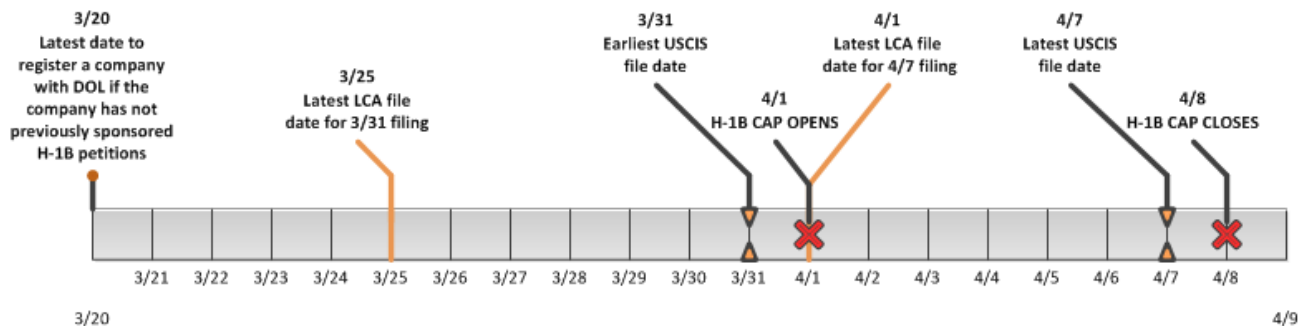




Fiscal Year 2016 H-1B Cap – You’ve Been Warned, Now Here Are This Year’s Key Dates

Fiscal Year 2016 H-1B Cap

U.S. Citizenship and Immigration Services (USCIS) will start accepting new H-1B petitions for fiscal year 2016 on Wednesday, April 1, 2015. Employers must immediately start identifying current and future employees who will need to be sponsored for new H-1B petitions. This chart identifies the absolute latest cut-off dates to file Labor Condition Applications (LCAs) and H-1B petitions for this year’s H-1B quota (H-1B cap).



It is extremely likely that this year’s H-1B quota (H-1B cap) will be met within five business days of it opening and USCIS will then stop accepting new petitions until next year’s H-1B cap, which will open on April 1, 2016. If USCIS receives more petitions than are available in the quota, then a lottery will be conducted to select the petitions that will be processed under the H-1B cap. Please note that only new H-

1B petitions are affected by the H-1B cap; H-1B petitions involving someone who has already been counted against the H-1B cap or who has previously held H-1B status are *not* affected by the H-1B cap.

By way of background, U.S. businesses use the H-1B program to employ foreign workers in specialty occupation positions that require theoretical or technical expertise in specialized fields, such as scientists, engineers or computer programmers. The number of initial H-1B visas available to U.S. employers (the H-1B cap) is 65,000, with an additional 20,000 numbers set aside for individuals who have obtained a U.S. master's degree or higher.

The usage of the H-1B program is strongly connected to the health of the U.S. economy. The rate at which USCIS has received cap-subject H-1B petitions in the past few years has dramatically increased as the economy has improved. For example, last year USCIS received 172,500 H-1B petitions within the first week of filing, requiring a lottery in order to select the petitions needed to meet the regular cap of 65,000 and master's cap of 20,000. Business immigration practitioners are predicting that this year's H-1B demand will be even greater than last year (perhaps 200,000 or more filings during the first week of the filing season, April 1, 2015, through April 7, 2015) and as a result more than half of all H-1B petitions filed by employers may be rejected by USCIS due to the randomized lottery system.

Petitions not selected in the H-1B lottery will be rejected. Should such a rejection occur, an affected foreign national seeking immigration and employment authorization sponsorship with an employer will be unable to obtain an H-1B visa until at least Oct. 1, 2016, (with the filing season beginning April 1, 2016). Affected foreign nationals may also be required to forego employment with employers and possibly leave the United States. In such cases employers will need to look at alternative visa options for employees unable to secure an H-1B visa.

Recommended Action

Based upon the above, Greenberg Traurig's Business Immigration & Compliance group strongly urges employers to file H-1B cap-subject petitions with USCIS on the earliest possible date in fiscal year 2016: mailing of H-1B cap-subject petitions to USCIS on March 31, 2015, for delivery to USCIS on Wednesday, April 1, 2015, the very first day of filing. This will provide the best possible chance for acceptance of the H-1B petition.

It also is recommended that H-1B cases should be initiated immediately. It can take two to four weeks or more to gather all of the necessary information and documentation, and prepare the requisite forms and supporting documentation for filing of an H-1B petition. Required information from the employer will include: (1) job title; (2) job description; (3) job location; (4) minimum education and experience required for the position; and (5) offered wage/salary. Required information from the employee will include: (1) resume; (2) educational documents (diplomas and transcripts); and (3) any documents related to prior or current U.S. immigration status.

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