



What's the Status of Lawsuits Challenging H-1B Visa Overhaul? A State of Play for Employers

Insights

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The Trump administration's recent blitz of new rules for the H-1B specialty occupation visa program has been met with multiple lawsuits, creating massive delays internationally and confusion around the timing and permanency of these policies. The White House rolled out major changes to the H-1B visa system in recent months that aim to change how visa recipients are selected for the program, institute six-figure fees for many new applicants, and increase vetting procedures. These efforts are designed to revise a visa program that the White House says has "been deliberately exploited to replace, rather than supplement, American workers with lower-paid, lower-skilled labor." With the status of these new policies changing each week, here's what you should know about these requirements and the legal challenges pending against them.

A Refresher

The federal government has made several largescale changes in recent months to the H-1B visa program, a non-immigrant category that allows US employers to hire foreign workers in specialty occupations requiring highly specialized knowledge. Only 85,000 new H-1B visas are made available each year, and applicants must be sponsored by a US employer and have at least a bachelor's degree or equivalent. Businesses have historically submitted hundreds of thousands of applications for these workers, and the government holds an annual lottery to select who will receive the visa slot. But employers should be prepared for the Trump administration's plans to completely rewrite the government's selection process for this visa program.

New Entry Fee Now in Place: Trump announced on September 19 that new H-1B visa applicants would have to pay a \$100,000 fee. Before this change, fees to apply for an H-1B visa were fairly predictable and related to program administrative costs. Applicants would submit a \$215 registration fee for the initial H-1B cap lottery, and private employers would submit a \$780 fee to sponsor a petition along with additional fees of approximately \$1,800 to \$2,600.

Employers received a bit of a reprieve in October when US Citizenship and Immigration Services (USCIS) clarified that a narrower group of H-1B petitions are subject to the fee, and that it mainly applies to new overseas hires and in other limited circumstances. That generally means that employers hiring foreign talent already in the US won't have to pay up, and that most existing workers in the program are unaffected.

Wage-Based Selection Proposed Rule: The Department of Homeland Security (DHS) released a proposed rulemaking in September that would replace the current random H-1B lottery system with a weighted, wage-based process for selecting visa recipients. Petitioners who pay wages at the higher end of the range for a given occupation would receive more chances in the random selection process. This represents a major overhaul of how the government chooses who receives the limited number of H-1B visa slots each year.

DHS received nearly 17,000 comments on the proposal, according to the government's online docket, and will have to review and prepare a response to that feedback. This process can take several months, and once the rule is finalized, individuals will then have the opportunity file lawsuits challenging the rule. The lottery is run in March. As we near that time, it becomes less likely that the change could take effect in the coming 2026 lottery.

Social Media Vetting Has Begun: Applicants for H-1B visas – along with their spouses and children seeking H-4 visas – must now undergo increased security screening that includes a review of their social media activity and online work history. Starting December 15, the State Department is requiring H-1B applicants and their family members seeking related visas, to make their social media profiles public so consular officers can scrutinize their posts, photos, comments, connections, and biographies across certain online platforms. Social media information will be used to verify employment background and screen for security risks.

Multi-Front Legal Fight

While no legal challenges have been filed against the social media vetting policy yet, and the lottery selection changes are making their way through the formal rulemaking process, a handful of cases have been brought targeting the \$100,000 H-1B visa fee.

The federal lawsuits filed by the U.S. Chamber of Commerce, Global Nurse Force and several unions and allied organizations, as well as a coalition of 20 state attorneys general, allege that the fee proclamation exceeds the president's authority and violates federal rulemaking requirements, among other claims.

Here's a rundown of where those cases currently stand:

U.S. Chamber of Commerce

The business organization filed a motion for expedited summary judgment in D.C. federal court. The group previously sought a preliminary injunction targeting the fee, so the case is in active briefing with no final decision yet.

Global Nurse Force and Union Coalition

The lawsuit filed in the Northern District of California federal court seeks declaratory and injunctive relief to block enforcement of the fee. The case remains pending with no ruling yet.

Multistate Attorneys General Lawsuit

California and Massachusetts Attorneys General Rob Bonta and Andrea Joy Campbell, respectively, have led a group of 20 Democratic-led states (including Oregon, New York, New Jersey, Washington, Colorado, and others), in filing a federal lawsuit in Massachusetts federal court challenging the \$100,000 H-1B fee. The case was just filed on December 12 and is in the early complaint and motion filing stage, so keep an eye out for development in the litigation soon.

