

IMMIGRATION

ANNUAL H-1B LOTTERY PROCESS - EMPLOYERS WITH FOREIGN NATIONAL EMPLOYEES SHOULD BEGIN PLANNING NOW**Please Deliver this Alert Notice to the Appropriate Responsible Company Personnel**

Prior to March 1, 2021, U.S. employers should urgently assess whether any current or prospective foreign national employees may require H-1B sponsorship. The annual H-1B lottery process is fast approaching and represents a key immigration planning issue for employers.

U.S. Citizenship and Immigration Services (USCIS) will continue to use the electronic registration process, first introduced last year, for the 2021 H-1B lottery. Under this process, employers must submit an electronic registration “ticket” for each sponsored employee during the designated registration period in March. In 2020, the registration period ran from March 1 until March 20. If USCIS selects a sponsored employee’s “ticket” in the lottery, the employer will have 90 days to submit a full petition demonstrating eligibility for H-1B status.

In order to file an electronic registration “ticket,” an employer must provide the following information: employer name, federal employer identification number (FEIN), headquarters address, contact information for an authorized signatory, employee name, date of birth, country of birth/citizenship, passport number, and whether the employee obtained a master’s degree or higher in the U.S. Each registration requires a \$10 fee.

USCIS recently finalized a rule to replace the current randomized lottery selection of electronic registration “tickets” with a system that prioritizes the highest paid H-1B workers within their respective occupations. More information about this proposed change is available in our recent LEGALcurrents [here](#). While it appears unlikely this new system will be in place for the 2021 H-1B lottery, if it does proceed, employers will need to provide additional salary and occupational information to file a registration “ticket.”

U.S. employers should immediately assess whether any current or prospective foreign national employees may require H-1B visa sponsorship to secure ongoing work authorization and work with counsel to prepare an electronic registration. H-1B visas generally cover bachelor’s level professional positions. Many U.S. employers hire foreign nationals to work in the U.S. under H-1B visa status, especially recent college graduates or others coming from abroad to work in the U.S.

Approximately 65,000 new H-1B visas become available each federal fiscal year (beginning October 1), with an additional 20,000 available for those who obtained a U.S. master’s degree. In recent years, the annual demand for H-1B visas has significantly outpaced their availability. Accordingly, USCIS has conducted a lottery each April for the upcoming fiscal year’s H-1B quota.

Not all individuals are subject to the H-1B quota. For example, many H-1B employees currently employed by U.S. companies may have already been counted against the quota and will not need to be counted again. Prospective or current employees subject to the H-1B quota may include:

- Current foreign students or recent graduates working under authorized F-1 Optional Practical Training (OPT).
- Foreign nationals in or outside the U.S. who are not already employed in H-1B status by a for-profit employer.
- Current H-1B employees at universities who seek new employment by for-profit companies.

If you have any questions regarding this LEGALcurrents and/or the lottery process, please do not hesitate to contact any member of the firm's [Immigration](#) practice group at 585.232.6500.

Frank A. Novak, 585.231.1406, fnovak@hselaw.com

Glenn R. Schieck, 585.231.1326, gschieck@hselaw.com

Paige N. Monachino, 585.231.1461, pmonachino@hselaw.com

Attorney Advertising. Prior results do not guarantee a similar outcome. This publication is provided as a service to clients and friends of Harter Secrest & Emery LLP. It is intended for general information purposes only and should not be considered as legal advice. The contents are neither an exhaustive discussion nor do they purport to cover all developments in the area. The reader should consult with legal counsel to determine how applicable laws relate to specific situations. © 2021 Harter Secrest & Emery LLP

