

## **Alert** | Immigration & Compliance



February 2022

### **Preparing for the FY2023 H-1B Cap Season**

Recruiters and managers should be prepared to answer questions about the H-1B<sup>1</sup> cap registration process for FY2023. This process initially requires only a \$10 registration fee and minimal information. Companies should consider the following:

- **One registration per beneficiary per company:** Duplicate registrations are prohibited. If a company submits more than one registration per beneficiary, all registrations filed by that company for that beneficiary will be considered invalid. One of the biggest changes for FY2023 is that U.S. Citizenship & Immigration Services (USCIS) is proposing to add a new feature in 2022 to allow stakeholders to check for “duplicate” registrations in advance of submitting their registration to help mitigate any accidental or erroneous registrations that might occur during the registration process. Visit the [AILA website](#) for a mock-up (proposed changes are in red).
- **Withdrawing Form G-28 from a registration:** The system will now include a warning stating that withdrawing an associated Form G-28 from a registration does not delete a submitted H-1B registration from the system.

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<sup>1</sup> This nonimmigrant classification applies to people who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability. See [USCIS website](#).

- **Companies should not wait for selection results to file a Labor Condition Application (LCA):** To avoid potential case processing delays due to Department of Labor system overload, the LCA should be filed as soon as possible.
- **Heavy demand expected:** In FY2022 USCIS received 308,613 H-1B registrations for 85,000 available visa numbers. Registrations not selected in the initial lottery will be held “in reserve” in the event that USCIS does not receive an H-1B petition for each selected registration.
  - Consider filing an H-1B cap case for potential hires and current employees in other nonimmigrant visa status (e.g., Trade NAFTA (TN), L-1B), especially for those whose final nonimmigrant time in the United States maxes out in the next three years.
  - Determine whether other visa options exist for employees who need sponsorship.
- **Supplemental lottery:** In the past two years, USCIS determined that there were fewer filed H-1B petitions as compared to selected H-1B registrations. In 2020 USCIS conducted one supplemental lottery. In 2021 USCIS conducted two supplemental lotteries. Supplemental lotteries are not guaranteed; however, USCIS could conduct a supplemental lottery in FY2023 and select some of those registrations that are held in reserve.
- **H-1B cap-gap benefits attach upon filing of the H-1B cap petition:** Cap gap does not attach upon filing the registration.
- **USCIS registration account:** Work with counsel to create an account and establish who at the company controls and has access to the company’s account.

### Registration/Lottery Overview

- Initial registration period: March 1 (noon EST) – March 18, 2022 (noon EST).
  - \$10 government registration fee. Case feasibility and preparation of LCA will entail legal fees.
- USCIS to select registrants no later than March 31, 2022.
  - Random selection process on electronic registrations.
  - Selected? Employer has 90-day window to complete and file the H-1B petition on behalf of the beneficiary.
- Considerations:
  - Oct. 1, 2022, is the earliest start date.
  - Beneficiary must possess at least a bachelor’s degree or the equivalent by the time of filing the H-1B petition, not registration.

### Information Required to Initiate an FY2023 H-1B Cap Case

- Proposed job description, including minimum requirements.
- Proposed work location (complete address).
- Proposed salary.
- Applicant’s CV and immigration documents.
- Company information: legal name, EIN, company address, and authorized signatory’s name/title/contact info.

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