

## Immigration Alert: The H-1B "Cap Season" Is Upon Us

1/29/2009

We are sending this alert to advise clients to plan now for the April 1, 2009 "deadline" for the filing of H-1B worker petitions. As you may already know, Congress has placed a numerical "cap," or limit, on H-1B visas of 58,200 each fiscal year, with an additional 20,000 reserved for applicants holding U.S. master's degrees or higher. Last year, U.S. Citizenship and Immigration Services (USCIS) received 163,000 H-1B visa petitions in the first five days of April, far exceeding the numerical cap, thus causing USCIS to conduct an H-1B "lottery" and to choose the 78,200 winners. Thus all H-1B visas are gone for this current fiscal year ending September 30, 2009, and employers may file for FY 2010 H-1B visas commencing April 1, 2009 (for validity beginning on October 1, 2009). Those not selected for this year's H-1B lottery will "miss the cap" and not be eligible for an H-1B for FY 2010. In each of the last several years, the cap has been exhausted in the first few days of April and, despite the current down economy, we predict the FY 2010 H-1B quota to be exhausted soon after the April 1, 2009 opening day for filing H-1B petitions.

At Mintz Levin, we understand that many of our clients may not have a clear idea how many of their potential employees will require H-1B petitions in the coming months, and that the current economic environment makes planning this far in advance challenging. However, given the large volume of applicants we anticipate for this year's batch of available H-1B visas, we urge you to consider these issues as you move forward in your hiring cycle, and to identify as soon as possible those candidates already in your employment who will require H-1B petitions, so that we can begin preparing the necessary documentation in advance of the April 1, 2009 filing date.

Specifically, employees or potential employees who may qualify for H-1B status include:

- individuals on F-1 optional practical training and J-1 academic training (including those who may have been hired but haven't begun working yet);
- employees in TN status approaching their third (or higher) year of TN status, or considering applying for green cards;
- employees in L-1B status who may be approaching their fourth or fifth year of L-1B status;
- spouses of H-1B employees already in H-1B status who are considering changing their status to enter the workforce; and
- individuals currently employed with an affiliate overseas, or individuals you may be recruiting from overseas to come to the United States to work with your U.S. operations.

If you have responsibility for your firm's immigration planning and processing and you have already identified H-1B candidates, please initiate the H-1B application process as soon as possible. Simply forward via e-mail the job title, proposed salary, full name, and basic contact information of the H-1B candidate, and we can reach out to you and to the employee to begin the application process.

As always, we are prepared to strategize with clients regarding those potential employees who either do not qualify for H-1B status or who have a gap in their employment eligibility prior to the start of the next fiscal year.

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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