
New Year Brings New H-1B Registration Requirements for Employers in 2020

By Rob P. Neale / Jan 08, 2020

Employers who utilize the H-1B work visa program to supplement its domestic workforce must be aware of significant changes in the coming year. Commencing in 2020, the U.S. Citizenship and Immigration Services (USCIS) will require all employers to complete an “electronic registration” process if they want to sponsor a foreign worker subject to the annual H-1B quota. Employers filing an H-1B petition that is exempt from the annual quota, such as certain cap-exempt organizations or H-1B extension filings, are not required to use the new registration system.

During the upcoming registration period starting on March 1, 2020, and ending on March 20, 2020, employers must complete the on-line registration process by providing, among other things, information about their company, information about the sponsored individual(s), and pay a \$10 registration fee per sponsored worker. After the registration period closes, USCIS will notify all registrants whether or not they have been randomly selected to submit a full H-1B petition with supporting documentation. In the past, employers simply submitted their H-1B petition and waited to see if their case was selected for processing.

While USCIS announced that its new program “will dramatically streamline processing by reducing paperwork and data exchange” and “will provide an overall cost savings to petitioning employers,” the actual overall impacts to employers resulting from these changes are unknown. For example, some employers may not, in fact, experience cost savings because employers whose petitions are selected will end up spending more money on their cases as the additional layer of administrative processing will add a new legal cost. It may turn out that the biggest beneficiary from these changes is the USCIS itself, both from a revenue-generating standpoint and a reduced workload perspective.

Furthermore, decreasing the up-front commitment historically required by an employer to enter the H-1B lottery for an individual beneficiary may result in significant unintended negative consequences to certain employers. Practitioners expect that companies will register as many petitions as possible under the agency’s new process, many of which will either not ultimately qualify for an H-1B or will end up being abandoned. The net result of this filing increase will be reduced odds of having a legitimate H-1B selected. Smaller employers who are unable to increase their selection chances by registering a large applicant pool will feel the most impact.

Another area of uncertainty surrounds the extent to which the government will use employer-provided information collected as part of the new H-1B registration program. The final rule authorizes USCIS to collect “sufficient information for each registration to mitigate the risk that the registration system will be flooded with frivolous registrations,” agency spokesman Matthew Bourke said. That includes the inclusion of an attestation with the potential for referrals to law enforcement if the information included in the registration is falsified, he said.

Employers enrolled in other immigration-related programs administered by the Department of Homeland Security (DHS), such as E-Verify, must agree to, among other things, greater government access to protected information which may be data mined and shared with other agencies for various enforcement purposes. Because the new electronic H-1B registration platform has yet to be shared with the public, it is unclear what an employer must specifically agree to in order to use the new system.

Clark Hill is closely monitoring these new developments regarding the H-1B electronic registration program and will provide any new information as it arises. We are prepared to assist employers on the issues these new initiatives may create. Should you have any questions, please contact the Clark Hill attorney with whom you regularly work.