

# The H-2B Test of the Labor Market and the Race to USCIS

January 5, 2023

**Fredrikson**

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# Agenda

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Introductions

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H-2B Cap

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DOL's Recruitment Requirements for H-2B Certification

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Recruitment Report

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H-2B Certification

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Q&A and Upcoming Webinar

# Presenters



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# Fredrikson H-2 Immigration Service Team



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# H-2B Cap



An employer does not receive H-2B visa numbers under the cap until it files the I-129 H-2B petition with USCIS.



DOL randomly assigns all petitions filed between 1/1-1/3 with a start date of April 1 into Group A, B, C, D, E, etc.



The H-2B employer needs to complete steps to recruit for U.S. (domestic) workers to receive the ETA 9142B certification that is required to file the I-129 petition



No matter what group the petition is assigned, it is important to work toward obtaining the ETA 9142B certification from DOL



There are still options to file an I-129 petition and receive H-2B workers, even after the cap has been met

# Notice of Acceptance

U.S. Department of Labor    Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604-2105



## NOTICE OF ACCEPTANCE H-2B TEMPORARY NON-AGRICULTURAL PROGRAM

March 26, 2022

[REDACTED]

Loan Huynh  
Fredrikson & Byron, P.A.  
200 South Sixth St., Suite 4000  
Minneapolis, MN 55402

Case Number: [REDACTED]

RE: [REDACTED]

Dear Sir/Madam:

The employer's application seeking temporary labor certification for [REDACTED], under the H-2B temporary non-agricultural labor certification program has been reviewed and accepted for processing. The application is timely and contains the required conditions of employment necessary to ensure that the wages and working conditions of U.S. workers similarly employed will not be adversely affected. The employer should read all instructions and information contained in this letter carefully. Before the Department of Labor can issue a final determination on its *Application for Temporary*

# H-2B Recruitment – Timeline

Fredrikson will provide recruitment instructions as soon as DOL issues the Notice of Acceptance

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

- All recruitment documents will be available under the position's profile

Notice of Job Opening – Post for 15 business days or provide Collective Bargaining Agent with a copy of NOJO

- Important to be very clear with us re: how many days your business is open for employees to have access to the Notice of Job Opportunity – if business is open 7 days/week, the NOJO needs to be posted for just over 2 weeks; if business is open 5 days/week, the NOJO needs to be posted for over 3 weeks
- Cannot count NOJO posting timeline start until the day after Notice of Acceptance is issued

Recruitment Report cannot be submitted until 16 business days after the date the NOA was issued where a NOJO is posted for 15 business days / 2 days after the date of the NOA was issued where there is a Collective Bargaining Agent

# H-2B Recruitment – Requirements

SWA Job Order posted until 21 days from employment start date

- We will take care of this

Post Notice of Job Opportunity

- Submission of the recruitment report to DOL can only occur after the job opportunity has been posted for 15 consecutive business days after the date of the NOA

<https://seasonaljobs.dol.gov/> - post position on this website

- DOL takes care of this

Notify any former U.S. workers that held the position in the last year

- Not required to contact former employees who were dismissed for cause, abandoned the worksite, or were employed as H-2B temporary workers

If you receive any U.S. applicants during the recruitment process

- Notify us immediately
- A final disposition must be made on each U.S. applicant before filing the Recruitment Report
- If you hire any U.S. workers, it will be noted in the Recruitment Report and DOL will reduce the number of H-2B workers certified by the number of U.S. workers hired



# Filing the Initial Recruitment Report

## Initial Recruitment Report

- Employer must make a decision on each applicant before filing
- Each U.S. worker who applies and accepts a position through this process will reduce the H-2B certification
- DOL will set a deadline for the Recruitment Report, but we will plan to file 16 business days after the date the NOA issued



Generally, the ETA 9142B certification is issued within 1-2 business days of filing the Recruitment Report



Once the ETA 9142B certification is received, the I-129 petition can be filed with USCIS – if the cap has not been met yet

# Notice of Certification

U.S. Department of Labor Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604-2105



**NOTICE OF CERTIFICATION**  
**H-2B TEMPORARY NON-AGRICULTURAL PROGRAM**

April 19, 2022

[REDACTED]

