

H-2 VISAS GET FINAL OVERHAUL BEFORE CHANGE IN POWER IN D.C. – 3 BIGGEST CHANGES FOR EMPLOYERS

Insights
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Federal immigration officials announced final rules to modernize the H-2A and H-2B temporary worker programs last week in an effort to enhance flexibility, strengthen worker protections, and improve program efficiency beginning January 17, 2025. These changes from the Department of Homeland Security (DHS) will impact a variety of industries, such as agriculture, farming, hospitality, landscaping, and construction, in addition to many others. What are the three biggest changes employers need to know about?

Quick Background

These changes were announced on the same day as [the revised final H-1B rule was revealed](#). The final rule will impact both the H-2A and H-2B nonimmigrant visa categories.

- An **H-2A worker** is a temporary agricultural worker authorized to enter the United States to perform seasonal or temporary agricultural labor or services.
- An **H-2B worker** is a temporary worker authorized to perform non-agricultural labor or services in the United States on a seasonal, intermittent, peak-load, or one-time basis.
- Both programs were designed to fill labor shortages while ensuring that the employment of foreign workers does not adversely affect similarly employed U.S. workers.

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3 Biggest Changes

The three biggest changes under the new rules include:

Worker Flexibility

- **Immediate Portability:** Eligible H-2 nonimmigrants can commence work with a new employer as soon as the employer files an extension of stay petition, eliminating the previous requirement to await petition approval. Previously, workers were required to wait for petition approval, causing significant delays for businesses and disrupting workers' income streams.
- **Changes to Grace Periods:** H-2A and H-2B workers will now have a pre-validity period of up to 10 days and a post-validity period of up to 30 days, subject to the three-year limitation on H-2 periods of stay. During the grace periods, the H-2 foreign worker would be considered to be maintaining a valid status but would not have work authorization.
- **60-day grace period following cessation or revocation of H-2 employment:** S. Citizenship and Immigration Services (USCIS) is increasing the grace period for H-2 workers whose employment was revoked from 30 days to 60 days. USCIS is also introducing a new 60-day period for H-2 workers who have stopped working or wish to seek new qualifying employment. During this grace period, the H-2 worker can seek new qualifying employment or prepare to depart from the United States.
- **Removal of the phrase "abscondment," "abscond," and its other variations:** DHS is removing these phrases to emphasize that the mere fact of leaving employment does not constitute a basis for assuming wrongdoing by the worker.

Enhanced Worker Protections

The final rule introduces measures to safeguard H-2 workers, focusing on:

- **Anti-Retaliation Measures "whistleblower protection":** Workers reporting violations are protected from retaliation by employers.
- **Wage Security:** Employers must provide clear documentation of wages and benefits and comply with

prevailing wage requirements.

- **Health and Safety Standards:** Employers must adhere to stringent safety protocols to ensure worker well-being.
- **Comply with USCIS' compliance reviews and worksite inspections:** Employers must comply and consent to USCIS site inspections, verifications, and compliance reviews.

Improving H-2 Program Efficiencies and Reducing Barriers to Legal Migration

DHS is making significant changes to improve the efficiency of the H-2 programs and reduce barriers to use of those programs:

- Eliminating the designated country list that limited the ability of USCIS to approve petitions for H-2 status for nationals outside of the designated countries. This will allow employers to hire foreign national workers into the H-2 visa category from any country.
- Simplifying the regulatory provisions regarding the three-year maximum period of stay by providing a uniform standard of 60 days outside of the United States for resetting the three-year clock following a departure. This will ensure clarity and consistency in reviewing an H-2 candidates' eligibility to complete a period of seasonal work.

What's Next?

Based on these changes, a revised Form I-129, Petition for a Nonimmigrant Worker, will be mandatory for all petitions starting January 17, 2025, aligning with the new rules' effective date. We will continue to monitor developments and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

If you have any questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Immigration Practice Group](#).