).

Silicon Valley companies and trade groups have succeeded at striking down recent immigration policies in the courts, including restrictions on international students and an Obama administration program called Deferred Action for Childhood Arrivals, or DACA, that protects immigrants living in the U.S. since childhood without legal permission.

“This is a new tactic under the guise of protecting American workers,” said Jesse Bless, a former Justice Department official

who is now director of federal litigation at the American Immigration Lawyers Association. Normally the government would seek to work or settle with a company before suing them, he said. “It tells me that, since they took this route, they are trying to set an example.”

New ICE Rule on Foreign Students Spurs Confusion

0:00 / 7:05

5:25



New ICE Rule on Foreign Students Spurs Confusion

The Trump administration rescinded guidelines on foreign student visas after the rules prompted a lawsuit from universities. Ahead of the rollback, four students from four countries talked with WSJ in July about the potential impact of the policy on their future. Photo: Maddie Meyer/Getty Images

Justice Department officials said their investigation kicked off when Facebook filed an application with the Labor Department to hire a foreign worker as an art director, a role that requires a bachelor's degree and two years of experience. The officials said Facebook should have been able to find an American to fill this type of job. Other positions included a number of software jobs as well as nontechnical positions.

U.S. immigration laws set strict requirements for companies looking to apply for green cards on behalf of their employees. They must advertise the job with a state workforce agency as well as in the Sunday edition of a newspaper, among several other requirements. Companies aren't specifically required to post a job opening on their websites.

If a qualified American worker comes forward, the company is required to interview that person, and the green-card application process can't move forward.

The lawsuit alleged that, though Facebook followed the advertising and recruiting requirements for these jobs, it didn't publicize the openings as extensively as it normally would. For example, Facebook didn't advertise the positions on its website and required candidates to mail in their applications rather than accepting them online, the suit said. As a result, the company received no more than one application from a U.S. worker in nearly all the jobs at issue, rather than the hundreds who normally apply for open Facebook postings, the complaint said. When U.S. workers did apply, the suit said Facebook hired them into different jobs, reserving the open position for the H-1B worker.

"Simply put, Facebook reserves these positions for temporary visa holders," the suit alleged.

The Justice Department has investigated a number of companies as part of a broader initiative that began in 2017 to target those that disfavor U.S. workers. But most companies settle before the Justice Department can sue, making Thursday's action especially significant, legal analysts said. Officials described it as the largest case brought under the initiative and the first against a major technology company.

Tech companies like Facebook rely on H-1B visas to plug gaps in

their technical workforce, which they say is essential to building the software that powers products like the Facebook news feed. Tech executives have said there aren't enough American students graduating with science and engineering degrees to meet their demand, a problem they say is only worsening as products grow more complex and reliant on advanced technology like artificial intelligence.

The U.S. unemployment rate for people in computer professions was 3% in October, according to an analysis of Bureau of Labor Statistics data by the National Foundation for American Policy. The national unemployment rate that month was 6.9%.

The H-1B program is the “lifeblood of Silicon Valley” where competition for engineers is fierce, said Vivek Wadhwa, a distinguished fellow at Harvard Law School’s Labor and Worklife Program who researches how jobs are being changed by automation.

Mr. Wadhwa added that companies seek to hire H-1B visa holders who have done the job because they have a proven track record of being able to handle the required work. “The companies want you because you’ve survived and you’ve proven yourself,” he said. “It’s not a matter of a fake credential.”

Write to Michelle Hackman at Michelle.Hackman@wsj.com, Sadie Gurman at sadie.gurman@wsj.com and Deepa Seetharaman at Deepa.Seetharaman@wsj.com

Copyright ©2020 Dow Jones & Company, Inc. All Rights Reserved.
87990cbe856818d5eddac44c7b1cdeb8