



## Legal Alert: USCIS Increases Filing Fees for H-1B and L-1 Applications

8/23/2010

On August 13, 2010, President Obama signed into law H.R. 6080 known as the Emergency Supplemental Appropriation for Border Security Act. This law became effective immediately and includes an increase of certain H-1B and L-1 application fees. The U.S. Citizenship and Immigration Service ("USCIS") will review H-1B and L-1 applications filed on or after August 14, 2010 for compliance with the new fees. If a company filed qualifying H-1B or L-1 applications after August 14, 2010 without the new fees, USCIS will hold the applications and issue a Request for Evidence ("RFE") to provide the employer an opportunity to submit the new fee or evidence that the employer is not obligated to pay it. If an employer believes it is not subject to the fee, it can provide USCIS evidence supporting that fact. Acceptable evidence would include a written attestation from the employer explaining why it is not subject to the new fee and any other additional information that supports the company's position. Further information is forthcoming, and USCIS is currently working on revising Form I-129 to conform to the law.

### ***Who Must Pay the Additional Fee?***

Affected employers are those who (1) employ 50 or more employees in the U.S.; and (2) 50% or more of the U.S. employees are H-1B or L-1 nonimmigrant workers. This is referred to as the "50-50 Rule."

### ***Which Immigration Applications are Affected?***

If you are a covered employer, you must pay the additional filing fee for **initial and change of employer H-1B or L-1 applications**. On the other hand, the additional fee does not apply to an H-1B or L-1 **extension** application filed by the same employer on behalf of an H-1B or L-1 employee for whom it previously filed an initial application.

### ***How Does an Employer Calculate Whether it has 50% or More H-1B or L-1 Workers in the U.S.?***

For purposes of evaluating whether a company has a U.S. workforce that is comprised of 50% or more H-1B and L-1 workers, a company must include all part-time and full-time H-1B and L-1 workers (including workers authorized to work under an L-2 dependent Employment Authorization Document). This calculation must be done based on a company's numbers at the time of filing a qualifying initial or change of employer application.

### ***How Much is the Additional Fee?***

The additional fee for initial and change of employer H-1B applications is \$2000. This fee must be paid on top of existing fees (i.e. USCIS processing fee, Fraud Prevention and Detection Fee, ACWIA fee, and optional Premium Processing fee).

The additional fee for initial and change of employer L-1 applications is \$2250. This fee must be paid on top of existing fees (i.e. USCIS processing fee, Fraud Prevention and Detection Fee, and optional Premium Processing fee).

If a company is subject to the new fee, it should issue a check in the appropriate amount made payable to the Department of Homeland Security and submit it with the application and other required fees.

If you have any questions regarding this issue or other business immigration issues, please contact the author of this Alert, Geetha Nadiminti, [gnadiminti@fordharrison.com](mailto:gnadiminti@fordharrison.com), any member of Ford & Harrison's Business Immigration practice group or the Ford & Harrison attorney with whom you usually work.