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## The 2020 H-1B cap season is underway

By Courtney H. New and Jason Gerrol

We are less than two months away from the H-1B cap-subject filing season. This year's lottery will be run under the new [pre-registration process](#) established by U.S. Citizenship and Immigration Services (USCIS).

**From March 1 to March 20, 2020**, USCIS will accept pre-registration filings from employers for H-1B visas for Fiscal Year 2021. The actual H-1B visa petition will be due within 90 days of notification of selection in the lottery, saving employers whose petition is not selected the time and expense of preparing a petition.

In short, the H-1B nonimmigrant visa classification is for foreign national workers in specialty occupations, meaning occupations that require theoretical and practical application of highly specialized knowledge (i.e., requiring at least a bachelor's degree, or equivalent, in a specialized field).

Now is the time for employers to consider H-1B sponsorship for:

- Foreign national employees who are in F-1 student status and working pursuant to a period of Optional Practical Training (OPT) following completion of a U.S. degree program. OPT is generally limited to 12 months (*although those who received a U.S. degree in a science, technology, engineering, or math (STEM) discipline may be eligible for an additional 24 months of employment authorization*) so employment beyond the first year is typically contingent on securing an H-1B.
- Employees in L-1 status, whom you are sponsoring for legal permanent residency (or will sponsor in the future), but who are unlikely to receive a “green card” within the allotted period of admission (i.e., five years if in L-1B status or seven years if in L-1A status).
- Employees who are currently authorized to work pursuant to the final rule providing employment authorization for certain H-4 dependent spouses (*as the current administration has announced its intention to rescind the rule allowing such employment for H-4 spouses*).
- Prospective employees who have not previously been counted against the H-1B numerical limits within the past six years (e.g., with another U.S. employer or working abroad), and whom you wish to employ in the United States.

Importantly, if you miss the March 1 to March 20, 2020 pre-registration period, there will be no new H-1B visas available for the remainder of the 2021 fiscal year ending September 30, 2021.

If you are interested in employing a foreign national in the U.S., your Nixon Peabody professional can discuss with you the H-1B process further as well as other work authorization options that may be available (e.g., O-1, etc.).

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Courtney H. New, 401-454-1116, [cnew@nixonpeabody.com](mailto:cnew@nixonpeabody.com)
- Jason M. Gerrol, 617-345-1372, [jgerrol@nixonpeabody.com](mailto:jgerrol@nixonpeabody.com)