BEGINNING APRIL 2, 2018, U.S. COMPANIES MAY FILE H-1B PETITIONS ON BEHALF OF THEIR PROSPECTIVE FOREIGN WORKERS

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The filing period for new H-1B petitions to be counted against the annual H-1B quota for Fiscal Year (FY) 2019 will begin on Monday, April 2, 2018. Cap-subject H-1B petitions will have an employment start date of October 1, 2018 or later. In preparation for the opening of the FY 2019 H-1B filing period, employers are strongly encouraged to begin identifying current and future employees who will need H-1B visa status to be legally employed in the United States.

H-1B visas are available for specialty occupations requiring the attainment of a bachelor's degree or higher (or its foreign equivalent) in a specific field. A specialty occupation is a position that requires the theoretical or practical application of a body of highly specialized knowledge, such as that of an engineer, attorney, business administrator, economist, or scientist.

Identify your Cap-Subject H-1B Needs:

For current or transferring employees, employers should consider who might need to file an H-1B for Fiscal Year 2019:

- **Identify F-1 or J-1 employees** (working under their Optional Practical Training Employment Authorization Document) who will need a change of status to H-1B;
- Identify potential **candidates who are abroad** and have not been previously counted against the H-1B cap;
- Determine whether any **TN employees** (NAFTA professionals) might want an H-1B to be eligible to apply for adjustment of status to a permanent resident;
- Consider whether you employ someone in **L-1B status** (intra-company transferees with specialized knowledge) who might need to switch to an H-1B to gain an additional year of status and for whom a change of status is a necessary component to planning your business' long-term strategy of pursuing lawful permanent residence for that employee;
- Review those employees who are on expiring **O visas** which are renewable in only one year increments (as compared to the three year visa period under an H-1B); and

The Importance of Early Preparation:

Congress has placed a numerical cap on H-1B visas. For FY 2019, the limit is 65,000 cap-subject H-1B visas, with an additional 20,000 visas available for individuals who have earned a Master's degree or higher from an accredited U.S. educational institution. As in previous years, we expect the H-1B cap to be reached within the

first week. If the U.S. Citizenship and Immigration Services (USCIS) receives more cap-subject H-1B petitions than the annual fiscal year limitation, USCIS will conduct a computer-generated random selection process or lottery. Once the number of available H-1B visas is reached for the federal fiscal year, no new cap-subject H-1B petitions can be approved until the filing period for the next fiscal year opens.

Employers should immediately begin identifying individuals for whom H-1B sponsorship will be needed so they can allow sufficient time for H-1B petition preparation. Every H-1B petition requires the certification of a Labor Condition Application (LCA), which could take up to seven (7) days by the Department of Labor (DOL). In addition, companies that have never filed an H-1B petition before must get their FEIN verified by the DOL prior to filing an LCA, which could take an additional five (5) days. Therefore, it is imperative to start the process early to ensure an April 2nd filing of your H-1B petition.

For more information about the H-1B program or other temporary work visas, please contact the author Adriana Kostencki, on the firm's Government and Regulatory Team.

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