



FY17 H-1B Cap Filings Begin April 1, 2016

Insights

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U.S. employers who sponsor foreign workers for temporary H-1B work visas should be aware that April 1, 2016, is the earliest date that new H-1B petitions may be filed to count against the upcoming FY17 quota (or “cap”). Employers should be identifying those first-time H-1B workers for which petitions will be filed this April. International students holding F-1 visas are the most common beneficiaries of first-time H-1B petitions. Demand for H-1Bs is expected to be higher than last year.

As background, the H-1B is the most popular temporary work visa category for professional foreign workers. To sponsor a foreign worker, a U.S. employer must first obtain an approved H-1B petition from the U.S. Citizenship and Immigration Services (USCIS). The supply of available new H-1Bs to employers looking to fill their staffing needs is not based on market demand; rather, the law places a predefined numerical limit on new H-1B work visas issued each government fiscal year (which runs from October 1 to September 30). Demand for new H-1Bs has dramatically exceeded the quota in the past number of years.

Specifically, USCIS cannot approve more than 85,000 new H-1B petitions each fiscal year. This total includes 65,000 general H-1Bs and an additional 20,000 H-1Bs for holders of a master’s or higher degree issued by a U.S. college or university. The yearly cap applies only to first-time H-1B workers who have not held H-1B status in the past. The cap does not apply to existing H-1B workers who are extending their current H-1B status or who are changing H-1B employers.

Because employers are permitted to file H-1B petitions up to six months in advance of the worker’s start date, April 1st becomes the earliest date on which new H-1Bs can be filed against the upcoming government fiscal year quota commencing on October 1st. USCIS is required to accept H-1B cap filings for the first five business days in April. If the number of H-1Bs receiving during this acceptance period is larger than the quota, the USCIS is mandated to perform a random selection process to determine which H-1B petitions will be accepted under the quota. Since April 1, 2016 falls on a Friday this year, USCIS is required to accept H-1B cap filings until the following Thursday, April 7, 2016. If selected and approved, the approval will be effective for H-1B employment on or after October 1st.

Employers must plan carefully to ensure that they have the highest chance of success to secure one of the new FY17 H-1Bs. Last year, the USCIS received over 233,000 H-1B petitions during the first five business days in April. Demand for H-1Bs this April is expected to be the same or higher. We

strongly recommend employers identify those individuals who may need H-1B sponsorship and to start preparing the H-1B petitions as early as possible.

Fisher Phillips 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 your Fisher Phillips legal representative for guidance.