

Considerations for Sponsoring a Foreign National Through the H-1B Visa Process

During the recruitment process, you may have been approached by a candidate that is in the United States on a work visa or you may be considering an applicant who will need visa sponsorship. The most common types of work visas are those in the H-1B family.

The H-1B is a temporary visa category that allows employers to petition for highly educated foreign professionals to work in “specialty occupations” such as mathematics, engineering, and technology. The initial duration of an H-1B visa is three years, which may be extended for a maximum of six years. It is one of the visas that allows the worker to apply for Resident Alien (formerly referred to as a “green card”) status if they are able to locate an employer to sponsor them.

When determining if sponsoring an H-1B visa candidate is the right option for staffing in your organization, there are many factors that should be considered:

Costs

An April 2019 policy brief from the *National Foundation for American Policy* estimated the cost of an initial H-1B visa between \$3,400 and \$16,560 (inclusive of attorney's fees); the combined cost of the initial visa and a three-year extension totals between \$6,300 and \$28,620. Additionally, if the employee is not already working for another employer in the U.S., the employer is responsible for travel costs to the U.S. for their H-1B employees. All of these costs must be funded by the employer and cannot be recouped from the employee.

Timing

Employers will need to submit petitions for new H-1B applicants sometime in March. Employee's with approved visas may not begin employment prior to October 1st of the same year (the start of the fiscal year for H-1B visas).

Visa Cap

H-1B visa applications (but not extensions) are subject to an annual cap for those with undergraduate degrees and an additional cap for those holding advance degrees. The government historically received petitions that exceeded the annual cap by more than three times within the first few business days of April each year.

Beginning in 2020, the U.S. Citizenship and Immigration Services (USCIS) is implementing a new electronic H-1B [registration process](#). Employers must first create an online account and then electronically register and pay the associated \$10 nonrefundable fee between the registration period of March 1 – March 20. The H-1B random selection process, if needed, will then be run on properly submitted electronic registrations. Only those with selected registrations will be eligible to file H-1B petitions. Therefore, even if the candidate and the employer go through the process and complete all necessary paperwork and submit fees timely, there is not a guarantee that the candidate will be awarded an H-1B.

Portability

The employed H-1B worker is allowed to enter into employment with a new employer provided that certain provisions are met. This means that your H-1B worker may look for other employment once working in the United States. This could also mean you may have candidates applying for positions at your organization that are currently working for another employer in the U.S. on an H-1B.

In these situations, paperwork and fees will need to be submitted to transfer or port the visa from one employer to another. Keep in mind, the employee will only have the remaining time left in their initial 3 year or 6 year extended period to work for the next employer. Changing employers does not renew the visa expiration time frame.

Changing Legislation

Sponsoring foreign nationals and obtaining work visas is often a hot topic in the political arena which may result in frequent process and eligibility changes.

An H-1B employee is an investment in your business. The process is also administratively time consuming and very detail focused. Employers who are considering sponsorship should work closely with an immigration attorney to ensure they are correctly and accurately following the legal process.