

H-1B Filing Season Is Almost Here – 3 FAQs for Employers

Legal Alert
February 10, 2021

H-1B cap filing season is fast approaching. U.S. employers who sponsor foreign workers for temporary H-1B work visas should start preparing now for the upcoming, new H-1B cap electronic registration commencing this year on March 9, 2021.

What Is the H-1B Cap?

The H-1B visa is the standard professional U.S. work visa. There is a quota (or “cap”) each year on the number of new H-1B visas available. Specifically, there are 65,000 H-1B visas available annually with an additional 20,000 for U.S. master’s degree holders. Individuals who have not previously held H-1B status are generally subject to this annual cap. Over the last five-plus years, this cap has been oversubscribed. When this occurs, the U.S. Citizenship & Immigration Service (“USCIS”) opens the filing window for a specific period and accepts electronic registrations for new H-1Bs during that period. Presuming the number of applicants registered during that period exceeds the annual quota, then USCIS plans to run a random lottery to select the applicants who will be eligible for making the H-1B petition filing in the following 90 days.

What Is the Process This Year?

The H-1B cap process will involve a pre-registration process again this year. Instead of the filing window opening on April 1, and all petitioners submitting complete physical filings for those employees they wish to sponsor, there will be an initial H-1B cap registration process that will open on **March 9, 2021** and will be administered online. USCIS has indicated that there will be an online registration period from **March 9, 2021 to March 25, 2021**. Petitioners will register for each of the potential H-1B beneficiaries they wish to sponsor for an H-1B this year during this period. There will be a \$10 fee associated with each registration per person. Presuming the number of employees

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registered exceeds the annual quota, then USCIS will run the lottery based on these registrations. USCIS will then notify petitioners if their beneficiaries have been selected. Petitioners will then have 90 days to submit full H-1B petitions for their selected individuals. It is anticipated that the notification of selection and the 90-day filing window will open around April 1, 2021. Case processing varies year to year; however, typically, H-1B petitions are processed in the late spring and summer (sometimes extending into the fall). H-1B cases that are approved will be valid starting no earlier than **October 1, 2021**.

Who Should Employers Consider Sponsoring for H-1B?

Any employees or potential employees who have not previously held H-1B status are subject to the H-1B cap. Common employee situations where H-1B sponsorship is recommended include:

- Employees in F-1 student status who are currently working pursuant to Curricular Practical Training (CPT) or Optional Practical Training (OPT).
- Employees in a dependent status (e.g., H-4, L-2, etc.) with work authorization.
- Employees in TN, E-3 or H-1B1 status. If you are considering sponsoring employees in TN, E-3 or H-1B1 status for lawful permanent residence (i.e., the green card), we would recommend sponsoring these individuals for H-1B status. There is a temporary intent requirement for TN, E-3 and H-1B1 status, so these are not the most conducive U.S. visas for individuals in the green card process. The H-1B allows for temporary and permanent intent to remain in the United States, so it is a much more advantageous status to hold for employees pursuing the green card.

Foster Garvey has knowledgeable legal professionals with many years of experience practicing federal immigration law. If you have questions about the upcoming H-1B cap or immigration sponsorship/compliance issues in general, please contact our [Immigration team](mailto:immgroup@foster.com) at immgroup@foster.com.