

Preparing for H-1B Visa Cap Season for Fiscal Year 2023

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The H-1B visa program was launched in 1990 providing a pathway for highly educated foreign nationals to temporarily work in the United States. The program allows an employer to hire a foreign employee to work in any of the following three categories: (1) specialty occupations; (2) services of exceptional merit and ability related to Department of Defense cooperative research and development project; or (3) fashion models of distinguished merit or ability. A specialty occupation may fall into categories of education, technology, finance, science, and more. H-1B visa holders may remain in the U.S. for three years and their stay can be extended for an additional three years, although exceptions do apply. Both the employer and prospective employee must meet additional specific eligibility requirements to be considered for a visa.

The H-1B visa is unique because it permits a temporary worker to have dual intent to return to their country or apply for a green card (permanent residence) in the future. Only 65,000 H-1B visas are available annually, along with an additional 20,000 for applicants with a master's degree or higher. Each year, the United States Citizenship and Immigration Services (USCIS) receive nearly three times more H-1B petitions than available visas.

The H-1B visa application is a complex multi-step process that, among other things, requires a Labor Certification Application from the Department of Labor, submissions of documentary evidence supporting employer and employee qualifications, and an I-129 form petition.

Since 2020, the H-1B Visa program implemented a new prerequisite electronic registration process. Employers who wish to sponsor a foreign employee for an H-1B visa must first electronically register the prospective employee by a specific date. The initial registration period for fiscal year 2023 opens on **March 1, 2022** at 12 p.m. E.T. and will close at the same time on **March 18, 2022**. Employers and their representatives should treat this as the only window of opportunity to apply for an H-1B visa in 2022. USCIS will run a lottery to select

eligible registrants who will then be permitted to submit H1-B petitions. Selected registrants will be notified by April 1 and will have 90 days to submit all application materials for the petition.

Now that the 2023 fiscal year H-1B Visa cap season is around the corner, employers should take steps to prepare for the registration period. Employers needing assistance with this process should consider consulting with a member of Boardman Clark Labor & Employment team.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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