

Blog Post

What Employers Need to Know — Final Rule by the Department of Homeland Security Updating the H-1B Nonimmigrant Worker Visa Program

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The U.S. Department of Homeland Security (DHS) recently issued a final rule aimed at modernizing the H-1B nonimmigrant worker visa program, with significant and favorable changes set to take effect on January 17, 2025. These updates provide much-needed clarity and support for U.S. employers seeking talented and professional employees. Following is a breakdown of the most impactful changes and what these changes mean for employers.

Redefining Specialty Occupations

The H-1B nonimmigrant visa program enables U.S. employers to temporarily hire foreign workers for specialty occupations, which are generally defined as roles requiring advanced knowledge and at least a bachelor's degree (or its equivalent) in a specific field. The definition of "specialty occupation" has been redefined to offer greater flexibility. Positions no longer need to universally require a bachelor's degree, as long as they typically demand one in a related field. This change acknowledges the broadness of professional roles in modern industries while ensuring the connection between academic credentials and job duties remains strong.

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Improved Consistency in Petition Approvals

The new rule emphasizes consistency by codifying a policy that defers to prior petition approvals by the United States Citizenship & Immigration Services under similar circumstances. This favorable change is expected to provide employers with more predictability and reduce unnecessary administrative hurdles when employers renew or amend H-1B petitions.

Flexible Worksite and Amendment Rules

Employers must continue filing H-1B amendments for significant changes in work locations/worksites, but are exempt from this requirement if the new site falls within the same geographic area covered by an existing Labor Condition Application (LCA) filed with the U.S. Department of Labor.

Support for International Students in F-1 Nonimmigrant Status

To address gaps in work authorization for F-1 international students transitioning to H-1B nonimmigrant worker status, the new rule extends the cap-gap period, ensuring that eligible individuals can remain employed while awaiting approval of their change of status from F-1 to H-1B. The F-1 cap-gap provision authorized under 8 CFR 214.2(f)(5)(vi) allows F-1 students with a pending or approved H-1B visa petition to remain in the U.S. and continue working or studying between the end of their F-1 student status and the start of their H-1B nonimmigrant worker status (which begins on October 1). This “gap” is typically from the end of the student’s authorized OPT (Optional Practical Training) or STEM OPT extension until the start of the H-1B visa, ensuring there’s no interruption in their legal stay or employment during this period.

Clarifications for Business Owners

H-1B nonimmigrant worker beneficiaries who own a controlling interest in their petitioning companies can still qualify for an H-1B visa classification,

provided their role predominantly involves specialized duties. However, one caveat is that these petitions will initially be approved for a shorter period — 18 months instead of the standard three years — to ensure compliance.

Focus on Genuine Job Offers by Potential Employers

The rule eliminates the outdated requirement to specify daily job assignments in H-1B petitions. Instead, employers must demonstrate that a bona fide position exists and that the role meets program requirements.

Enhanced Oversight and Compliance

Of most importance is ongoing focus on compliance. The regulation codifies DHS's authority to conduct site visits to verify compliance. Employers found noncompliant during these inspections risk having their petitions denied or revoked. Employers must prepare for an increase in onsite inspections starting in 2025.

Expanded Cap Exemptions

Nonprofit organizations and research institutions that engage in qualifying educational or research activities may now benefit from broader H-1B cap exemptions. This adjustment recognizes their critical contributions to the U.S. workforce.

Addressing Processing Delays

For H-1B petitions delayed during adjudication, employers will have the option to adjust the validity period, provided they comply with prevailing wage requirements. This change helps mitigate the impact of lengthy processing times.

Preparing for the Transition

The new rule requires use of a new Form I-129 starting January 17, 2025, with no grace period for older versions. Employers should prepare for

potential disruptions as USCIS staff adapt to the updated standards.

The H-1B visa program remains a vital tool for attracting top global talent. These updates reflect the evolving needs of employers, creating a more efficient system that supports business growth and innovation. For guidance on how these and other recent changes may impact your organization, reach out to our team of experienced immigration professionals.

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