

# H-2A and H-2B Program Updates: All You Need to Know for the 2023 Season

December 13, 2022

**Fredrikson**

*Where Law and Business Meet*<sup>®</sup>

# Agenda

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Introductions

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Fredrikson Client Portal

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H-2A Program Update

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H-2B Program Update

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H-2B Best Practices

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Q&A and Upcoming Webinars

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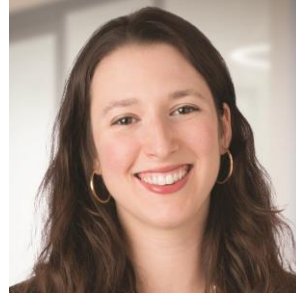
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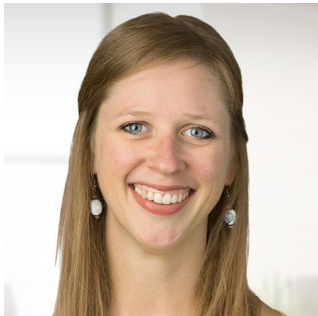
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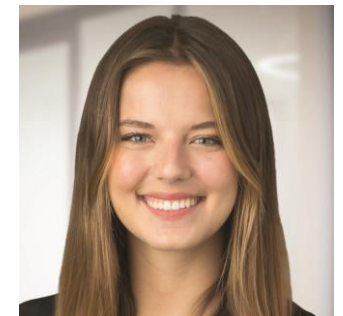
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# Fredrikson Immigration Client Portal

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This year, we will be utilizing Fredrikson's immigration database, powered by Tracker, to track the status of your H-2 filings and access your documents.

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Tracker client portal will give more transparency to the employer and increases efficiency in sharing documents and information.

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Tracker URL: <https://fredlaw.casemgmtsys.com/home/login>

# Fredrikson Immigration Portal Demo

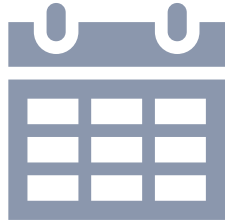
## Employer will have access to:

- Submissions filed with the government
- Status of applications
- Recruitment documents
- Compliance advisories
- Employees' documents & information
- Audit file

## Company contacts (current clients)

- Make sure to log in and look around
- If you would like us provide a more detailed training for your team, we can set up a Zoom meeting.

# H-2A Program Updates



The ETA 790 Job Order must be filed with DOL 75-60 days before the date of need



Make sure to get housing secured well in advance of filing the ETA 790



Final H-2A Rule highlights

# 2022 H-2A Final Rule- Highlights

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Electronic Filing– Mandate electronic filing-Foreign Labor Application Gateway system

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Joint Employment-All individual employers to jointly employ H-2A full time workers

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Industry Specific-Codifies procedures for workers engaged in animal shearing, beekeeping, and custom combining

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Housing-must meet applicable local, State, or Federal standards addressing certain health or safety concerns

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Area of intended employment-travel to multiple worksites allowed but must return within same day of business to original worksite

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Surety Bonds-Electronic submission and incremental increases in bond amounts

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Debarment for attorney and agents based on their own actions

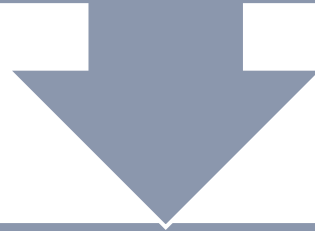
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Wages-broadens ability of state entities to conduct prevailing wage surveys



# H-2B Filing Timeline & Randomization Process

For April 1, 2023 start date, the ETA 9142B must be filed with DOL 90-75 days before the employment start date, which is January 1-16



33,000 visas are available for the second half of the Fiscal Year 2023, which includes employment start dates of April 1 – September 30

All ETA 9142B applications received by DOL January 1-3 will be put into a random selection – we plan to file all ETA 9142B applications in those first 3 days

DOL will assign each application to a group – this usually occurs a few days after January 3

Group A = 35,000 workers; each subsequent group includes no more than 20,000 workers

In the past, we have seen that most applications in Group A and some in Group B have made it into the cap

# Hot Off The Press! H-2B Additional Visas Released

Nationals of El Salvador, Guatemala, Honduras, and Haiti

- 20,000 visas for full fiscal year
- Does not need to be a returning worker
- If start date Oct. 1 – March 31, can file Dec. 15
- If start date April 1 – Sept. 30, file 15 days after 2<sup>nd</sup> half statutory cap met

Start Dates: Oct. 1, 2022 – Mar. 31, 2023

- 18,216 additional visas for returning workers
- Can file starting Dec. 15
- Premium processing suspended until Jan. 3, 2023
- Visas do not carry over to later start dates

Start Dates: April 1, 2023 – May 14, 2023

- 16,500 visas for returning workers
- File no earlier than 15 days after 2<sup>nd</sup> half of statutory cap met
- Visas do not carry over to later start dates

Start Dates: May 15, 2023 – Sept. 30, 2023

- 10,000 visas for returning workers
- File no earlier than 45 days after 2<sup>nd</sup> half of statutory cap met

# H-2B Additional Visas – More Information

Additional recruitment steps are required for employers filing an H-2B petition 30 or more days after the certified start date

Additional visa applications will be filed at the California Service Center

If filing for additional visas, must prove irreparable harm. This year, this includes a statement signed concurrently with USCIS filing

H-2B portability has been extended through Jan 25, 2024

# New: H-2B Temporary Need Registration Number

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Applications filed after January 1, 2023, where a Notice of Acceptance (NOA) is issued will be assigned a unique temporary need registration number

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The unique temporary need registration number will remain active for up to 3 years; will be considered “one piece of evidence” in DOL adjudications

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Any material changes in future filings will invalidate the unique registration number

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*Padilla Construction Company, et. al. v. Martin J. Walsh, et. al.*, No. 2:18-cv-1214 (C.D. Cal. Nov. 2, 2022)

# H-2B Best Practices for Filing by January 1



Temporary Need Documentation – Track and provide monthly payroll summary, revenue summary, and other requested information to prepare temporary need statement



Any change in the dates of need or number of H-2B workers must be documented and explained



Carefully review final ETA 9142 Form and supporting documents as soon as possible and no later than December 27 for timely filing



Designate a point person to partner with Fredrikson once the NOA is issued

# H-2B Best Practices for Obtaining Certification



Changes to employment terms (i.e., job location, number of workers) MUST be communicated to Fredrikson before recruitment is conducted and/or ETA 9142B is certified



Follow recruitment instructions to avoid delays in the recruitment process



Named Petitions – If filing a named petition for an H-2B change of employer, please complete spreadsheet with the following information: name, nationality, current immigration status, passport pages, prior immigration status and approvals, and current i-94 record



Communication – maintain open communication with counsel. Do not make changes to terms of employment without contacting counsel

# Upcoming Webinars

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**H-2B Recruitment for U.S. Workers & the Race to USCIS: January 5, 2023**

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**H-2B Workers, I-129 & Compliance: Mid-February 2023**

# Q&A?





# Thank you!

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