And here's a quick summary of the main arguments made in those cases:

- **Separation of Powers.** All three suits stress that the September fee proclamation exceeded the authority Congress gave the President in the Immigration and Nationality Act (INA) and related fee statutes, effectively attempting to re-write the H-1B program and its cost structure. Congress already established a framework for the visa program, the lawsuits say, that set specific fee provisions and provided a limited delegation of authority to DHS to set cost-based fees.
- **Rulemaking Process.** The trio of cases claim that the government flouted the Administrative Procedure Act when issuing the proclamation, as H-1B filing fees have historically been set through the formal notice-and-comment rulemaking process. The administration failed to notify the public of the policy change before implementing it and didn't provide stakeholders with the opportunity to comment on the policy, the lawsuits say.
- **Arbitrary and Capricious:** Another key argument made in these cases is that the H-1B fee is not rationally tied to processing costs or to the asserted domestic policy goals of protecting US workers' ability to compete in the labor market. The complaints also point out the government implemented the fee without a reasoned analysis, consideration of the disruptions it may cause, or any potential alternatives to the policy.

What Should You Do?

Until and unless a court blocks any of these new rules, you need to prepare for and comply with them. Here are some potential action steps you can consider as you adjust to this new reality:

- **Audit Your Current H-1B Population** so you can prioritize resources if costs or delays increase.
 - Determine who is potentially subject to the fee and who is not. Feel free to reach out to our [Immigration Practice Group](#) to help make that analysis.
 - Who is up for extension, amendment, or will require consular processing outside the U.S. – and when?
 - Which roles are mission-critical?

- **Budget and Scenario-Plan (Without Overreacting)**

- Build contingency budgets. If you are going to seek a national interest exception to the \$100k fee, it could cost more than your usual H-1B budget.
- Model scenarios *with* and *without* the \$100K fee. Factor in delays, not just cost (this is really about knowing where it applies and where it doesn't).

- **Prepare Employees for Social Media Vetting**

- Ensure consistency between job descriptions, petition filings, LinkedIn, and other public professional profiles.
- Avoid coaching them on content: focus on accuracy and consistency, not creating language for them.
- Make employees aware that social media is being reviewed for politics, past employment with censoring platforms, etc. They should review their posts and make their own decisions.

- **Expect Delays and Plan Around Them**

- H-1B visa applicants in India are already experiencing mass rescheduling of consular interviews in the wake of the sweeping new social media vetting requirement. Applicants with appointments in mid-December are being systematically rescheduled for as late as July 2026 and beyond due to the time and resources it will take to complete the additional steps ([read more about this here](#)). These delays and appointment changes will likely occur in consulates in other countries and may apply to other visa categories beyond H-1Bs.
- Build start-date flexibility into offer letters, project timelines, and staffing assumptions.
- Consider your employment policies with respect to instances where visa delays force employees to remain outside the U.S. for extended periods.

Conclusion

Fisher Phillips has a dedicated team of attorneys closely tracking the regulatory and legal developments surrounding the H-1B visa program. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly to your inbox. For support, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Immigration Practice Team](#).

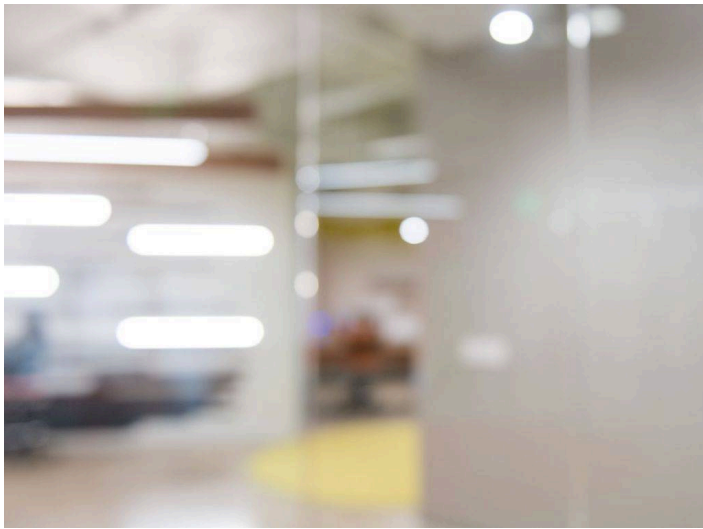
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