

Get Ready for H-1B Season!

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Attorney Articles

Many employers recruiting foreign workers know that the annual "H-1B cap" was hit on November 22, 2011. Employers seeking to hire under this category have been waiting for months to apply for new visas, and April 2, 2012 is the first day that the U.S. Citizenship and Immigration Services ("USCIS") will accept petitions for next year's allotment. No one can tell what the demand for H-1Bs will be on April 2 of this year, but it is expected to be heavier due to an earlier-hit cap last year. It is important that employers file all new H-1B petitions on April 2, 2012 when the H-1B quota opens. Your Dorsey & Whitney immigration professionals recommend that new hires subject to the H-1B cap gather appropriate documentation and be prepared to file petitions as soon after April 2 as possible. The process requires filing a Labor Condition Application ("LCA") before filing the petition. Employers should contact their immigration professional to begin the process immediately.

The H-1B visa has an annual numerical limit "cap" of 65,000 visas each fiscal year. An additional 20,000 are available under an exemption for foreign nationals (usually F-1 students) who have graduated from a U.S. college or university with a master's degree or higher. Employers are encouraged to begin identifying current and future employees who will need H-1B visa status to be legally employed. Individuals currently employed as F-1 students or J-1 trainees, individuals seeking to change to H-1B from another work status (such as L-1, TN or E-3), and individuals outside of the United States commonly require new, cap-subject H-1Bs. Not all H-1B petitions are subject to the annual limit, including extensions of current H-1B visas, changes in terms for current visa-holders, transfers, and second H-1B positions.

Employers should immediately identify persons for whom H-1B sponsorship will be needed. This will allow sufficient time for petition preparation, including the time required to file and receive certification of the prerequisite Labor Condition Application ("LCA") filed with the U.S. Department of Labor. Current LCA processing times are approximately seven days, and employers must take this additional processing time into consideration to guarantee the timely approval of the LCA and the ability to file the H-1B petition on April 2, 2012. We recommend that you contact Dorsey & Whitney LLP to initiate any new H-1B petitions as soon as possible.

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