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FLORIDA'S BUSINESS LAW FIRM

BEGINNING APRIL 3, 2017, U.S. COMPANIES MAY FILE H-1B PETITIONS ON BEHALF OF THEIR PROSPECTIVE FOREIGN WORKERS

January 26, 2017

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IMMIGRATION

The filing period for new H-1B petitions to be counted against the annual H-1B quota for Fiscal Year (FY) 2018 will begin on Monday, April 3, 2017. Cap-subject H-1B petitions will have an employment start date of October 1, 2017 or later. In preparation for the opening of the FY 2018 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.**

Identify your Cap-Subject H-1B Needs:

H-1B visas are available for specialty occupations requiring the attainment of a bachelor's degree or its equivalent. For current or transferring employees, employers should consider who might need to file an H-1B for Fiscal Year 2018:

- 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 2018, 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.

As such, **we strongly advise clients to finalize their H-1B petition decisions by February 24, 2017.** Every case 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 3rd 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.

Related Team Member(s)

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