

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

MARCH 8, 2021

Time to Get Ready for H-1B Season!

The time has come to start preparing for the FY2022 H-1B season. Employers who wish to sponsor employees or potential employees for H-1B petitions should begin to get their applications in order now to be ready for the March lottery. This is the only opportunity during 2021 to apply for an H-1B visa. Approved H-1B applicants in the FY2022 cycle will be able to start work on October 1, 2021 (the first day of FY 2022).

To give context, the H-1B is a visa that allows highly educated foreign nationals to work in the United States for an initial period of three years, with potential for a subsequent three-year renewal. In recent years, USCIS has received 250,000 or more H-1B registrations to fill an 85,000 visa cap (65,000 for bachelor's degrees; 20,000 for master's degrees). Due to this disparity between interest and available visas, USCIS runs a lottery system to select lucky employers/employees to submit H-1B petitions.

The H-1B application process is multi-step.

Step One - Registration

First, employers register potential hires or foreign employees during the H-1B registration period. Last year, USCIS began using an online registration system for processing the H-1B lottery. This system requires employers or their attorneys to submit H-1B registrations for the coming year through a MyUSCIS account. Registration involves basic information about the employer and the employee and costs \$10. For FY2022, the registration period will run from March 9, 2021 to March 25, 2021.

Step Two - The Lottery

After the close of the registration period, USCIS runs a random lottery and selects registrants to file H-1B petitions. Last year, the winners were notified electronically by April 1st. Those who are not selected in the lottery are added to a waiting list. For FY2021, USCIS ran a second lottery in August and selected additional registrants off the waiting list because the initial lottery did not fill the H-1B cap.

Step Three - Filing the Petition

Lottery winners have 90 days to submit an H-1B petition to USCIS. The petition itself is more involved than registration and requires a Labor Condition Application, an I-129 petition, and a filing fee. If the petition is approved, the employee can start working under an H-1B visa as early as October 1st, 2021.

New Wage Rule?

On January 8, 2021 the Department of Homeland Security issued a new rule, which would change the random lottery process to one that prioritizes H-1B applications offering higher wages. On February 8, 2021, USCIS published a final administrative rule delaying the previous wage rule until at least December 31, 2021. The wage rule should not affect applications for FY2022.

What should employers do to prepare for H-1B season?

1. Identify candidates for H-1B sponsorship. Often F-1 students seek H-1B status when their work authorization through Optional Practical Training (OPT) expires. In addition, employees with TN, L-1, or E-3 status may benefit from the H-1B because H-1B visa holders are permitted to have “dual intent” to pursue the permanent residency process while in temporary H-1B status.
2. Begin Labor Condition Application process.
3. Create account with MyUSCIS.
4. Gather information from H-1B hopefuls for registration and petition.
5. Begin preparing H-1B Petition.

Employers who need assistance with the H-1B visa process should consult with a member of the Boardman Clark Labor & Employment team as soon as possible!

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