

DHS RELEASES FINAL H-1B WEIGHTED SELECTION RULE: 7 STEPS EMPLOYERS SHOULD TAKE BEFORE THE NEXT CAP SEASON

Insights
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The Department of Homeland Security (DHS) just finalized a change to the H-1B visa program to officially replace the traditional random lottery with a wage-weighted selection system. The rule, released earlier today and expected to be formally published in the Federal Register on December 29, marks one of the most significant structural shifts to the H-1B cap process in decades and will require you to take a new approach to your annual immigration strategy. You should begin preparing for the 2026 cap season by reading the summary below and reviewing our list of seven suggested action items.

What Just Happened

The final rule largely mirrors the proposal unveiled in September, [which we previously covered in detail here](#). In a nutshell: DHS will replace the random H-1B cap lottery with a weighted selection process that favors higher wage levels assigned to the offered position.

- The rule applies to all 85,000 annual H-1B cap numbers, including:
 - 65,000 under the regular cap, and
 - 20,000 reserved for workers with US master's degrees or higher.
- Instead of each registration being treated equally, registrations will receive multiple "entries" into the

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selection process based on the DOL wage level for the job.

- US Customs and Immigration Services (USCIS) says the change is intended to prioritize “higher-paid, higher-skilled” positions and better protect US workers.

The Details

The new system does not entirely eliminate the lottery. Rather, it changes the odds for each entry. Each H-1B registration will still be placed into a single selection pool, but registrations tied to higher wage levels will be entered into that pool more times, increasing their likelihood of being selected.

Here’s how it breaks down:

- **Wage Level IV (will be entered into the selection pool four times)**
Jobs requiring the highest level of experience and independent judgment, often involving leadership, strategy, or recognized expertise.
- **Wage Level III (will be entered into the selection pool three times)**
Senior-level roles performing complex duties with significant autonomy and responsibility.
- **Wage Level II (will be entered into the selection pool two times)**
Fully qualified, mid-level professionals with some experience and moderate supervision.
- **Wage Level I (will be entered into the selection pool one time)**
Entry-level positions involving routine tasks, close supervision, or training components.

Important Clarification: Wage Levels Are Not Actual Salaries

Wage levels are based on the Department of Labor’s prevailing wage system and reflect relative seniority and job complexity within a specific occupation and location, not simply how much the worker is paid. As DHS acknowledged during rulemaking (and as employer groups warned in public comments), many H-1B workers earn salaries well above US averages but may still fall into Wage Level I or II due to:



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- Occupational classification
- Geographic wage structures
- Required experience or supervisory expectations

When Does This Take Effect?

The rule is scheduled to take effect February 27, 2026, in time for the next H-1B cap registration cycle.

Will Litigation Delay or Block the Rule?

As with most new initiatives from the administration, you can expect to see legal challenges from opponents. The groups that oppose this change have already signaled that they believe DHS exceeded its statutory authority and adopted an arbitrary proxy for "skill."

That said, there is no guarantee of an injunction that impacts your business before the next cap season, especially since SCOTUS limited the ability of courts to issue broad "universal" injunctions. You should assume the rule will apply unless and until a court says otherwise.

What Employers Should Do Now

Here are some action steps you should consider in order to best position yourself for the revised lottery system.

- 1. Audit H-1B-eligible roles** for accurate SOC codes and defensible wage level assignments.
- 2. Stress-test job descriptions**, as small wording changes can materially affect wage level outcomes.
- 3. Model selection risk** for roles likely to fall into Wage Levels I or II.
- 4. Coordinate immigration and compensation teams** early to avoid reactive or risky adjustments. Wage level, SOC code, job description, and LCA details should align across registration and petition stages to avoid RFEs or denials.
- 5. Conduct a privileged pay equity audit** in conjunction with your FP counsel, or at least be aware of potential pay equity issues. If you increase wages for foreign nationals in an attempt to gain better odds in the new lottery system, you could inadvertently cause an adverse impact on your US

workers. This may, in turn, require a compensation adjustment across the board.

6. Evaluate alternative visa options (O-1, L-1, TN, STEM OPT extensions, or accelerated permanent residence) for critical talent. [Here are 11 alternatives your organization can use to retain top talent and critical staff](#) without relying on the H-1B lottery.

7. Stay up to speed on other changes and legal challenges that are pending. Remember that immigration authorities have also announced a [\\$100,000 H-1B entry fee](#), which faces at least three lawsuits. As well as a [social media vetting program](#) targeting H-1B visa applicants and their spouses and children. The best way to stay caught up is to sign up for [Fisher Phillips' Insight System](#).

Conclusion

Fisher Phillips will continue to monitor the rule and will provide additional updates as new information becomes available. In the meantime, we encourage you to sign up for [Fisher Phillips' Insight System](#) to receive the latest updates. If you have any further questions, please contact your Fisher Phillips attorney, the authors of this insight, or any attorney in our [Immigration Practice Group](#).