Loan Huynh  
Fredrikson & Byron, P.A.  
200 South Sixth St. Suite 4000  
Minneapolis, MN 55402

Case Number: [REDACTED]

**RE:** [REDACTED]

Dear Sir/Madam:

The employer's application seeking temporary labor certification under the H-2B temporary non-agricultural program has been **certified**. This office accepted for consideration an application from the employer requesting H-2B temporary labor certification for [REDACTED]

In accordance with 20 Code of Federal Regulations (CFR) Part 655, Subpart A, it has been determined that a sufficient number of able, willing and qualified U.S. workers are not available at the time and place needed to fill the job opportunities for which

# Options If You Do Not Receive Visas Under the 2<sup>nd</sup> Half Cap of FY 2023

Obtain an H-2B Certification even if you do not make it into the cap!

Workers who are exempt from the Cap:

- Already counted against the 1<sup>st</sup> half FY Cap (entered after Oct. 2022)
- In the U.S. in H-2B status
- Fish roe processors, fish roe technicians, or supervisors of fish roe processing
- Performing labor/services in the Cmlth of Northern Mariana Islands or Guam until Dec. 31, 2029.
- Supplemental H-2B Visas (64,716 additional visas)
  - Returning Workers (held H-2B status in the past 3 fiscal years) = 44,716 additional visas total
    - Start date in first half of FY 2023 (Oct. 1, 2022, to March 31, 2023): 18,216 visas
    - Start date in early second half of FY 2023 (Apr. 1 to May 14): 16,500 visas
    - Start date in late second half of FY 2023 (May 15 to Sept. 30): 10,000 visas
  - Nationals of El Salvador, Guatemala, Honduras, or Haiti: 20,000 visas

# Planning Ahead – Documents to gather for named beneficiaries

- I-94 Record
- Passport (valid for duration of the time in U.S.)
- U.S. Immigration History (past visas, I-797 forms)

The screenshot shows the Tracker software interface for 'H-2 Company'. The main content area is titled 'NEW SERVICE REQUEST' and contains a 'Questionnaire' section. Under 'Add or Change an Employee', there are dropdown menus for 'Individual' (set to '- New -') and 'Organization' (set to 'H-2 Company'). Under 'Add Process to Employee', there are dropdown menus for 'Country' (set to 'United States'), 'Process' (set to '- New -'), 'Organization' (set to 'H-2 Company'), and 'Petitioner' (set to '- None -'). Below this, there are sections for 'Organizational Detail Information with DS-1566 Form' and 'Organizational Detail Information with DS-1566'. The 'Beneficiary ATTACHMENT - 1 to Form I-129' entry is highlighted in yellow. At the bottom, there is a 'TO BE COMPLETED' table with columns for 'Questionnaire', 'Process', 'Status', and 'Last Updated'. The table contains one row: 'Beneficiary ATTACHMENT - 1 to Form I-129' (Individual Questionnaire) with a status of 'In Progress' and a last updated date of '1/3/2023 1:55:44 PM'.

The screenshot shows the Tracker software interface for 'Beneficiary ATTACHMENT - 1 to Form I-129'. The main content area is titled 'Beneficiary ATTACHMENT - 1 to Form I-129' and contains a 'Questionnaire' section. The questionnaire includes instructions: 'Please answer this questionnaire as completely as possible to ensure a prompt review. Please note that required fields/questions will have an "\*" and must be completed before you can submit the form for review.' Below the instructions is the 'Employee Information for I-129 Form Section' with the following fields: 'First Name\*' (Nicole), 'Middle Name' (empty), 'Last Name\*' (H-2 Employee), 'Email' (noemail@email.com), 'Email Type\*' (Personal), 'Email Address\*' (noemail@email.com), 'Primary email address?' (Yes/No), 'Date of Birth\*' (01/01/2000), and 'Gender\*' (Female).

# Upcoming Webinar

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**H-2B Workers, I-129, Consular  
Processing, & Compliance:  
February 14, 2023**

# Q&A?



# Thank you!

**Fredrikson**

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