

Blog Post

New \$100,000 H-1B Fee Update: What U.S. Employers Need to Know Now

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On October 20, 2025, U.S. Citizenship and Immigration Services (USCIS) released further guidance clarifying the implementation of the new \$100,000 H-1B fee established under the recent Presidential Proclamation. Below is a summary of the key provisions and practical implications based on the agency's announcement.

Petition for Nonimmigrant Worker Subject to the \$100,000 Fee

The fee applies to H-1B petitions filed on or after September 21, 2025, when the Petition for Nonimmigrant Worker: (1) is filed for consular processing, regardless of whether the beneficiary/employee is physically inside or outside the United States at the time of filing; or (2) is filed on behalf of a beneficiary/employee outside the U.S. who does not hold a valid H-1B visa.

In essence, any petition requesting consular processing, meaning that the H-1B approval will be used to obtain a H-1B nonimmigrant worker visa at a U.S. consulate or for admission at a port-of-entry, will trigger the \$100,000 payment requirement.

Petitions Not Subject to the Fee

The Proclamation does not apply to:

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- H-1B petitions that request an extension of stay, amendment, or change of nonimmigrant status within the U.S. (including change of employer filings);
- H-1B petitions filed before September 21, 2025; or
- Cases where beneficiaries hold valid H-1B visas and subsequently travel internationally and reenter the U.S.

Caveat: If an H-1B nonimmigrant worker petition requesting an extension, amendment, or change of status is denied and subsequently approved only for consular notification, USCIS will require payment of the \$100,000 fee prior to issuing final approval.

Practical Scenarios

Here's how the fee may apply in different H-1B filing contexts:

- Change from a Valid Nonimmigrant Status to H-1B Status: No fee applies if the petition is approved. If denied and converted to consular processing, the \$100,000 fee will be required.
- Change of Employer: Not subject to the fee if the change of status is approved. The fee applies if consular notification is requested or required.
- Amendments: No fee applies if approved as an amendment. If denied and converted to consular processing, the fee will apply.
- Extensions: No fee applies if approved as an amendment. If denied and converted to consular processing, the fee will apply.

FY 2027 H-1B Cap Lottery Filings

H-1B cap petitions filed under the FY 2027 lottery that request and receive a change of status approval will not be subject to the \$100,000 fee. Accordingly, beneficiaries selected in the H-1B lottery registration who are already in the U.S. at the time of filing will not trigger the new payment requirement.

Effect of International Travel

Foreign nationals holding an approved H-1B petition not subject to the fee will not become subject to it simply by traveling abroad and reentering the U.S., provided that no new consular processing H-1B petition is filed.

However, while non-essential travel is permissible, we do not recommend it at this time. If the international employee has any upcoming international travel planned they should consider postponing their plans.

Limited Exceptions Granted by DHS

USCIS has indicated that exceptions to the \$100,000 fee will be available only in extremely limited circumstances, where all of the following can be demonstrated:

- The H-1B worker's employment is in the national interest;
- No qualified U.S. worker is available to fill the position;
- The worker does not pose a threat to national security or welfare; and
- Requiring payment would significantly undermine U.S. interests.

Requests for exceptions must be submitted to and approved by the Department of Homeland Security (DHS) prior to filing the H-1B petition with USCIS. USCIS has not yet issued detailed evidentiary requirements for such requests. However, initial indications suggest the standard will be exceptionally high and limited to individual cases, not broad company or industry exemptions.

We are currently assisting employers to formulate arguments in support of potential exemption scenarios and will continue to monitor agency updates closely.

Ongoing Litigation and Policy Developments

The U.S. Chamber of Commerce has filed a lawsuit in the U.S. District Court for the District of Columbia challenging the legality of the \$100,000 H-1B fee. The lawsuit argues that the Proclamation violates the Immigration and Nationality Act (INA) and exceeds the president's executive authority.

According to the Chamber's complaint: "The President has significant authority over the entry of noncitizens into the United States, but that authority is bounded by statute and cannot directly contradict laws passed by Congress." Given this pending litigation and the complex constitutional questions involving the separation of powers, the implementation and enforcement of the \$100,000 fee may evolve in the coming months.

Next Steps and Continuing Updates

Our Immigration Team is closely monitoring this issue and will continue to provide updates as USCIS or DHS releases additional implementation guidance or as the ongoing litigation progresses.

If you have any questions regarding this update or its potential impact on your organization's H-1B program, please contact Akerman's Immigration Strategic Planning & Compliance department under the Labor & Employment Practice group directly.

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