

USCIS CLARIFIES WHEN AND HOW TO PAY ADDITIONAL FEE FOR CERTAIN H-1B AND L-1 PETITIONS.

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The Consolidated Appropriations Act, 2016 (Public Law 114-113), signed into law by President Obama on December 18, 2015, increased the fees for *certain* H-1B and L-1 petitioners. These petitioners are required to submit an additional fee of \$4,000 for *certain* H-1 B petitions and \$4,500 for *certain* L-1 A and L-1B petitions submitted on or after December 18, 2015. The additional fee will remain in effect until September 30, 2025¹. United States Citizenship and Immigration Services (USCIS) has instructed employers to pay the additional fee using a separate check made payable to the Department of Homeland Security.

The additional fees apply to employers who employ 50 or more employees in the United States, with more than 50 percent of those employees in H-1 B or L (including L-1 A and L-1 B) nonimmigrant status. These employers must submit the additional fees with an H-1B or L-1 petition filed:

- Initially to grant status to a nonimmigrant described in subparagraph (H)(i)(b) or (L) of section 101(a)(15) of the Immigration and Nationality Act; or
- To obtain authorization for a nonimmigrant in such status to change employers.

This fee is in addition to the base processing fee, Fraud Prevention and Detection Fee, American Competitiveness and Workforce Improvement Act of 1998 fee (when required), as well as the premium processing fee, if applicable.

To reflect the changes, USCIS is in the process of revising Form 1-129. Petition for a Nonimmigrant Worker and Form 1-129S. Nonimmigrant Petition Based on Blanket L Petition to reflect the provisions of Public Law 114-113.

When an Employer Must Pay the Additional Fee

If the Employer is an H-1B Petitioner

The employer must pay the additional \$4,000 fee if all of the following applies to you:

- You employ 50 or more employees in the United States;
- More than half of your employees in the United States are in H-1B, L-1A, or L-1B nonimmigrant status;
- You filed your H-1B petition with a postmark date of Dec. 18, 2015 or later (or if you sent it by

¹ The additional fee previously required by Public Law 111-230, as amended, expired on September 30, 2015.

courier services, the courier picked up your H-1B packet on Dec. 18,2015, or later); and

- You filed an H-1B petition to:
 - Seek initial H-1B nonimmigrant status for a foreign national, or
 - Obtain authorization for an H-1B worker to change employers.

Employer is NOT required to pay the additional fee for:

- H-1B extension requests filed by the same employer for the same employee;
- H-1B amended petitions; or
- Petitions based on other employment-based visa categories (such as H-1B1, H-2A, H-2B, etc.)

If the Employer is an L-1 Petitioner

The employer must pay the additional \$4,500 fee if all of the following applies to you:

- You employ 50 or more employees in the United States;
- More than half of your employees in the United States are in H-1B, L-1A, or L-1B nonimmigrant status (L-2 employees are not included in this amount);
- You filed your L-1 petition with a postmark date of Dec. 18,2015 or later (or if you sent it by courier services, the courier picked up your H-1B packet on Dec. 18,2015, or later); and
- You filed an L-1 petition to:
 - Seek initial L-1A or L-1B nonimmigrant status for a foreign national, or
 - Obtain authorization for an L-1A or L-B worker to change employers.

Employer is NOT required to pay the additional fee for:

- L-1A or L-1B extension requests filed by the same employer for the same employee;
- L-1A or L-1B amended petitions; or
- Petitions based on other employment-based visa categories (such as H-1B1, H-2A, H-2B, etc.)

How USCIS will Determine Applicability of Additional Fee for H-1B and L-1 Petitions

USCIS will count all of employer's full-time and part-time employees when determining the applicability of the additional fee. Employees of related entities will not count.

When calculating the percentage of employer's employees in H-1B or L-1 status, USCIS will calculate based on the number of employees employer has in the United States, regardless of whether they are paid through a U.S. or foreign payroll.