

## H-1B Cap for Fiscal Year 2010 - Employers Should Consider Planning Ahead

January 13, 2009

On April 1, 2009, employers may begin filing new H-1B petitions for Fiscal Year 2010. Employers should consider planning ahead, as numbers may run out quickly after filing begins. Last year, the U.S. Citizenship and Immigration Services (USCIS) received approximately 163,000 petitions during the five-day filing period, and conducted a random lottery to select the 65,000 petitions that would be eligible for processing.

Employers may want to contact immigration counsel to begin the process of filing H-1B petitions for new hires, changes of status to H-1B (such as a change from L-1 or TN) and students whose optional practical training Employment Authorization Documents (EADs) will expire prior to October 1, 2009. Employers may also want to plan ahead for overseas transferees who may not qualify for L-1 status.

The quota or "cap" for new H-1B petitions is 65,000 per year, and of these, 6,800 visas are set aside based on Free Trade Agreements with Chile and Singapore. An additional 20,000 H-1B petitions are available for beneficiaries with U.S. master's degrees. The H-1B cap applies only to "new" H-1B petitions. The following H-1B petitions are not subject to the cap: extensions of stay; most petitions to change employer; petitions for foreign nationals seeking employment with institutions of higher education, nonprofit research organizations and government research organizations; and petitions for physicians who previously held J-1 status and have applied for a waiver of the two-year residence requirement based on service in an underserved area. Changes of employer from an "exempt" employer to a "non-exempt" employer will likely be subject to the cap.

Employers may also wish to consider alternatives to H-1B status for temporary workers. Those employers should seek assistance from immigration counsel regarding specific eligibility requirements and individual qualifications for specific visa categories.

### For Further Information

If you have any questions about this Alert or would like more information, please contact one of the [attorneys](#) in our [Immigration Law Practice Group](#) or the attorney in the firm with whom you are regularly in contact.