



Alerts

Now is the Time to Prepare for the H-1B Cap Season

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Insights for Employers

H-1B employment visas are one of the most highly used and sought-after temporary work authorizations in the United States and allow employers to hire foreign nationals to perform employment in jobs considered "specialty" occupations. A specialty occupation is defined as an occupation requiring at least a Bachelor's degree or equivalent in the United States. In its current form, the H-1B employment authorization is limited to 85,000 visa petition submissions, and employment start dates for employment that occur on October 1 of each government fiscal year. Individuals currently working for U.S. employers in H-1B status are not subject to this numerical limitation when a new employer files a petition to change sponsoring employers for their H-1B employment authorization.

The Pre-Registration Period

Before 2020, the U.S. Citizenship and Immigration Services (USCIS) allowed employers to file their H-1B petitions up to 180 days prior to the October 1 start date and then monitored the number of H-1B registrations it received in the first five days of April. If the mandated cap of 85,000 H-1B petition submissions was exceeded, the USCIS would conduct a random lottery by first selecting the first 20,000 Master's degree H-1B filings and then fill the remaining 65,000 H-1B cap with Bachelor's degree cases.

In January 2020, USCIS introduced an H-1B "pre-registration period" scheduled for a March 1 - March 20 time period. USCIS again utilized the H-1B pre-registration process for March 2021 H-1B submissions, and is expected to use this process again in March 2022. USCIS received approximately 275,000 petitions for the 85,000 spots in the first year and over 300,000 petitions in 2021. Because of the scarcity of these H-1B authorizations, preparing well in advance for pre-registration is crucial, and the time is now to start the preparation process.

H-1B pre-registration for March 2022

The H-1B filing pre-registration period allows employers to register their individual H-1B submissions online with one select foreign national applicant. Multiple filings by the same employer for one foreign national will disqualify the submission. It is important to note that more than one employer may file an H-1B petition for one foreign national.

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Exemptions from the H-1B Cap

Certain employers are exempt from the H-1B numerical limitations, and therefore do not need to go through the pre-registration process. These employers consist of the following:

- governmental research organizations,
- nonprofit research organizations, institutes of higher education, and
- nonprofit organizations affiliated with institutions of higher education.

Conclusion

With the H-1B cap pre-registration period quickly approaching, the appropriate time to review your hiring needs is now. If you have identified employees located abroad, international students requiring H-1B sponsorship, or others who might wish to benefit from the H-1B visa program, make sure they are considered for this visa option. The start of the March 1 – March 20 pre-registration window is quickly approaching.