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H-1B Petitions April 1 Deadline

With the federal government's fiscal year 2013 approaching, employers who wish to sponsor a first-time H-1B worker may file their petitions starting April 1, 2012. United States Citizenship & Immigration Services (USCIS) regulations allow such petitions to be filed six months before the start of the coming fiscal year (October 1, 2012). With the start of H-1B season looming, employers should review their workforce and recruitment pool to determine whether they will need to file a petition for fiscal year 2013.

H-1B visas are reserved for workers in a specialty occupation that requires a Bachelor's Degree or higher. USCIS grants these visas in three-year increments, for up to six years. If an employer wishes to employ an H-1B worker, it must file an H-1B petition and offer the potential employee a wage that meets the prevailing wage for the position in the geographical area of employment. Additionally, the employer must satisfy a number of mandatory notice requirements.

There are only 65,000 H-1B slots available each fiscal year. USCIS also grants an additional 20,000 H-1B visas to employers who hire employees with a Master's Degree from a college or university in the United States.

Employers who plan on submitting a petition should do so as close to April 1, 2012 as possible. In past years, USCIS has reached the cap limit on the first day. In fiscal year 2012 the cap was reached on November 22, 2011, a full three months earlier than in fiscal year 2011. USCIS awards H-1Bs on a rolling basis throughout the year, but when the cap is reached USCIS uses a random selection process to determine which petitions will be accepted for processing. Because no one knows when the cap will be reached, employers should file a petition on April 1 in order to guarantee an opportunity for an H-1B visa.

The April 1 deadline applies to foreign workers who will engage in "new" H-1B employment. Such workers may not begin their H-1B work until the beginning of the fiscal year in which the visa was issued (i.e., October 1). Not all H-1B workers are subject to the annual allocation of visas; under certain circumstances the USCIS will consider workers to be "cap-exempt," such as the following:

- Individuals who already have an H-1B visa and wish to extend the amount of time they remain in the United States;
- Workers who, in the past six years, have been counted toward the cap, unless

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they would be eligible for another full six years of admission because they have been outside the United States for at least one full year since they last held their H-1B status;
- Individuals who will be employed at an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization;
- Petitions filed to change the terms of employment of a current H-1B visa holder;
- Petitions filed to allow a current H-1B worker to change employers (unless the worker is switching from a "cap-exempt" entity to an employer who is subject to the cap);
- Current H-1B visa holders who wish to work concurrently in a second H-1B position; and/or
- J-1 foreign medical graduates who have received a "Conrad 30" waiver of the two year foreign residence requirement.

Reinhart stands ready to answer any questions you may have about the H-1B petition process and whether a visa will help your organization meet its workforce-related goals. If you are contemplating filing a petition, contact your Reinhart attorney or one of Reinhart's Immigration attorneys as soon as possible to ensure timely filing of the petition."

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