



Fall 2020 Back-To-School – Planning For F-1 Students And Other Visa-Dependent Employees After Record-Breaking H-1B Cap Turnout

Insights

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With students across the country returning to remote or socially distanced schooling, many things are looking very different in 2020 – and immigration is no exception. Earlier this year, employers and visa-dependent employees eagerly awaited the first iteration of a pre-filing H-1B cap registration process. Rather than the usual process of submitting a full H-1B petition during the first week of April, the new registration process allowed employers to register their H-1B cap beneficiaries online with a \$10 registration fee per employee. U.S. Citizenship & Immigration Services (USCIS) conducted a random lottery in late March and notified the lucky employers of their registration selections. These employers could then file H-1B cap petitions with USCIS between April and June.

With a nominal fee of \$10 per registration and less paperwork, the new registration process made the H-1B cap lottery process less expensive and time consuming for employers this year. As experts anticipated, there was a record-breaking number of applicants for the 65,000 available slots. In fact, breaking a prior record of 236,000 petitions submitted for FY 2017, USCIS received nearly 275,000 registrations for FY 2021, with approximately 23% of registrations being selected in the H-1B lottery.

Despite the high number of registrations submitted, some employers did not ultimately file petitions for individuals selected in the lottery due to the economic downturn and layoffs caused by COVID-19. This led USCIS to run an unprecedented second lottery selection in August 2020 to fill the remaining slots. Registrations selected in the second round of the lottery have been notified recently, and corresponding petitions must be filed with USCIS by November 16. It is unclear whether any further registrations will be selected for FY 2021.

As we enter fall, now is a good time for employers to review their list of visa-dependent employees to determine who will have a chance at applying for the H-1B lottery next year, and who may need to explore other immigration options to ensure continued work authorization. As the economy continues to rebound, it is likely that H-1B cap registrations will continue to increase in the coming years, further reducing the likelihood of an individual being selected in the lottery. It is also possible that there could be new changes made to H-1B cap registration and/or selection process next year.

Most F-1 students have between one and three attempts at the H-1B cap lottery while they are on Optional Practical Training (OPT), depending on their graduation date and whether their major is in a STEM field. Because there is no guarantee that an employee will be selected in the H-1B lottery even

after multiple attempts, it is never too early to include these employees in your list of H-1B cap registrations and formulate a backup plan in the event they are not selected in the lottery. This is especially important for F-1 students who are currently on OPT, as there could be changes in the future that impact their eligibility for employment. A number of alternatives may be available for individuals who are running up against the clock, including O-1s for individuals with extraordinary ability, TNs for Canadian or Mexican citizens, or even green card applications based on employment or marriage to a U.S. citizen. Please contact [your Fisher Phillips immigration attorney](#) for more information about preparing for next year's H-1B cap registration process or to discuss options available for employees not selected in this year's lottery.

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