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USCIS Will Begin Accepting Cap-Subject H-1B Petitions for Fiscal Year 2020 on April 1, 2019

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U.S. Citizenship and Immigration Services (USCIS) will accept new H-1B petitions subject to the annual quota for fiscal year 2020 (FY 2020) starting April 1, 2019. Employers should identify any current or future employees who may require new H-1B visas to work in the United States. Individuals currently holding F-1 student visas, individuals seeking to change to H-1B status from another visa status (such as L-1, TN, O-1, or E-3), and individuals outside the United States likely will require cap-subject H-1B petitions to be filed on their behalf.

Overview of the H-1B Visa Program

The H-1B visa program permits U.S. companies to employ foreign nationals in specialty occupations. A “specialty occupation” is a position that requires the theoretical or practical application of a body of highly specialized knowledge, such as that of an engineer, economist, or scientist. The specialty occupation must require a bachelor’s degree or higher (or its foreign equivalent) in a specific field.

The number of new H-1B visas available on an annual basis is subject to limitations for each fiscal year. Currently, the annual limit is 65,000 visa numbers per year with an additional 20,000 available to H-1B applicants who possess advanced degrees from U.S. academic institutions. Of the 65,000 available H-1B visas, 6,800 are reserved for citizens of Chile and Singapore. Due to the cap, employers will want to plan far in advance and file their cap-subject petitions as early as possible to help ensure they have the best chance to secure H-1B status for the next fiscal year.

When USCIS receives more cap-subject H-1B petitions than the annual fiscal year limitation, USCIS conducts a computer-generated random lottery selection process. The first lottery is limited to individuals who possess advanced degrees from U.S. academic institutions. If a qualifying advanced degree holder is not selected in this first lottery, his or her petition will be rolled into a second lottery for the regular H-1B cap.

Cap-subject petitions that have not been selected in the lottery will be returned with the U.S. government filing fees. Once the number of available H-1B visas has been fulfilled, USCIS will not accept or approve any additional cap-subject H-1B petitions until the filing period for the next fiscal year opens.

Cap-Exempt Petitions

Some H-1B petitions are exempt from the annual fiscal year limitation, including (1) H-1B petitions that are filed to extend or amend H-1B employment for foreign workers who are already in H-1B status and (2) petitions filed on behalf of new workers to be employed in H-1B status by institutions of higher education or related nonprofit entities, nonprofit research organizations, or government research organizations.

How to Prepare for the FY 2020 H-1B Cap

The annual fiscal year cap for H-1B visas is typically reached within the first week of filing. Because the number of



Article By

[Brian D. Bumgardner](#)

[Katherine C. MacIlwaine](#)

[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)

[Our InsightsImmigration](#)

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cap-subject H-1B petitions that will be filed by employers for FY 2020 is uncertain, employers will want to mail all cap-subject H-1B petitions early within the filing window. The first day to mail FY 2020 cap-subject petitions will be March 29, 2019, for delivery to USCIS on April 1, 2019, which is the first day of the filing period. Employers should immediately begin identifying individuals for whom H-1B sponsorship will be needed to allow sufficient time for H-1B petition preparation.

In preparing FY 2020 H-1B petitions, employers should keep in mind the time required to file and receive certification of a [Labor Condition Application \(LCA\)](#). The LCA is a prerequisite to a properly filed H-1B petition. As part of the LCA, employers must attest that they will pay the H-1B worker the higher of the prevailing wage or actual wage for the position in the geographic area of intended employment. The LCA is then submitted to the U.S. Department of Labor, which can take up to 10 days to certify the application. Employers should keep this processing time in mind to ensure timely approval of an LCA. Timely filing and approval of an LCA will help ensure that an employer is best positioned to mail the H-1B cap-subject petition on March 29, 2019, for delivery to USCIS on April 1, 2019.

Employers can take action now to initiate cap-subject H-1B petitions.

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